

## **Al-Muwatta Hadith (Hadith 36.13)**

### ***Prohibition against Forfeiting Pledges Given on Security***

Yahya said, "Malik related to us from Ibn Shihab from Sa'id ibn al-Musayyab that the Messenger of Allah, may Allah bless him and grant him peace, said, 'The pledge given as security is not forfeited.' "

Malik said, "The explanation of that according to what we think - and Allah knows best - is that a man gives a pledge to somebody in security for something. The pledge is superior to that for which he pawned it. The pledger says to the pawn-broker, 'I will bring you your due, after such-and-such a time. If not, the pledge is yours for what it was pawned for.' "

Malik said, "This transaction is not good and it is not halal. This is what was forbidden. If the owner brings what he pledged it for after the period, it is his. I think that the time condition is void."

[View Page](#)

## **Al-Muwatta Hadith (Hadith 36.13a)**

### ***Judgement on Pledging Fruit and Animals as Security***

Yahya said, "I heard Malik say that if a man pledges his garden for a stated period and the fruits of that garden are ready before the end of that period, the fruits are not included in the pledge with the real estate, unless it is stipulated by the pledger in his pledge. However, if a man receives a slave-girl as a pledge and she is pregnant or she becomes pregnant after his taking her as a pledge, her child is included with her.

"A distinction is made between the fruit and the child of the slave-girl. The Messenger of Allah, may Allah bless him and grant him peace, said, 'If someone sells a palm which has been pollinated, the fruit belongs to the seller unless the buyer stipulates its inclusion.' The undisputed way of doing things in our community is that if a man sells a slave-girl or an animal with a foetus in its womb, the foetus belongs to the buyer, whether or not the buyer stipulates it. The palm is not like the animal. Fruit is not like the foetus in its mother's womb. Part of what clarifies that is also that it is the usage of people to have a man pawn the fruit of the palm apart from the palm. No one pawns the foetus in its mother's womb whether of slaves or animals."

[View Page](#)

## **Al-Muwatta Hadith (Hadith 36.13b)**

### ***Judgement on Pledging Animals as Security***

Yahya said that he had heard Malik say, "The undisputed way of doing things in our community concerning pledges is that in cases where land or a house or an animal are known to have been destroyed whilst in the possession of the broker of the pledge, and the circumstances of the loss are known, the loss is against the pledger. There is no deduction made from what is due to the broker at all. Any pledge which perishes in the possession of the broker and the circumstances of its loss are only known by his word, the loss is against the broker and he is liable for its value. He is asked to describe whatever was destroyed and then he is made to take an oath about that description and what he loaned on security for it. "Then people of discernment evaluate the description. If the pledge was worth more than what the broker loaned, the pledger takes the extra. If the assessed value of the pledge is less than what he was loaned, the pledger is made to take an oath as to what the broker loaned and he does not have to pay the extra which the broker loaned above the assessed value of the pledge. If the pledger refuses to take an oath, he has to give the broker the extra above the assessed value of the pledge. If the broker says that he doesn't know the value of the pledge, the pledger is made to take an oath on the description of the pledge and that is his if he brings a matter which is not disapproved of."

Malik said, "All this applies when the broker takes the pledge and does not put it in the hands of another."

[View Page](#)

### **Al-Muwatta Hadith (Hadith 36.13c)**

#### ***Judgement on Pledges between Two Men***

Yahya said that he heard Malik speak about two men who had a pledge between them. One of them undertook to sell his pledge, and the other one had asked him to wait a year for his due. He said, "If it is possible to divide the pledge, and the due of the one who asked him to wait will not be decreased, half the pledge which is between them is sold for him and he is given his due. If it is feared that his right will be decreased, all the pledge is sold, and the one who undertook to sell his pledge is given his due from that. If the one who asked him to wait for his due is pleased in himself, half of the price is paid to the pledger. If not, the is made to take an oath that he only asked him to wait so that he could +transfer my pledge to me in its form.' Then he is given his due immediately."

Yahya said that he heard Malik say about a slave whose master had pledged him and the slave had property of his own, "The property of the slave is not part of the pledge unless the broker stipulates that."

[View Page](#)

### **Al-Muwatta Hadith (Hadith 36.13d)**

#### ***Judgement on Pledges in General***

Yahya said that he heard Malik speak about someone who pledged goods as security for a loan, and they perished with the broker. The one who took out the loan confirmed its specification. They agreed on the amount of the loan, but challenged each other about the value of the pledge, the pledger saying that it had been worth twenty dinars, whilst the broker said that it had been worth only ten, and that the amount loaned on security was twenty dinars. Malik said, "It is said to the one in whose hand the pledge is, 'describe it.' If he describes it he is made to take an oath on it and then the people of experience evaluate that description. If the value is more than what was loaned on security for it, it is said to the broker, 'Return the rest of his due to the pledger.' If the value is less than what was loaned on security for it, the broker takes the rest of his due from the pledger. If the value is the exact amount of the loan, the pledge is compensated for by the loan."

Yahya said that he heard Malik say, "What is done in our community about two men who have a dispute about an amount of money loaned on the security of a pledge - the pledger claiming that he pledged it for ten dinars and the broker insisting that he took the pledge as security for twenty dinars, and the pledge is clearly in the possession of the broker - is that the broker is made to take an oath when the value of the pledge is fully known. If the value of the pledge is exactly what he swore that he had loaned on security for it, the broker takes the pledge as his right. He is more entitled to take precedence with an oath since he has possession of the pledge. If the owner of the pledge wants to give him the amount which he swore that he was owed, he can take the pledge back. If the pledge is worth less than the twenty dinars he loaned, then it is said to the pledger, 'Either you give him what he has sworn to and take your pledge back, or you swear to what you said you pledged it for.' If the pledger takes the oath, then what the broker has increased over the value of the pledge will become invalid. If the pledger does not take an oath, he must pay what the broker swore to."

Malik said, "If a pledge given on security for a loan perishes, and both parties deny each other's rights, with the broker who is owed the loan saying that he gave twenty dinars, and the pledger who owes the loan saying that he was given only ten, and with the broker who is owed the loan saying the pledge was worth ten dinars, and the broker who owes the loan saying it was worth twenty, then the broker who is owed the loan is asked to describe the pledge. If he describes it, he must take an oath on its description. Then people with experience of it evaluate that description. If the value of the pledge is estimated to be more than what the broker claims it was, he takes an oath as to what he claimed, and the pledger is given what is over from the value of the pledge. If its value is less than what the broker claims of it, he is made to take an oath as to what he claims is his. Then he demands settlement according to the actual value of the pledge. The one who owes the loan is then made to take an oath on the extra amount which remains owing against him to the claimant after the price of the pledge is reached. That is because the broker becomes a claimant against the pledger. If he takes an oath, the rest of what the broker swore to of what he claimed above the value of the pledge is invalidated. If he draws back, he is bound to

pay what remains due to the broker after the value of the pledge."

[View Page](#)

## **Al-Muwatta Hadith (Hadith 36.13e)**

### ***Judgement on Renting Animals and Going Beyond Specified Destinations***

Yahya said that he heard Malik say, "What is done in our community about a man who rents an animal for a journey to a specified place and then he goes beyond that place and further, is that the owner of the animal has a choice. If he wants to take extra rent for his animal to cover the distance overstepped, he is given that on top of the first rent and the animal is returned. If the owner of the animal likes to sell the animal from the place where he over-steps, he has the price of the animal on top of the rent. If, however, the hirer rented the animal to go and return and then he overstepped when he reached the city to which he rented him, the owner of the animal only has half the first rent. That is because half of the rent is going, and half of it is returning. If he oversteps with the animal, only half of the first rent is obliged for him. Had the animal died when he reached the city to which it was rented, the hirer would not be liable and the renter would only have half the rent."

Malik said, "That is what is done with people who overstep and dispute about what they took the animal for."

Malik said, "It is also like that with some one who takes qirad-money from his companion. The owner of the property says to him, 'Do not buy such-and-such animals or such-and-such goods.' He names them and forbids them and disapproves of his money being invested in them. The one who takes the money then buys what he was forbidden. By that, he intends to be liable for the money and take the profit of his companion. When he does that, the owner of the money has an option. If he wants to enter with him in the goods according to the original stipulations between them about the profit, he does so. If he likes, he has his capital guaranteed against the one who took the capital and over stepped the mark."

Malik said, "It is also like that with a man with whom another man invests some goods. The owner of the property orders him to buy certain goods for him which he names. He differs, and buys with the goods something other than what he was ordered to buy. He exceeded his orders. The owner of the goods has an option. If he wants to take what was bought with his property, he takes it. If he wants the partner to be liable for his capital he has that."

[View Page](#)

Source : *Alim.org-Al-Muwatta Hadith-13.36*