Islamic Rulings

بسم الله الرحمن الرحيم

In the name of God
the Compassionate, the Merciful

Islamic Rulings

A Guide of Islamic Practice

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English version of
Ahkam Ash-Shari'ah

Translation
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Transliteration Used in This Book

There are different transliteration systems for writing the Arabic alphabet in English. The system used in this book is given in the following table. A few words in this book, such as Mecca and Islam, do not follow this system since they have become widely written in the way that is not exactly similar to this system.

’	ء	s	س	h	هـ
i	إ / ئـ	σ≅ Σ ≅	ص	i / y	ي
o’	ؤ	δ≅≅ Δ≅	ض	ā Ā	آ
b	ب	τ≅ T≅	ط	at or ah	ة
t	ت	dh	ظ	ū Ū / w	و
th	ث	‘	ع	ī Ī	ي
j	ج	gh	غ	a / e	فتحة (َ)
η≅ H ≅	ح	f	ف	an / en	تنوين الفتح (ً)
kh	خ	q	ق	o	ضمّة (ُ)
d	د	k	ك	on	تنوين الضّمّ (ٌ)
th	ذ	l	ل	i	كسرة (ِ)
r	ر	m	م	in	تنوين الكسر (ٍ)
z	ز	n	ن		

Introduction

In the Name of God, the Beneficent, the Merciful
And peace be upon His chosen people.
After publishing the authentic practical guide of rulings of his eminence the Grand Ayatollāh Sayyid Moη≅ammed Hosaīn Faδ≅≅lollāh, entitled *Fiqh ash-Sharī'ah*, in three volumes – the entries (*mesā'il*) of which were formulated so as to satisfy the various needs of Muslims in a way that produces clarity, using examples to explain the ideas – some who follow his eminence's rulings found that the guide was too big and they expressed their wish for an abridged version to be prepared. Such a version should contain most of the Islamic rulings that are within the area of the (common) test (*maη≅al ibtilā'*), and in one volume that can be easily handled, as well as being easy to use for teaching in schools (□□*awzeh*), where the preliminaries (*moqeddimāt*) are usually taught.
This inspired the rulings office (*mekteb al-Istiftā'*) to set about summarising the three volumes, choosing from them those areas that Muslims find themselves in need of for the relevant ruling on the one hand, and observing the teaching needs on the other. Now that this book, with the aid of God, is complete, we have decided to call it *Islamic Rulings* (*Aη≅kam ash- Sharī'ah*).

The publisher

In the Name of God, the Beneficent, the Merciful

Following this practical jurisprudence guide, entitled *Aη≅kam ash- Sharī'ah* is deemed satisfactory, as far as meeting obligations before Allāh is concerned, God-willing. And Allāh is the guide to what is good, and we depend on Him alone.

Moη≅ammed Hosaīn Faδ≅≅lollāh's seal
10 Jumada al-Awwel 1427H

Ways to Knowledge of the Sharī'ah

The Muslim becomes obliged to abide by the Sharī'ah and to carry out its duties (*teklīf;* becoming a *mokelleff*) upon a certain age or upon certain signs…

For the male, it is on reaching the age of 15 Hijri years (14 years and 7 months in the Roman calendar), or on the appearance of rough hair on his pubis (under the abdomen and above the penis), or the production of semen, whether as a result of a dream or otherwise.

As for the female, she becomes a *mokelleff* when she reaches the age of 13 Hijri years, or when she has her first period, provided that this happens before the age of thriteen. However, it is preferrable to get her acquainted with wearing the Hijab (veil) and performing prayers from the age of nine Hijri years.

The ways to knowledge of the *Sharī'ah* rulings – besides the necessary rulings that are known as a matter of certainty – are threefold:

a- *Ijtihād*, i.e. the formulation of rulings by the specialist, who is the *mojtehid*.

b- *Teqlīd*, i.e. following the rulings of a *mojtehid*.

c- *Iη≅tiyāτ≅*, i.e. the cautionary way, which is the way to ensure the correctness of the acts through observing all the probabilities that could be part of a person's duties.

The details of the above can be divided into three parts:

Part one: *Ijtihād*

1. *Ijtihād*, as a term, means 'spending the effort to arrive at the rulings of the *Sharī'ah* from dependable sources', and this takes place following the possession by the specialist of the necessary knowledge related to the *Sharī'ah* that gives him the ability to carry it (*ijtihād*) out.

2. *Ijtihād* is an obligation under the condition of sufficiency (*wājib kifā'ī*) on every person, but if it is taken on by those who can meet the needs of the Muslim nation (*ommeh*), it becomes no longer obligatory on the rest of Muslims.

3. The *mojtehid* is either a *moτ≅laq* or a *motejezzi'*: the first is one who has had the chance and the circumstances to arrive at all the rulings that are needed, while the second has not got the circumstances to arrive at all of them, but at some of them. Thus, the capability and scope of *ijtihād* is not a matter for dividing into parts, but becoming a *moτ≅laq mojtehid* or a *motejezzi' mojtehid* takes place according to the amount of the effort spent and the breadth of judgement, as related to the external circumstances.

4. The (competence of the) *ijtihād* of the scholar – also his prevalence over other scholars – can be ascertained through the following:

First: The immediate knowledge of the expert – even if he is not a *mojtehid* himself – who is capable of making distinctions in a way that certainty or satisfaction is achieved within the scholar's competence.

Second: His competence becoming commonly accepted amongst people or in the Islamic specialist schools (*η≅awzeh 'ilmiyyeh*), in a way that offers certainty or satisfaction as well.

Third: Expert witness; this is satisfied by the witness of two just individuals, or one just individual, or the trustworthy. Such an expert – at the lowest level – is one who has reached a degree of specialist knowledge and knowledge in jurisprudence and (jurisprudence)

fundamentals (*oσ≅ūl*) that make him capable of differentiating between the (competent) *mojtehid* and the others.

5. When the experts differ in their opinion, the opinion of the one who has a stronger knowledge is to be followed. And when they are the same, or when one cannot discern the difference between them, the number of witnesses is to be observed; however, if the degree and number of such witnesses are equal, they all become independable.

6. The *mojtehid* has (in this capacity) two responsibilities:

First: Issuing the rulings; the title given for such person is the *merji'*.

Second: Ruling between people in the position of a judge, or in probation (*η≅asbiyyeh*) issues such as Islamic trusts (*awqāf*) and children (*qāσ≅irīn*); or in dealing with the public affairs of the nation if he has attained the position of rule or general guardianship/authority (*wilāyeh 'āmmeh*), for which he is given the title of *η≅ākim shar'ī* or *al-walī al-feqīh* (the jurist ruler or guardian).

7. The conditions/requirements that must be satisfied in the *merji'* are:

1- He has reached the Islamic legal age (*bāligh*).

2- He possesses full reason/mental sanity.

3- He is male.

4- He was born within a marriage.

5- He follows the Imami Ithna-'asherī school.

6- He embodies justice; that is, he follows and observes the line of obedience to Allah, the Most High, observing His do's and don'ts. Such justice disappears with committing a sin, and returns only after true repentance.

7- He should not suffer from more than average forgetfulness, since this affects the process of deduction and arriving at a ruling (*istinbāτ≅).*

8- The ability to arrive at a ruling (*ijtihād*) should be linked to the long practice of teaching and research in jurisprudence, so as to have attained maturity in jurisprudence ruling.

Some of the first five conditions are a matter of *iη≅tiyāτ≅* (cautionary standpoint).

8. It is an obligatory precautionary condition (*aη≅waτ≅ wojūben*) not to follow a dead scholar at the outset (of *teqlīd*). However, if someone follows a *mojtehid* then he dies, he has the choice of either continuing to follow him or switching to another, living one, either wholly or partially.

9. Being the most knowledgeable (*a'lemiyyeh*) is not a condition for the *merji'*; and so it is allowed to follow another *merji'* when the most knowledgeable is present, although it is better to follow the most knowledgeable when he is present.

10. The most knowledgeable (*al-A'lem*) is the most capable of the process of deduction (*istinbāτ≅*), and this is because he is the most capable and skilful in understanding the Qur'an and Sunnah, and in coming up with the ruling from them through the known methods in the Arabic language, and is more precise in the field of *osūl* and its applications, and is more capable of understanding the spirit of Islam in its rulings and its deduced issues and inferences.

11. The conditions/requirements for the *η≅ākim shar'ī* or *walī feqīh* are all the same as those listed for the *merji'*, except the *a'lemiyyeh* (being the most knowledgeable), as this is definitely not required of him. As for the ability of absolute *ijtihād*, i.e. in all fields, it is a condition/requirement for the *merji'* who attains the position of general leadership (*qiyādeh 'āmmeh*), but not as a judge only.

In addition, the scholar who takes over the general leadership must have courage that is manifested in his bravery and firmness in stances, and knowledge of the issues of his age and time in a way that helps him to achieve wisdom in his political and administrative performance.

12. If the scholar takes over general leadership, he will have guardianship/authority and rule over the general affairs of people that are in need of his guardianship. These general affairs include: whatever is related to the public order on which the stability of the life of Muslims and non-Muslims depend; and whatever protects their political, economic, and social security and other affairs, and so whatever their system as a society depends on.

13. When the scholar (*merji'*) issues an order, it must be obeyed and it is prohibited to violate it within the field where he has guardianship and within the area that is subject to his guardianship. Moreover, obeying him is not confined to what the Muslim believes in regarding his *ijtihād* or his *teqlīd* (i.e. following another *merji'*), rather his obedience is obligatory in what the Muslim follows as rulings, such as if he is ordered to pay the *khoms* (20% levy) or *zekāt* (tax) to a certain party and in a certain way.

14. He who believes – as a matter of *ijtihād* or *teqlīd* – that obedience to the *walī feqīh* (general guardian) is not obligatory, is not allowed to be open in his disobedience in a way that leads to disturbance in the public order.

15. There is no objection in having more than one *merji'* taking over the responsibility of public affairs in more than one Islamic country, unless this multiplicity harms, partially or wholly, the correct order of the public affairs of Muslims; in this case it is obligatory to stand under the rule of one *walī* in whatever satisfies the need, protects unity and protects the nation.

16. *Al-Walī al-Feqīh* must consult the experts and specialists even in things about which he has knowledge, then issue his master ruling after consultation; this should take place through a certain process to be agreed upon.

17. If someone is absolutely certain of the incorrectness of *al-Walī al- Feqīh* in matters that are not related to the public order, he should not obey him.

18. It is prohibited to seek legal rulings from judges whom the Sharī'ah does not see fit for such a position, and any money or property taken according to his ruling is forbidden, even if the one taking it was actually right – unless getting what is his right cannot be achieved except through that judge, and in this case if the ruling was related to something that is defined externally, such as 'this house', he is allowed to take it without the need to get the permission of the Islamic judge; otherwise he must turn to the Islamic judge if the subject of ruling was money owed.

Part two: *Teqlīd*

19. *Teqlīd* takes place when one decides to follow a *mojtehid* and abide by his rulings when needed, even if one does not actually need to do that.

20. If the Muslim performs his duties without *teqlīd*, his performance of these duties is void, unless two things take place:

First: His performance of his duties was the same as the rulings of the *merji'* he should follow;

Second: The intention (of compliance with the orders of God) (*qaσ≅d al-qorbeh*) was present in his acts of worship in which intention (*niyyeh*) is obligatory.

21. *Tebīδ≅≅*, i.e. following more than one living scholar/*merji'*, is not allowed except when compelled to do so, but when it is allowed, then when he changes to the second *merji'* he is not allowed to turn back to the first, or to any other, if this will definitely lead to violating the Islamic ruling that will take place. For example: if he follows a *merji'* who rules that prayers should be *qaσ≅r* (2 *rak'ahs* instead of 4) in the second homeland, then he changes to another whose ruling is *temām* (praying full prayer), here he is not allowed to return to the first *merji'*, or whoever has the same ruling, because he knows for certain that one of the two prayers would become void.

22. If the child follows a *merji'* before reaching *bolūgh* (the Islamic legal age), his following of him is correct, so is his continuing to follow him after he reaches *bolūgh*, provided that the *merji'* has all the necessary qualifications.

23. It is obligatory that one should seek the living *merji'*'s permission to follow the previous, dead *merji'*, so that the living *merji'* can specify for the Muslim whether he can continue to follow the dead *merji'* and how far such following can go.

24. The *teqlīd* is only specific to rulings related to *aη≅kām* (do's and don'ts), so the Muslim is free to disobey his *merji'* in *mawthū'āt* (issues of other than the do's and don'ts).

Part three: *Iη≅tiyāt*

25. The Muslim is free to use *iη≅tiyaτ≅*, whether it entails repeating the act (such as when the ruling is either *qaσ≅r* or *temām*), or not (such as when the act is either allowed or obligatory, or either allowed or prohibited). However, if the matter is either obligatory or prohibited, *iη≅tiyāτ≅* cannot be used, and in this case it must be decided using either *ijtihād* or *teqlīd*.

26. In this book, some expressions used have to be explained:

1- *Al-Aη≅waτ≅ Wojūben*: The Muslim has the choice of either following that ruling, or turning to another scholar to seek his ruling.

2- *Al-Afδ≅≅al*: This is an alternative way of saying *al-Aη≅waτ≅ Istiη≅bāben* that scholars use, and it means that it is recommended to be followed although not obligatory.

3- *Al-Awlā*: This is the same as *al-Afδ≅≅al*.

4- *Al-Aqwā*: More probable, hence the given ruling.

Part One

WORSHIP ACTS

Section One
Purity
Aτ≅-T≅ehāreh

Purity means cleanliness, and in Sharī‘ah it means cleanliness in a specific way for two kinds of things and their consequences:

First: Impurities that have a material consequence such as urine, stools, blood etc – things that the Sharī‘ah calls ‘*nejāseh*’, i.e. impurity, and which have been given the term ‘*nejāseh khebethiyyeh*’, and to achieve purity from which has been given the term ‘*aτ≅-T≅ehāreh min al-Khebeth*’.

Second: Consequences that are related to the soul and body due to sleeping, urine, menses, *jenābeh* (intercourse etc) and the like, which have been given the term ‘*al-H≅adeth*’, and to achieve purity from which, through ablution (*woδ≅≅ū’*) or washing (*ghosl*), is called ‘*aτ≅-T≅ehāreh min al-H≅adeth*’.

And here are definitions of some terms used in this area:

Al-H≅adeth – the second kind mentioned above – has two categories:

Al-H≅adeth al-Aσ≅ghar (small occurrence), which is what is removed by ablution and these are: passing urine, passing stools, passing wind, slight *istiη≅āδ≅≅eh* (blood seen by women that is not from the menses) and the occurrence of whatever makes awareness absent, such as sleeping, drunkenness or falling unconscious.

Al-H≅adeth al-Akbar (big occurrence), which cannot be removed except by washing (*ghosl*) and these are: death, *jenābeh*, *nifās* (blood seen during or after giving birth), medium or excessive *istiη≅āδ≅≅eh* or touching the dead.

An-Nejis is specifically *al-A‘yān an-Nejiseh* – things that are inherently unclean, which are the first source for impurity, such as urine, stools and blood.

Al-Motenejjis is everything that is originally pure then acquired impurity in a specific way. In other words, it is any pure body or thing that was affected by an impure thing touching it.

Purity from *η≅adeth* or *khebeth* is not obligatory in itself, but obligatory for starting any act in which cleanliness is obligatory, such as praying, performing the circum-ambulationaround the Ka’beh, entering mosques, touching the words of the Qur’an etc. In other words, one cannot perform any of these acts unless one is clean. Cleanliness/purity may also become obligatory if it becomes part of a vow (*nathr*), covenant (*‘ahd*) or oath (*yemīn*), such as when one vows to stay in an ablution-pure state, or to purify one's clothes or body from any *nejāseh khebethiyyeh* immediately, or the like.

Apart from that, it was narrated that it is recommended that one stays pure from *η≅adeth* all the time. Also, it was narrated that ablution and washing is recommended for a lot of recommended acts.

Chapter One

Impurities and Purifiers

An-Nejāsāt **and Al-***Moτ≅ehhirāt*

Impurities

(A) *Al-A'yān an-Nejiseh* (inherently-impure things)

These are eight in number:

First and second: Urine and stools

27. For the urine or stools of an animal to be impure, three conditions must be collectively present:
1- The animal must have a 'fluid' soul, and this means that the animal has arteries and veins from which blood flows out forcefully when slaughtered, in comparison to animals from which the blood flows out without force.
2- Its meat must be prohibited to eat according to the Sharī'ah, whether the animal is prohibited as a food originally (such as lions, cats, wolves etc), or is prohibited to eat due to an external event such as the cow that a man had had intercourse with and so its meat becomes prohibited, or the sheep that is given pig's milk and grows using that milk, or the chicken that feeds from man's stools and grows on it.
3- It must not be a bird.
If the animal does not satisfy any one of these conditions, its urine and stools are pure.

28. If it is doubted that one of these conditions is present in an animal, the ruling is that its urine and stools are pure.

Third: Blood

29. The blood of a man and any animal which has a 'fluid' soul is impure, so this renders impure the blood of man and all animals, except fish and insects, such as snakes, locusts, flies etc.

30. The blood seen inside eggs is impure as an obligatory precaution (*aη≅waτ≅ wojūben*).

31. Blood that comes out of mosquitoes and the like is pure, even if they have just sucked it out of a man's or animal's body.

32. Blood left in the slaughtered animal after it has been slaughtered in the Islamic way, and after the expected quantity of blood had come out, is pure.

33. If it is doubted that a condition that renders blood impure – that the animal has a 'fluid' soul – the blood is ruled pure; also when it is doubted that that red fluid is blood or not. In summary: it must be known that this is blood, and that it is from an animal of a 'fluid' soul, before it is ruled as impure.

Four: Semen

34. Semen from every animal that has a 'fluid' soul is impure. As for other secretions, such as *methy* (secretion that comes out during sexual arousal) and *wedy* (secretion that comes out after urinating), they are pure.

Fifth: The dead

35. A dead animal is impure when it is a question of an animal of 'fluid' soul. The dead within the Sharī'ah laws covers:

a- Animals that have died without slaughtering.
b- Animals slaughtered, but not according to the Sharī‘ah; it is called ‘*ghair al-Mothekkā*’.

36. The impure state in the dead covers the parts that life was present in; parts that life is not present in are pure, such as feathers, wool, horns, bones, eggs in which the outermost skin of the embryo is covered; also the rennet and the milk inside the breast if the animal is allowed to eat, and they do not need to be purified even that they touched the dead. However, this does not include the dead that are inherently impure (*‘ayn nejis*), when nothing is excluded.

37. The slaughtered animal is either taken from a Muslim or from a non-Muslim. So, here are two situations:
First: If it is taken from a Muslim, then it is ruled pure and allowed, and it is not obligatory to ask the Muslim seller about its source or the way it was slaughtered. This ruling also covers the situation when it is taken from a non-Muslim but the buyer knows that the latter has taken it from a Muslim. However, if the non-Muslim informs him that he has taken it from a Muslim, this does not make eating it allowable unless he is satisfied with this information; as for the state of purity, its ruling comes in the following situation.
Second: If it is taken from a non-Muslim, the ruling is that it is not allowed to be eaten, but it is ruled pure and prayer can be performed wearing it (i.e. if the thing is skin etc) on the condition that it is probable that this thing taken from the animal was (already) *mothekkā* (slaughtered according to the Sharī‘ah), and this is probable because of the existence of a lot of Muslims who care about slaughtering or importing it from Muslim markets. This ruling includes the situation where it is taken from a Muslim but is known that the latter had taken it from a non-Muslim, or a non-Muslim country, unless if the buyer believes that it is probable that that seller was certain of its allowable state, through seeing him eating it for example, in which case it is ruled allowable to eat.

38. Things such as scales/skins or thin skin that comes from of man’s body, such as the skin that flakes away from the lips and the like, whether this takes place as a result of rubbing, peeling off or falling on its own, all these are pure. However, the flesh that is cut off a living body is ruled, like the dead, as impure, unless it stayed hanging from the body, even if by a thread of skin, in which case it remains pure.

39. When it is doubted that the condition of impurity is present in the dead, such as if it is doubted whether the animal had a ‘fluid’ soul or not, or that the part in question was from such an animal, the ruling is purity.

Sixth and seventh: The dog and pig

40. Dogs and pigs are impure, and all their parts, including the parts which life is not present in.

Eighth: *Jellāleh* camels' sweat

41. The sweat of *jellāleh* camels is impure; *jellāleh* camels are those animals that feed on human stools until its flesh grows and its bones strengthen.

Other things

42. Alcohol is pure in all its kinds, as well as everything that causes drunkenness and is originally fluid; also solid things that cause drunkenness, such as *η≅āshīsheh*, is pure without dispute.

43. It is probable (*aqwā*) that grape extract is pure if it is brought to the boil and less than two thirds of it evaporates; however it is an obligatory precaution to avoid eating and drinking it until two thirds of it have been evaporated by boiling, so that they become allowed.

44. *Foqā‘*– it seems it is a beer commonly known in our time – is a drink that causes drunkenness taken from barley; it is pure, although it is better to be avoided, and it is prohibited because it causes drunkenness.

45. It is probable (*aqwā*) that all human beings are pure; however, it is better to avoid anything that a non-Muslim, other than People of the Book (*kitābī*), has touched.

46. The sweat of the person who has not washed from *jenābeh* that followed a forbidden sexual act (i.e. the person became *jonob* from a forbidden act such as adultery, masturbation or intercourse during menstrual period) is pure. Also, it is acceptable to pray in clothes that bear that sweat.

(B) How things become impure and their rulings

47. Pure things become impure when they touch one of the previously listed inherently-impure things (*a'yān nejiseh*) with the presence of a spreading wetness in one of them; spreading wetness is when water is present and its effect appears when is transferred (between the two things in question); however, if it is doubted that such wetness is present, the ruling is one of purity.

48. If an inherently impure thing touches another thing, the latter is called *al-Motenejjis al-Awwel* (the first thing affected by the impurity); if the impure thing left it then it (the touched thing) touched another (second) thing, then if *al-Motenejjis al-Awwel* is fluid, the second thing would definitely become impure, and if it was solid and was touched bya spreading wetness, it would become impure as an obligatory precaution ruling, and this is regardless of its state being fluid or solid; but as for the second thing, which is called *al-Motenejjis ath-Thānī* (the second thing affected by the impurity), it does make impure the things that it touches at all, i.e. *al-Motenejjis ath-Thānī* does not make impure what it touches, whether the two parties are solid or fluid or one of them solid and the other fluid.

49. If flies or the like land on an inherently impure thing then land on a pure thing, the latter is not considered impure unless it is ascertained that some of the impurity has stayed on it and that the touch was accompanied by wetness.

50. Impurity is ascertained through one of the following ways:
a- Knowledge, or the satisfaction that it took place.
b- The witness of two just believers, or one just believer, or a trustworthy person.
c- The person which that thing is under his/her disposal informing about it, such as the wife or servant informing him that the thing is impure.

51. If one knows that one of two (or more) containers is impure but does not know which one, there are two situations:
a- When both containers are under his disposal, which is called '*ash-Shobheh al-Maη≅σ≅ūreh*' (a contained doubt), he should avoid both of them and not use them in acts in which purity is a condition. However, if someone puts his hand in any of them, his hand does not become impure.
b- When one of them is outside his disposal, which is called '*ash-Shobheh ghair al-Maη≅σ≅ūreh*', and he is absolutely sure about the container he has, or the one in another house which he does not use, it is not obligatory to avoid the container which he has and it is ruled pure.

Purifiers

Purifying from *an-Nejāseh al-Khebethiyyeh* takes place with the following:

(A) Water

Which is the most important purifier, the rulings of which are as follows:

First: The types of water

52. Water may be divided into two types, according to its nature:
1- Pure water (*moτ≅laq*): which is the commonly known pure water, such as the water of rivers, springs, seas etc. This type is listed among the purifiers.
2- Mixed water (*moδ≅≅āf*): which is of two types:

a- Water mixed with another substance that changes its colour, taste or odour, such as water mixed with sugar, salt, tea etc.
b- Every fluid substance the nature of which is different to that of water, such as rose water, orange or pomegranate juices, petrol etc.
This type is not one of the purifiers, and it does not remove a *η≅adeth* or *khebeth*, and gets affected by impurities touching it however small the impurity and however abundant the added water.

53. Pure water is divided, according to its quantity and source, into two types:

Abundant water (*kethīr*), which is of many types:
1- Running water (*jārī*): it is – in most cases – water that comes out from under the ground, flowing from it into underground or overground channels, such as the water of rivers, wells and springs that do not diminish as a result of taking water from them; there is no condition for the amount flowing out to be more abundant than a *korr* (*korr* = 27 cubic handspan/377kg).
2- Rain water: without any distinction between showers or drizzle that can be called rain.
3- Still water (*rākid*) which is equal in volume to one *korr*.
The ruling regarding these three types of water is that they do not become impure unless one of its three features – colour, taste or odour – changes with the impurity; this comes with two conditions:
a- The change must take place with the colour, taste or odour of the impurity not the water in question.
b- The change must take place through the immediate touching/mixing of the impurity, not if the impurity was merely near the water.

A small amount of water (*qelīl*), which is below a *korr* in measure, and is different to the *korr* water in that it becomes impure by mere touching/mixing with the cause of impurity, in a way in which the water in question can be affected by the impurity if it, or an affected (*motenejjis*) substance/body, falls in it; so if it is poured over the impurity from a decanter, for instance, the water column coming down from the decanter does not become impure, likewise what is in the decanter. The same goes for the under-*korr* water forcefully flowing from the bottom to the impurity lying at the top; neither the water column nor its source becomes impure since pushing (one another) prevents it from getting affected.
4. All the previously mentioned types of water can be used in purifying, whether from *η≅adeth* or *khebeth*, the explanation of which will come later in the rules of purifying using water.

55. When it becomes impure, pure water (*moτ≅laq*) may be purified by pouring a *korr* of water into it, or running water or rain into it, or by connecting the two. However, mixed water (*moδ≅≅āf*) cannot be purified because it is mixed.

Second: The general rules of purifying with water
56. So that purifying with water can occur, the following must be take place:
1- The removal of the impurity (*'ayn an-Nejāseh*), such as blood or stools, if it is present, and this can take place using water or other removing agents; to remove the impurity, it is the removal of the substance that is apparent suffices, not necessarily its colour or odour, although removing them makes the purity better and more comprehensive.
2- Performing many washes, i.e. pouring water more than once, which is obligatory when some things become impure through some inherently-impure things. For this to take place, a pause between each two successive pourings must take place; hence it is not sufficient simply to pour, in one go, a large amount of water that is equal to the water to be poured in the many washes intended,.
3- The water stays pure when it is used for purifying, and for this it is sufficient to have this water overwhelming the impure thing for a moment, even if it did change afterwards. And when more than one wash is obligatory, it is sufficient that the last wash is pure – as

explained just above – so that purity is achieved, but this is not a condition in the washes before that.
4- When using under-*korr* water, it must be poured over the impure thing; it is incorrect to throw the impure thing in it.
5- Washing machine water can remove an impure spot, whether the flow of water on it moves it or whether this is achieve through washing by hand, or with a tool, or by wiping with a piece of cloth. This is when using the under-*korr* water in particular. As for using abundant water, this is not required unless when more than one wash is obligatory; yes, for the last wash in particular abundant water should be used, but such movement is not a condition.
57. If one chooses to remove the impurity by water, it is sufficient to pour water until the inherently-impure thing is removed, then one should keep on pouring a little. This is counted as two washes; if it needs more than two washes, one must stop pouring after the second wash, between the washes. It is not enough to keep on pouring using an amount equal to that intended to be used for all the washes, as mentioned earlier.

Third: How to purify clothes etc

58. It is sufficient to purify clothes, bedlinen and similar cloth and textiles from all impurities by washing them once, after removing the inherently-impure thing, either in one separate wash or one that is continuous from the purifying wash, as mentioned above in the rules of purifying.

59. Clothes must be rinsed, or rubbed, or the like, with two conditions:

a- When the impurity passed through the material, or if it only touched the surface of the clothes or bed, rinsing is not obligatory.

b- Purifying is done by under-*korr* water, but if it is done by abundant water, rinsing is not obligatory, unless the inherently-impure thing stayed and was removed by water, in which case rinsing after that removal wash is necessary.

60. It is sufficient for the rinsing to be done in any way that removes the water of the washing machine from the clothes etc, whether using rinsing, wringing or the fast spinning of electric washers.

61. If some of the washing powder that became impure is found on the clothes, then if it is similar to the soap through which water did flow, its inside is pure; as for its outside, it is always pure; but if it comes from shampoos and similar fluids, their place must be purified except if it is evident from the colour only, this is assuming that it had become impure when touching the clothes.

Fourth: How to purify containers

62. Containers here are those which people use for food and drink as are commonly known, but these may differ according to time and place; this includes pots, trays, plates, glasses, decanters etc, but not things like *τ≅isht* (a wide circular bowl used to wash clothes), even if food is placed in it in an exceptional circumstances.
63. If a dog drinks from a plate, or licks it without drinking, it must be treated with soil (*ta'fīr*) before purifying with water, the soil being pure as an obligatory precaution. Treatment with soil is done by putting an amount of soil or sand in the container, then adding some water, and the container is wiped with the water-soil mixture, then it is washed with water to remove the soil; then it has to be washed either once by abundant water or twice by under-*korr* water. But if the plate was empty and it licked it with its tongue, there is no need to do *ta'fīr* for the whole plate, but only the area affected by the licking.

64. Containers from which pigs have drunk, or in which rats have died, must be washed seven times with abundant or under-*korr* water. Such rats are the big rodents commonly known, and the ruling does not include small mice that live in houses and fields.

65. If the container becomes impure due to things other than those mentioned above, it is sufficient to purify it with under-*korr* water three times, or with an abundant amount once.

66. Since alcohol is pure according to our opinion, containers do not become impure when touching or holding it, although it is better to wash them three times with under-*korr* water or abundant water.

67. For large containers that are fixed so water cannot be poured out of them, it is sufficient to pour under-*korr* water in them then take it out using a utensil, then pour again and take it out for the obligatory number of times. Such utensils are subject to the same purity rulings and so they must be purified if they become a *motenejjis thānī* (the second thing affected by the impurity), otherwise not.

Fifth: How to purify the other impure (*motenejjis*) things

68. To purify the other impure things it is sufficient to wash them once with water, after removing the inherently-impure thing in a separate or continuous wash, without any difference between purifying with under-*korr* water or with abundant water.

69. Oil or fluid ghee cannot be purified if it becomes impure, and in this case it cannot be used except where purity is not a condition.

70. Impure milk can be made pure by making it into cheese, then putting the cheese in *korr* water until water reaches the inside; all the conditions of purifying apply.

71. The presence of oily fat (*desem*) on meat, fat, the hands or olives does not prevent purifying with water, as long as it does not have apparent body.

(B) Earth

72. Earth means everything that can be called earth; distinctions between types can be made as follows:

1- The natural earth, with which man had had no interference with, such as soil, sand, pebbles and all types of rock. This type is without doubt a purifier, without exception between what was attached to the earth or separate, such as if soil or rocks are brought and put on the rooftop of a house.

2- The unnatural earth which man had manipulated, such as earth covered with asphalt, cement, baked brick or limestone, which is baked; these are considered purifier substances as well.

3- Whatever is covered with things that are not part of earth at all, such as things covered with wood or fitted carpet or the like, in which no element of the earth's natural elements is present, this is not earth and cannot be used for purification.

4- The buildings that are elevated above the earth, such as the floor of a house, or its roof, this is also earth as far as purification is concerned, provided of course that it is of the kinds mentioned in the first two categories above, not the third.

73. Earth purifies the sole (i.e. earth facing side) of the foot, and the soles of shoes, scuff and socks; also the sole of artificial legs, the amputees' cane/stick and the knees and palms of those who crawl on them, (however) it is better not to include the last four in this ruling.

74. There are conditions for purifying with earth:

1- The removal of the inherently-impure thing, if it is present.

2- The impurity occurred as a result of walking on the ground/floor.

3- The earth is dry – this is an obligatory precaution. It is not a condition that the floor is pure, nor that the slipper or feet are wet when walking on it.

75. It is enough, when purifying with earth, to walk on it, or to wipe with it if the inherently-impure thing has been removed by means other than walking; otherwise walking or wiping must continue until the inherently-impure thing is removed. It is better to walk fifteen armspan, even if it is removed with shorter a distance.

(C) The sun

76. Purification with sunshine is applicable for certain things, which can be divided into two parts:

a- What is considered natural earth or part of it; this includes the earth itself and everything on it, such as plants, rocks, trees and the leaves and fruits on them.
b- Whatever is not considered part of the natural earth but bodies that are fixed or built on it, such as buildings and whatever go with them (doors, windows, ropes, fences) or man-made water ponds and channels and the like, or moving bodies that are commonly considered fixed such as ships, aeroplanes, cars and industrial tools.

77. Whatever can be separated from its unremovable origins is considered removable, such as harvested fruits, soil after removing it from earth, parts from things such as ships; but if they are returned to their origins, the ruling for that origin applies to them.

78. The conditions for purifications with the sun are:
1- The existence of wetness in the impure body, and so the sun dries it out when it is allowed to shine onto it; the wetness does not need to be spreading.
2- The direct shining of the sun on the impure body.
3- The exclusiveness of the sun in the drying (of the body), so if drying depends on the sun and the wind, for example, it is not sufficient, unless if the effect of the wind is minimal.
4- The removal of the inherently-impure thing, if present, with the sunshine, otherwise the sunshine and the wetness are enough to achieve a pure state.

79. A dry impure thing can be purified with the sun by pouring water on it to make it wet, then if it dries out in the sunshine, it becomes pure.

(D) Transformation/change (*istiη≅āleh*)

80. *Istiη≅āleh* is the transformation/change of the nature of something into another nature, such as the transformation/change of wood into ash or coal, the semen into an animal, the urine or impure water into vapour and the dead into soil; this is based on common knowledge, not precise science.

81. Transformation/change purifies both inherently-impure and impure things.

82. The transformation/change of features that does not reach the extent of changing the nature of the substance – such as when milk becomes cheese, wheat becomes dough or bread, etc – does not make a thing pure.

(E) Place transfer

83. The blood of a fluid-soul creatures, like the blood of humans and animals, becomes pure once it enters the bodies of insects which have no fluid soul, such as when man's blood enters a mosquito's body.

(F) Absence

84. A thing that has become impure when it was left with other people and the person was absent for a period of time is ruled as pure on the following conditions:
1- The owner of the thing must know that it is impure.
2- The owner must regard it as impure – whether through his own *ijtihād* or through *teqlīd*.
3- There is a good probability that the owner did purify it, such as if the thing is something that the owner would use with the condition of purity.
4- The owner is someone who is concerned about purity.

(G) The removal of inherently-impure things

85. Animals, insects and the interior parts of humans become pure from the impurities befalling them merely by the removal of the inherently-impure things by any means. According to this, the interior parts of humans, such as the inside of the mouth, nose and ear, become pure when the inherently-impure thing or the impure thing (*motenejjis*) is removed. However, removable false teeth must be purified with water. The inside of the eyelids and lips are regarded as part of the interior parts, while the outside is not.

(H) *Tebe'iyyeh*

86. *Tebe'iyyeh* is the ruling that something is pure as a result of the purity of another thing due to the relationship between them, such as the tools that are used to wash the dead, the hands of the person doing the washing, the cloth used in washing the dead and the washing surface; these all become pure when the dead body is purified.

(I) *Istibrā'* of the *jellāl* animal (one which feeds on impurities)

87. The *jellāl* animal becomes pure when it has fed on clean food for a period of time after which it is no longer considered a *jellāl* – this is the term '*istibrā'*'; it is better to keep on feeding camels for forty days, cows for thirty days, sheep for ten days, ducks for five days and chickens for three days, even if they are no longer considered as *jellāl* after a shorter period.

The *tekhellī* rulings

Tekhellī is finding a *khelweh* (empty place) for passing urine or stools. This can be explained as follows:

First – the place of *tekhellī*:

88. It is forbidden to use places owned by others for such purposes without their permission, which may be ascertained through indications that imply his permission to use them. That said, there is no need for permission in large areas, unless if the owner announces his refusal.

89. It is permitted to use lavatories in public (*awqāf*) places, such as mosques, η≅usainiyyehs, schools, clubs etc, unless they (the lavatories) are exclusive to certain people such as the worshippers in the mosque or the students in the school, something which, if known, makes it forbidden for people other than the worshippers etc to use for *tekhellī.*

90. It is forbidden to perform *tekhellī* on public roads and places where people rest, such as public car parks or gardens, if this causes harm to people; it becomes *mekrūh* (recommended not to do) even when there is no harm to people; also it is *mekrūh* to do *tekhellī* in water, especially still/standing water, or under fruit trees; urination is *mekrūh* on hard ground and in the holes where insects live.

Second – concealing the *'awreh*:

91. It is obligatory for a person to conceal his *'awreh* from onlookers, whether during *tekhellī* or otherwise, using anything suitable for a partition or cover when onlookers are present or probable.

92. The *'awreh* of a man is his penis, testes and anus, whether the onlookers are male or female, unmarriageable relatives (*meη≅ārim*) or others, including the insane and children who have not reached *bolūgh* (the Islamic legal age) if they know and were aware of the meaning of the sexual act and the meaning of *'awreh* and its sexual function; excluded from this ruling is the wife, even if during the revocable divorce time period (*'iddeh* of a *rej'ī* divorce), and the young child who is unaware of such matters (*ghair al-Momeyyiz*).

93. A woman must cover all her body except the face, hands and feet; the ruling regarding looking at women and their body or *'awreh* – which is the vagina and anus – is as follows:
a- The *'awreh* must be covered/concealed and it is forbidden to look at it for any male from among the unmarriageable or others (*ajānib*). As for females, looking is allowed when there is need for this, such as giving birth, medical examination and other commonly-acknowledged needs and necessities, but it has to be without desire, and is not allowed in other situations,. Those excluded from this ruling are the husband and the young child who is unaware of such matters.
b- The (ruling regarding the) whole of the body that must be covered, and forbidding looking at it, is exclusive to males who are not amongst the unmarriageable relatives, including the

insane and children who have not reached *bolūgh* but have awareness of such matters; although it is better for unmarriageable men not to look to what is between the bellybutton and knees of their unmarriageable women.

94. Concealing of the ‘awreh is done by concealing its surface, but it is not necessary to conceal its size or features (behind the clothes), unless this affects the onlooker and stirs desire, such as in tight clothes that do not conceal the size of the *‘awreh*, and the like.

95. It is allowed to look to the *‘awreh* in compelling situations such as for treatment or rescue from drowning etc; it is also allowed when unavoidable, and in extreme difficulty that cannot be averted such as in situations of shame, impropriety, intense humiliation and the like.

Third – the direction of the body during *tekhellī*:

96. It is better not to face the *qibleh* (the *Ka’beh* in Mecca) with the front of the body, nor with the back, during *tekhellī*; the front of the body includes the chest, abdomen and the knees; this applies whether performing this act inside buildings or in the open.

97. To achieve the condition above, i.e. not facing the *qibleh* with the front or back, it is sufficient to just turn at an angle that it is commonly accepted to be not facing the *qibleh* or showing his back to it, so it is not necessary to turn through 90° to achieve this.

Fourth – purifying the two outlets (*istinjā’*):

98. It is sufficient to purify the place of urination by under-*korr* water twice, the first wash to remove the inherently-impure things; if pouring water is continuous after the removal of that, one wash is sufficient; one wash is sufficient as well when using abundant water.

99. Purifying the place of stools can be done by one of the following methods:
a- With water, and this is done by continuously pouring water until the inherently-impure things are removed and the place becomes clean, without the need for many (separate) washes, whether using under-*korr* water or abundant water.
b- By wiping it with anything that dislodges the inherently-impure things and removes them, such as with stones, paper, wood, iron etc; three pieces of these things must be used even if cleanliness is achieved place with less; also, it is obligatory to do it more than three times if cleanliness is not achieved, until it is achieved. The pieces must be pure, and the inherently-impure thing must not move outside the anus, so if it moves and the areas around the anus became dirty with it, only water can purify it; the same applies if blood came out with stools or if something impure touches the anus.

100. If after leaving the place of *tekhellī*, one becomes doubtful whether the area has been purified or not, one should regard it as not pure even if one normally does purify it. If such doubt takes place after prayer, the prayer is valid, but the area must be purified for the following prayers.

101. *Istibrā’* is recommended for men after urinating, and this is done by using the finger to wipe from the anus to the base of the penis under the testes three times, then wiping the penis from its base above the testes to its tip three times, then to squeeze the head (*η≈ashefeh*) three times, or to pull it (move it up and down) three times, in a way that leaves no urine in the urethra, then to purify the area with water. The benefit of this is to avoid any wetness being seen after urinating and so if it is not known whether the wetness is urine or not, it is considered as pure, keeping the ablution valid, whilst if he has not performed *istibrā’*, the wetness is ruled as impure and ablution has to be done again.
As for women, there is no *istibrā’*, and the wetness coming out after purifying the urine outlets is ruled as pure, unless it is certain that it is urine.
The water used for purifying the areas of urine and stools is pure even if it is scarce, provided that it is free of any inherently-impure thing; that said, it is not allowed to use it in ablution or washing, as shall be explained later.

Chapter Two

Rulings of Purification (*Aη≅kām at-Teτ≅ahhor*) from al-H≅adeth al-Aσ≅ghar and al-Jenābeh

It was mentioned above that *al-H≅adeth* means an occurrence (*η≅odūth*) that makes purification by ablution or washing obligatory, as a pre-requirement for another act in which purity is a condition. What makes ablution obligatory is *al-H≅adeth al-Aσ≅ghar* and what makes thorough washing obligatory is *al-H≅adeth al-Akbar*. In the following, we shall explain the details of each, limiting the second one to *jenābeh*, since we are going to list all types of *al-H≅adeth al-Akbar* in two further chapters.

Al-H≅adeth al-Aσ≅ghar and its ablution

(A) Things that affect/make a *η≅adeth*

102. *Al-H≅adeth* takes place as a result of the following:
First and second: Urine and stools coming out from the natural outlets, or from other outlets if that is usual, and even if it is unusual as long as they are regarded as urine and stools; there is no difference between small or large amounts of it.
Third: Wind from the stools outlet or a diseased outlet.
Fourth: Sleep that overwhelms the mind, which takes place when the hearing is no longer operational (as it is when one is awake); like sleep, all states that overwhelm the mind such as insanity, drunkenness, losing consciousness etc.
Fifth: *Istiη≅āδ≅≅eh* (blood coming from women other than during the menses), as shall be detailed later.

(B) Consequences of *al-H≅adeth al-Aσ≅ghar*

103. It is forbidden for anyone to touch the Arabic words of the Holy Qur'an, whether they are in the Qur'an or otherwise, but it is not forbidden to touch a translation of the meanings of the verses.

104. It is not forbidden to touch sacred words that are not part of a Qur'anic verse such as the word 'Allah' and the rest of His names and attributes, although it is better to abstain from touching them; also, it is not forbidden to touch the name of the Prophet (sawa), the Imams (as) and the angels (as).

105. There is no difference between touching with the hand and touching with any other part of the body, even with the hair if it is attached to the skin.

106. The ruling regarding words common to the Qur'an and others depends on the intention of the writer; when in doubt of his intention, touching is allowed.

107. *Al-H≅adeth al-Aσ≅ghar* is not removed except by ablution (*woδ≅≅ū'*), and this is why ablution has become a condition for the correctness of many obligatory and recommended things, and a condition of completeness in others, the details of which are as follows:
a- Things for which ablution is an obligatory condition:

First: Obligatory prayers, daily and others, whether offering them within their designated time (*adā'*) or afterwards (*qeδ≅≅ā'*), on behalf of one's self or others; also the *iη≅tiyāt* prayer (prayer offered to remedy some of the doubts in prayers) and the offering of prayer afterwards (*qeδ≅≅ā'*) or the forgotten parts such as *teshehhod* or *sejdeh*; the same applies to recommended prayers.

Second: The Ka'beh circum-ambulation in pilgrimage and small pilgrimage (*'omreh*), whether obligatory or recommended.

Third: Ablution may become obligatory in certain circumstances, such as if one vow or makes an oath to stay in a pure state throughout one's life or for a certain period, in this case ablution becomes obligatory; or it may be a requirement for another obligatory act such as if salvaging a copy of the Qur'an from an impurity requires touching its words (purity is a condition in this case as mentioned earlier).

b- Things in which ablution is recommended:

In addition to the fact that ablution is recommended as it is, it is also recommended to be in a state of purity, and to renew the ablution if performed some period of time before, for the Ka'beh circum-ambulationthat is not part of the duties of pilgrimage and *'omreh*, for the two *sehw* (the state of losing concentration during prayers) *sejdeh*, for reading the Qur'an and related things apart from touching, for entering mosques and the gracious tombs, for carrying out the rituals of pilgrimage and *'omreh* in which ablution is not a condition, and for offering prayers of the dead and others.

(C) The conditions of ablution

108. When carrying out ablution, certain conditions have to be met:

First: The purity of water as explained in the *nejāsāt* earlier; ablution using impure water is not valid, nor using water state of purity/impurity of which is doubtful in some way, nor using water of *istinjā'* (washing after passing urine or stools) although it is pure.

Second: The water must be pure (*moτ≅laq*) and so ablution cannot be done using mixed (*moδ≅≅āf*) water; that would render the ablution void, whether it was intentional or out of ignorance or forgetfulness.

Third: The water must be free to use (*mobāη≅*), and so it is not accepted to use usurped (*meghsūb*) water for ablution if one knows this and did it (the usurping) intentionally – such ablution becomes void; also the ablution becomes void – as an obligatory precaution – if affected by someone who is ignorant through carelessness in trying to learn the ruling. However, ablution does not become void through forgetfulness, if the person forgetting was himself the one who did the usurping.

That said, the place where the person stands does not need to be free (*mobāη≅*), nor the area he is in, nor the water outlet, nor the container if he takes the water from it using his hand, but the ablution does become void if he performs it by immersing (*rems*) himself in it, unless the norm regards this as normal usage for the container.

Fourth: The purity of the organs of ablution, which is sufficient if it is done while pouring the water of ablution, without the need of separating the purification wash from the ablution wash.

Fifth: The water must reach the skin, so if something prevents this (*η≅ājib*), the ablution is not satisfactory; and when this is doubtful, one has to check if the doubt is reasonable, otherwise the ablution is not satisfactory. If someone has concerns before ablution that something might be a *η≅ājib*, he must remove it, but if he is concerned after completing the ablution that there is something preventing the water reaching one of his ablution organs when he was performing it, or if he knows that such a thing prevents the water reaching one of his ablution organs, but after the ablution he becomes doubtful whether he did or did not remove it, or if he saw after ablution a *η≅ājib* but doubted whether this came after or before the ablution, he must follow the precaution of ensuring the removal of the *η≅ājib* and perform ablution afresh.

Sixth: *Mobāshereh*, i.e. the person himself is to perform the acts of ablution, which are the actual washing or wiping of the organs of the ablution; but it is acceptable with other acts that

are not related to the actual washing or wiping, such as the pouring of water in the hand of the person, though its is recommended not to do it (*mekrūh*).

If the person cannot perform ablution himself, the following situations apply:

a- His inability is total, in which case he should start with the *niyyeh* (intention) of the ablution; it is better if the helper does that as well, then the helper pours the water on the person's face and hands, then takes the wetness from of the person's hand and wipes his head and feet.

b- The same as in the above case, but the person can move his limbs; here the ruling is the same, but the wiping of the head and feet must be done by the person's own hands.

c- If he can carry out some of these acts, the helper's role has to be kept to what the person cannot do, but the wiping must be performed using the person's hand, unless if he cannot, in which case the rulings in (a) above applies.

Seventh: Order (*tertīb*), which is: washing the face first, followed by the right hand, then the left hand, then wiping the head, followed by wiping the right and left feet together, or the right foot, then finally the left foot.

However, disturbing the order does not render the ablution void, whether it is intentional – and not as the initiation of a forbidden ruling – or through lack of awarenss (*sehw*), but he has to remedy it so that the order is observed, in which case his ablution is valid unless *mowālāt* (see below) is not observed.

Eighth: *Mowālāt*, which is the succession of the acts of ablution one after the other, so that if one stops for a while long enough to be normally regarded as disturbing the succession and the unity of the ablution act, the ablution becomes void; this often means the drying out of the previous organ before starting with the next one.

Ninth: There is nothing that prevents performing the ablution, but if this is the case, it becomes one of the things that makes *teyemmom* (using soil not water) obligatory, as will be explained later.

(D) The acts of ablution

Before starting to detail the acts of ablution, we must mention that ablution must take place out of intention (*niyyeh*), and the intention is the decision that is present in the mind to carry out the act when one is embarking on it, and willing to do it; also it must continue to the end of ablution, and it should be performed, exclusively, for Allah the Most High, and to no one else.

As a whole, ablution consists of two washes and two wipes: washing the face and the hands and wiping the head and the feet. The details are as follows:

First: Washing the face and hands

109. It is obligatory to wash the face from the edge of the hair on the head (at the top of the forehead) to the edge of the beard lengthwise, and across the area that falls between the thumb and the middle finger – when putting the hand on the face – breadthwise.

110. It is obligatory to wash the skin, but it is not necessary that the water reaches the skin under the hair, but rather that the exposed area is washed, unless the hair is sparse, not fully covering the skin, such as fine hair, or (scattered) coarse hair, in which case it (the skin) must be washed.

111. He who has hair on his forehead, or (the reverse) he whose hair has fallen away from it, or whose fingers are longer or shorter than what is normally proportional to his face, should turn (in judgement) to the common norm in all this.

112. It is obligatory to wash both hands, the right first then the left, starting from the elbow and ending up at the finger tips. The elbow is the joint that includes both the upper arm and forearm bones.

113. It is obligatory when washing the hands to wash the skin and the hair (fine or coarse), as well as what looks like an additional finger or the like that is considered joined to the hand.

114. The amputee whose arm is cut from the elbow has no obligation to wash it, but if it is cut lower than the elbow, he must wash what is left.

115. It is obligatory to add a little more than the mentioned limits in the face and hands so as to ensure that the required areas are washed. Also, washing must be performed from top to bottom, as is commonly done. Moreover, it is not sufficient to do anything that is not regarded as washing, such as wiping, but the water must be poured, even if by the hand, on the areas to wash with it.

Second: Wiping the head and feet

116. It is obligatory to wipe the head, and the area of that is the uppermost edge of the face which is the area between the edge of the hair (at the top of the forehead) and the centre (between the horizontal and vertical parts of the head), but it is not obligatory to wipe all of this area, only what is within it (the minimum); it is better to cover, by wiping, an area equal three joined fingers.

117. It is not allowed to wipe the hair that is outside the head area, which is the hair that, when stretched, falls outside the head limits; thus one must comb the hair out and wipe what is inside the head limits.

118. The bald person should wipe his head according to the common norm.

119. It is obligatory to wipe the top part of each foot, the right followed by the left, but it is allowed to wipe both of them together; the area to be wiped is from the tips of the toes to the top of the foot, but it is better when wiping to reach the joint of the leg, and breadthwise whatever is covered by the wipe (the minimum), but better to wipe to the width of three fingers.

120. It is obligatory when wiping the head and feet to observe the following:
1- The wiping of the head and feet must be done with the wetness left over from the ablution water on the hand, even if it is scarce, and no new water can be taken
2- The wiping of the head must be done with the palm of the right hand, and it is an obligatory precaution to wipe the toppart of the right foot with the palm of the right hand and the top part of the left foot with the palm of the left hand; but if wiping with the palms is not possible, the top part of the hand should be used in the same order.
3- The area to be wiped must be free of any apparent wetness, but a light wetness that is not apparent and that would be overwhelmed by the wetness of the wiping does not affect the validity of the ablution.
4- The wiping organ and the wiped organ/part must come in contact, so it is not acceptable to wipe over any covering, such as a turban or socks unless this is by compelling necessity, such as cold weather, or over a bandage etc.

121. It is not obligatory to wipe with the whole of the palm, part of it is acceptable; the amputee who has lost his hands may wipe with his arm. Also, it is acceptable to carry out the wiping of the head and feet in the reverse order, although it is better to follow the recommended order.

(E) The doubts in ablution

122. Doubts may arise over ablution, or over its conditions and parts, the details of which are as follows:

First case: The person has had *η≅adeth* and doubts whether he (later) has carried out ablution; in this case he decide that his *η≅adeth* is still not removed (by ablution).

Second case: He is certain of his ablution, but doubts whether he had *η≅adeth*, so he decides that his ablution is still valid.

Third case: He is certain of his ablution and certain of the *η≅adeth*, but does not know which one came before the other; in this case he has to carry out ablution again.

And if he finds himself in the first or third case after finishing prayers, there are two situations:
a- His doubt stretches to before the prayer, so that if his attention had been turned to it before the prayer he would also have doubt regarding his ablution; in this case his prayer is void and he has to perform the ablution and prayer again.
b- His doubt takes place in that moment, and does not stretch to what went before; in this case his prayer is valid, but he has to perform ablution for the next prayers.
But if this doubt assails him during praying, he must stop, perform ablution and start his prayer afresh.

Fourth case: He is certain of his ablution, but doubts some of its acts, and here are two situations:
First: The doubt concerns the actual washing of an organ, and there are two cases:
a- The doubt takes place after finishing the ablution completely; in this case his ablution is valid unless the doubt concerns the last organ, i.e. wiping the left foot; in this case he should take notice of that (i.e. wipe it) if *mowālāt* (succession without pause) was not violated, or if he has not started the next prayer, or the *athān* (call to prayer) or *iqāmeh* (shorter call) for it at least; so if *mowālāt* is no longer valid or if he has entered the prayer, its *athān* or *iqāmeh*, he should disregard his doubt.
b- The doubt takes place during ablution, such as if he doubts washing his face while he is washing his right arm, or if he has not even started washing it; in this case he must go back and wash the doubted organ, then wash the organ that follows, observing the obligatory order, even if he had started washing it before the doubt.
Second: He is certain of washing the organ, but he doubts the correctness of the washing or the wiping of it immediately after leaving it, or after starting washing or wiping the part that follows; in this case he should disregard his doubt, regarding his past act as valid and should continue with his ablution.

(F) Splint and bandage (*jebīreh*) ablution

This covers the rulings of ablution in the presence of a splint, bandage or the like on one of the organs of ablution. A splint is used as part of a treatment of a fracture, and bandages are used as dressings for wounds or abscesses; this also includes plasters (over a wound); however, in cases involving simply pain, swelling or skin rash, it is an obligatory precaution to wipe over the bandage then to perform *teyemmom* as a precaution. Splint and bandage rulings differ according to whether the affected area is wrapped with a bandage etc or if it is left uncovered:

First: Bandaged organs

123. If the organ affected by a fracture, wound or abscess is wrapped with a bandage to treat it and it is possible to take the dressing off and wash the area that it covers, the person in question must take it off and carry out his ablutions as normal. However, if taking it off is not possible, either because this would harm the affected area, or because healing requires that it is not taken off, or because a specialist/doctor, who is not available, is needed to do that, ablution must be done in the normal way until reaching the area in question; then the splint or bandage must be wiped, for the pouring of water just on an area that forms part of the affected organ is not enough in this case.

124. There is no difference, with a splint or bandage that cannot be taken off, between the case where the splint or bandage covers the whole of one or more of the washing or wiping organs or not, so if all the ablution organs are bandaged, it is sufficient to only wipe them.

125. If the splint or bandage covers more than the area affected, then if it is possible to take off the additional portion and put the water on that additional portion, it becomes obligatory; otherwise (if it is not possible to take it off) ablution is done over the additional portion (as part of the rest of the splint or bandage).

126. If the splint is impure, and if it is the same size as the wound itself, it is sufficient to place a pure piece of cloth over it and wipe it, even if it could be taken off and replaced to

purify it. However, if it covers more than the wound, even if more than the normal size, then if it could be taken off to wash the additional portion, this must be done; otherwise, a piece of cloth must be placed over it and wiped.

127. If the edges of the wound are harmed by wiping over the splint or bandage, washing should be avoided and wiping is fine; however, if the affected/wounded area is larger than normal, it is an obligatory precaution to perform both ablution with the splint and *teyemmom* (a form of purification that applies in exceptional cases in which the person is incapable of ablution or washing; see below).

Second: Uncovered organs

128. If the affected organ is uncovered, is pure and would not be harmed by water, then ablution must be carried out as normal. But if it is not possible to wash it – even if because of the medication placed on it – it is sufficient to wash the areas around it and leave the affected area unwashed, even if it is possible to place a piece of cloth over it to wipe it.

129. The plaster that cannot be taken off does not call for *teyemmom*; ablution by wiping over it is sufficient.

130. The patient who is on drip treatment must remove the needle and perform ablution if it is possible; otherwise if it is possible to wash the area around the puncture, ablution by washing is also obligatory in this case; if both are not possible, *teyemmom* becomes obligatory, even if the needle is injected in one of the *teyemmom* organs.

131. If it is not possible to perform ablution when there is a tube inserted into the mouth or nose, *teyemmom* becomes obligatory.

132. If it is known that the difficulties in performing ablution as normal will disappear after a while, leaving sufficient time for the acts or worship due, prayer(s) must be delayed to that time, then ablution should be performed in the normal way. However, if it is not known, the person can perform ablution on the understanding that the situation (with the splint or bandage) is going to stay like that; then if this later proved to be the case, his ablution and prayer are valid, but if the situation changes with sufficient time for offering it again, ablution and prayers must be repeated.

133. The ablution of splints and bandages removes the *η≅adeth*.

134. In all cases where the person becomes doubtful regarding the ruling whether ablution or *teyemmom* applies, it is an obligatory precaution to perform both ablution and *teyemmom*.

135. If the person has applied a splint or bandage out of conviction of harm and he performs his obligations accordingly then finds that there was no harm, the ablution becomes void and he must repeat the prayers that were offered with that ablution.

(G) The ablution of *dā'im al-H≅adeth*

The term given to *al-Meslūs* or *al-Mebτ≅ūn* is *dā'im al-H≅adeth*. *Al- Meslūs* is someone who cannot control his/her urination, while *al- Mebτ≅ūn* is someone who cannot control his/her bowel movements or wind. The rulings in these cases are as follows:

136. For *al- Meslūs* or *al- Mebτ≅ūn*, there are two cases:
First case: There is no period of stoppage of *η≅adeth* (soiling by urine, bowel movements, wind) during the time of prayer, or that there is a stoppage time but not long enough for performing the purification and some of the prayer; in this case it is obligatory to perform ablution and prayer, whether for one or more prayers, and it is not obligatory to do the ablution again during the day unless another *η≅adeth* of a type other than this condition, such as sleeping, takes place. Ablution becomes void also if the *η≅adeth* stops for a long period, such as a day or more.
Second case: There is a stoppage period; here there are two cases:

a- The stoppage period is long enough for purification and complete prayer inside the time (of prayer); in this case one must wait until this period arrives then carry out ablution and prayer as normal.
b- The stoppage period is long enough for purification and part of the prayer inside the time (of prayer); in this case one must wait until this period arrives, then carry out ablution and prayer, and it is not obligatory to repeat the ablution during the prayer if the *η≅adeth* takes place during it.
137. *Al- Meslūs* or *al- Mebτ≅ūn* must take care (for the sake of the prayers) not to let the impurities of the urine or stool soil the body or clothes; it is obligatory that the areas affected by impurities be purified for every prayer.
138. The ablution of *Al- Meslūs* or *al- Mebτ≅ūn* makes allowable every act that calls for purity, so it allow them to pray, and it allows them to perform the circum-ambulation around the Ka'beh, touch the words of the Qur'an and the like.

Al-Jenābeh and its rules of washing

(A) *Al-Jenābeh*

The rulings are as follows:
First: The causes of jenābeh
139. *Al-Jenābeh* takes place in two situations:
1- Intercourse, which takes place with the penetration of the length of the penis head (or more) in the woman's vagina, even if without ejaculation; if intercourse takes place in this way, washing becomes obligatory on both the man and woman, whether they are young or old, sane or insane, free or coerced. And just as *jenābeh* takes place from normal intercourse, it also takes place when penetration the woman's anus occurs, and in cases of abnormal sexual acts, such as penetrating a male's anus, an animal or intercourse with the dead. This is in addition to the fact that the obligation of washing in some of these is based on obligatory precaution.
2- Semen coming out of man due to any cause, if it comes out from the natural outlet, whether using a implement such as a needle or without. However, if it comes from any place other than the natural outlet, the ruling of a *jenābeh* is not quite certain, and it is better to wash.

140. There is no difference if a *jenābeh* takes place through intercourse between the act performed with a bare penis or with a penis covered by a condom.

141. When it is doubted that the fluid seen outside is semen or not, the person should look for three signs: the onrush/forceful flow, desire, and the body's lassitude; if all are present, the fluid outside is semen, and washing is obligatory; this applies to a normal, healthy person. For a sick man, however, it is sufficient to feel desire and the body's lassitude for a ruling of *jenābeh*.

142. What comes out from the woman in desire is not semen – according to specialist opinion – and so it is pure; also, there is no washing to be done by her if this was accompanied by desire and the body's lassitude, although washing is better in this (latter) case.

143. Every secretion from the male organ, apart from semen, urine and blood, is pure and there neither a wash nor ablution is necessary to remove it. These secretions have common names: *methy*, secretion that comes out during sexual arousal, *wethy*, which comes before urinating, and *wedy*, secretion that comes out after urinating; all are different from semen in nature and colour.

144. If a man's desire is stirred and something similar to an internal ejaculation takes place but no semen appears outside, washing is not obligatory.

145. A man's semen left inside a woman's vagina after intercourse does not make the woman's washing void if it comes out after washing, and she only has to purify what it touches.

146. If a boy who has not reached *bolūgh* (the Islamic legal age) experiences a *jenābeh* similar to intercourse, if he washes it is acceptable; otherwise after reaching *bolūgh* he would have to wash.

147. If the person who has had *jenābeh* doubts whether he has washed or not, if this takes place during praying, the prayer becomes void and he has to wash and repeat the prayer; but if this takes place after finishing the prayer, the prayer is valid, but he has to wash for the following prayers.

Second: The acts affected by jenābeh washing

148. Many things are affected by *jenābeh* washing:

1- All types of prayers, including their forgotten parts, but it (washing) is not obligatory for the *sehw sejdeh*, although it is better; likewise the prayer of the dead and the reciting of *sejdeh*.

2- Circum-ambulation around the Ka'beh that is part of pilgrimage or '*omreh*, both the obligatory and the recommended, but not the circum-ambulation around the Ka'beh that takes place out of ignorance or forgetfulness of the *jenābeh*, or intentional if the person has committed a sin by entering the Holy Mosque (*al-Mesjid al-H≅arām*).

3- Obligatory and recommended fasting – it is an obligatory precaution to wash before dawn if the person's jenābeh took place at night during the fasting of Ramadan, or when making another obligatory fast; the fasting becomes void by intentional jenābeh during the day in both obligatory and recommended fasting.

Third: Things that are forbidden for a person with jenābeh

149. Certain things are forbidden for a person under *jenabeh*:

1- Touching the words and letters of the holy Qur'an, as well as what is written with them such as the diacritical marks/short vowels, *medd* (short horizontal lines above some vowels to elongate their pronunciation when reciting) etc; it is better not to touch the word 'Allah' and His special names, as was explained in ablution ruling no. 103 and after.

2- Staying in the mosque even for a short period, especially the Holy Mosque of Mecca (al-Mesjid al-□□arām) and the Prophet Mosque, Medina. However, merely entering to pass through without staying for even a short period, and with the intention of just passing through. is allowed in mosques other than the Holy Mosque and the Prophet Mosque. It is also not allowed to enter to put something inside, unless this is done when passing through; it is also allowed to throw such things from the outside.

150. It is better to regard the Holy tombsof the infallibles (as) as mosques, if it is not known that they are regarded as mosques at the outset; otherwise the rulings of mosques apply.

151. It is better – when under *jenābeh* – not to read the verses of *sejdeh* in the *'azā'im* chapters: as-Sejdeh (starting with *alif lām mīm)*, Fossilet (starting with *η≅ā' mīm*), an-Nejm and al-'Alaq.

(B) How to wash away *jenābeh*

First: Conditions/requirements of the wash

152. The conditions/requirements that must be present do not differ from those for ablution, except for one, *mowālāt* (succession), since in the washing *mowālāt* is not obligatory; so it is allowable to wash the head and neck and after an hour or more to wash the rest. Yes, *mowālāt* must be observed in the *istiη≅āδ≅≅eh* wash when the *η≅adeth* continues, and by *al- Meslūs* and *al- Mebtūn* when they wash to remove *al-H≅adeth al-Akbar* (big occurrence, such as from death, *jenābeh*), not as a condition in itself to render the wash valid, but because they need to go straight away to prayers – generally.

Second: How the wash is performed

All the exposed parts of the body must be washed, coupled with the intention (*niyyeh* of *qorbeh*); it has two forms:

The first: Gradual or in an order/sequential (*tedrījī* or *tertībī*)

153. In the gradual type of washing, the head and neck must be washed first, then it is better to wash the right side of the body, followed by the left, although the person washing can, after washing the head and neck, wash the whole of the body in one go without the right-then-left order. As for the private parts, they can be washed from whichever side when the sides are washed separately.

154. To achieve a gradual wash, there is no difference between bringing the water to the organ by pouring it on it or by immersing the body in water, in which case the person can immerse his head and neck first then his body, or immerse some of his body then pour the water on the rest, on the condition that the organ to be immersed must be wholly outside the water before immersing it.

155. The skin must be washed and all the hair over it, whether thick or sparse, except the hair that stretches out of the head and in this case it is sufficient to wash only the hair next to the skin; also, the person must make the water reach the skin under the hair (using the fingers etc).

The second: In one go (irtimāsī)

156. The person may wash away *jenābeh* in one go, and this takes two forms:
a- The amount of poured water must be abundant such as in a waterfall or the like, and in this case it is not essential to separate between the head and body, provided that they start with the head so as not to end up washing the body before the head.
b- Immersing in water in a way that the water covers the whole of the body (even) in one moment so that nothing stays outside the water, and with no part staying in the mud so that washing cannot be said to have been achieved. It is essential that the body – partially or wholly – is outside the water before intending to wash; therefore washing has not been achieved if the person initiates (in his mind) his intention when the body is already completely under water.

157. If there is something that prevents water from reaching his body (*η≅ājib*) and he discovers it after the wash, there are two possibilities:
1- He has carried out an immersion-type wash; in this case the wash becomes void and the person must repeat it, whether in the same manner or with the gradual type.
2- If his wash was the gradual type, then:
a- If the *η≅ājib* was on the body, the person needs only to remove the *η≅ājib* and wash the place under it, and his wash is valid.
b- If the *η≅ājib* was on the head or neck, the person needs to remove it and wash under it, then repeat the wash of the body so as to achieve the gradual completion of the wash.

158. It is not obligatory to make the gradual wash from top to bottom; it can be done in any way according to how the water is brought to the body; also, in the immersion type, it is not obligatory that the washer enters the water with his head. As was mentioned earlier, the immersion-type wash is not achieved unless the water covers the whole of the body.

159. It is not a condition for the water to be a *korr* amount (or more) for an immersion-type wash, so the wash is valid with a smaller amount, provided that the body is pure before the wash.

Third: Rulings of the wash

160. It is better that the person under *jenābeh* urinates after ejaculating semen, before washing, so as to clear the urethra of the semen, preventing what could be semen from coming out after washing, for if he becomes doubtful whether what comes out before urinating is indeed semen, he must regard it as semen, and so he has to repeat the wash if he has washed before. Yes, the nine wipes and squeezes (*istibrā'*, see no. 101 earlier) are sufficient if he cannot urinate.

161. If *η≅adeth* that calls for ablution (passing wind etc) takes places during washing, the person can continue his wash and perform ablution after this in order to do anything that calls for ablution before it; however, it is better to repeat the wash and do ablutions after it.

162. If *η≅adeth* takes place during the wash and washing becomes obligatory, here are two possibilities:
a- The new *η≅adeth* is similar to the one the person is washing to remove; in this case it is an obligatory precaution to complete the wash and repeat it again.
b- The new *η≅adeth* is different to the one the person is washing to remove; here the person has the choice of either completing the wash then repeating it with the intention that it is needed, or to stop and start a new wash with the intention of removing the *η≅adeth* in general.This is if the person did that with a gradual-type wash; otherwise the person may initiate the intention of washing to remove one or both of them, if the continuation was done with an immersion wash.

163. It is sufficient to carry out one wash for many occurrences (*η≅adeth*s), initiating the intention of washing for them as a whole or for each one of them, or for a certain one of them and this would be sufficient for the rest.

164. Washing for *al-H≅adeth al-Akbar* (*jenābeh* etc) cancels the need for ablution; the same applies to the recommended washes for which its recommended state (*isti η≅bāb*) is confirmed, such as the Friday wash, for *i η≅rām* (starting pilgrimage or *'omreh*) and others. In addition, it cancels the need for ablution if the person performs *teyemmom* instead of washing; this is if he was able to perform ablution, otherwise it would cancel the need for another *teyemmom* instead of ablution.

165. The splint and bandage ablution rulings explained earlier apply for washing as well, and the matter is the same except for two cases:
1- If the splint or bandage is for a wound or abscess and is exposed, the person has the choice of washing with the splint or bandage on or do *teyemmom* – if the first is chosen it is sufficient to wash the edges of the wound, although it is better to cover it with a piece of cloth and wipe over it.
2- If it is a fracture and is wrapped with a splint, the person must wash and wipe over the splint, but if the person cannot wipe over it, or it is exposed and it is not possible to wash it, *teyemmom* becomes obligatory.
166. If the person knows that *al-H≅adeth al-Akbar* has taken place, but doubts whether he has washed or not, he should regard himself still under *η≅adeth* and must wash to remove it.

167. If the person becomes doubtful regarding washing a part of the organs, then if the doubt relates to the washing of the head or neck or any part of him and he was already washing the body, he should continue the wash without repeating it. But if he has not started to wash any part of the body, then he must wash the parts he doubted (then wash the body). And if the doubt relates to washing the body or part of it, he must wash the doubted parts, even if the doubt occurred after finishing the wash.

168. If the person doubts the validity of the wash after finishing it, he should regard it as valid and there is no need to repeat it. And if he doubts the validity of washing a certain organ while washing it, he must ensure the correctness of the wash; but if the doubt occurred after finishing washing it, there is no need to repeat the wash.

169. It was explained earlier that the wash consists of two parts and that order must take place when performing them if the wash is done with the gradual-type method. But if the order is violated, intentionally or otherwise, the wash does not become void, but the person has to repeat whatever would correct and achieve the order; so if the body was washed before the head, only the body is to be washed again. Excluded from this is any situation where the intentionincludes disobedience and rebellion against God the Most High or an attempt to initiate a new ruling of one's own; the wash would be void in this case and must be repeated.

Fourth: The recommended washes

170. The recommended (*moste η≅abb*) washes are: the Friday wash, the *Eid* wash (both Fitr and Adha Eids), for the *i η≅rām* of pilgrimage or *'omreh*, to enter Mecca and Medina, the day of *terwiyeh* (8th of Thol-Hijjeh, the 12th *Hijri*/Lunar month), the day of *'Arefeh*, to enter the

Ka‘beh, the first, the seventeenth, the nineteenth, the twenty-first and the twenty-third nights of Remadan, to do *istikhāreh* (to make a decision through certain recitals of the Qur'an or certain prayers), for the *istisqā’* prayer (a special prayer in times of drought and scarce rainfall), to visit Imam H≅osain (as) at his tomb and to wash for repentance (*tawbeh*). All of these washes cancel the need for ablution.

171. The Friday wash can take place at three times:
1- Between the true dawn and the *zewāl* of the sun (noon, or when the sun lies at the top of a perpendicular line); this is the time when people are free to carry out the wash whenever they like.
2- Between the *zewāl* of the sun and sunset, on Friday; this is for those people who cannot carry it out in the time above.
3- Throughout Saturday, which is the *qeδ≅≅ā’* time (offering worship after its time has elapsed), i.e. the person’s intention when washing is *qeδ≅≅ā’*.
So, if the person performs the Friday wash in any of these three times, he/she does not have to perform ablution.

172. The recommended washes mentioned above are of two types:
a- Washes that are recommended at certain times, such as Friday and the *Eid*, do not become void by *η≅adeth*, whether during the wash or later; only ablution needs to be performed for the acts in which purity is required.
b- Washes that are recommended for certain acts, such to enter the Ka’bah or for *iη≅rām*, do become void by *η≅adeth*, whether during it or later, before starting the act; so if the person wishes to keep to the recommended state (*istiη≅bāb*), he/she has to repeat the wash.

At-Teyemmom and its rulings

Teyemmom is purification in a certain way and is resorted to in exceptional cases in which the person is incapable of ablution or washing; such cases justify teyemmom. The rulings are as follows:

(A) Conditions that justify *teyemmom*

173. It is justified for a person to abandon ablution or washing (and resort to *teyemmom*) in the following cases:
First: When water is lacking in the area in which the person is staying and the area is of approx. 220m radius in rough terrain, or approx. 440m radius in plain/flat terrain. The person has to search (for water) – by himself or with the help of others – until he becomes absolutely certain or satisfied that water is not available. However, if he comes to know that water is available beyond that distance by a distance that is not difficult to cover, it is obligatory to go there.
If the person does not search, although he is capable of doing so and there is time to do this, and he performs *teyemmom* and prays believing that his act is allowed, it seems that his *teyemmom* and prayer are valid if it is later ascertained that the water is indeed lacking. His prayer is also valid if he searched for the water and could not find then finds it after the prayer.
Second: When it is not possible to use the water, and this includes the following cases:
a- The obstacle is religious, such as if the water is impure orhas been usurped.
b- It is not possible to get to it either because of old age or disability, or because of fear from an enemy or thief, or if it involves doing a forbidden act, such as entering other people’s land without their permission (trespassing).
c- If the person needs the water for something that is more important than ablution, such is in cases of intense thirst, or if it would harm others if the water has to be shared and using it would leave the others without water; and if the water is needed to purify the mosque, his body or dress from impurities, he should use the water for this purpose instead.
d- A psychological obstacle, such as fear of humiliation when requesting the water from its owner.

e- A financial obstacle, such as if obtaining the water requires spending a lot of money that would harm the person; but if this would not cause any harm, spending it becomes obligatory, even if the price is high.
f- The obstacle relates to the time of prayer so that ablution or washing would push the prayer, wholly or partially, outside the time; this needs only to be reasonably probable.

174. If a person should have performed *teyemmom* but performed ablution or washing, the ablution and wash becomes void except in the following cases – some of which are sinful, however:
a- It was intensely difficult to obtain or use water.
b- He resorted to forbidden acts to reach the water.
c- The person was short of time as well as ignorant of the obligation of *teyemmom*, or he had the knowledge but preferred (out of choice) to resort to ablution or washing.
d- There was an element of humiliation involved, or money-spending that would harm him or do the harm to some of their money or cattle.

(B) Things used for *teyemmom*

175. *Teyemmom* must be carried out using things that may be called earth, which includes:
a- Natural earth, such as soil, rock, sand, dry mud etc.
b- Baked earth, such as cement and limestone, mosaics and tiles, provided that their exposed surfaces are not plated with a non-earthy material that is regarded as a cover (*η≅ājib*).
Apart from these, other materials – such as metals or precious stones formed inside the earth – like iron, gold, turquoise or diamonds, substances made from oil such as nylon; also salt, kohl and the like – all these are not allowed to be used for *teyemmom*. Also, it is not allowed to perform *teyemmom* with things that can no longer be called earth, even though that was their origin, such as glass, wood, its ash, plants and the like.

176. It is not a condition for things that may be used for *teyemmom* to be part of the original earth, so *teyemmom* may be performed using things that were taken from earth then placed in the home for another purpose, such as washing basins.

177. If something suitable for *teyemmom* is mixed with another thing that is not (for instance, if soil is mixed with ash), here if the amount of the latter was so small that would not negate the name of earth from the mixture, *teyemmom* may (still) be done using it, otherwise not.

178. If a person cannot find anything suitable for *teyemmom*, but he can find mud, he may dry it out and use it; and if he cannot find that but can find thick dust and is able to collect enough of it until it becomes like soil, he has to collect it and use it; and if he cannot find that but can find mud wet with water but cannot dry it out, he should use it if possible; and if he cannot find any of that, he should pray without *teyemmom*, and does not need to repeat (as *qeδ≅≅ā'*) later.

(C) The requirements/conditions of *teyemmom*

179. The requirements/conditions – in addition to the intention of *qorbeh* – of *teyemmom* are:
1- The soil is free (to use, not owned) and pure.
2- The place in which the person performs *teyemmom* is free (not owned), if *teyemmom* is considered (by the owner) to be a kind of usurping/misappropriation of the place.
3- There should be no *η≅ājib* (covering) over the skin in both the wiping and the wiped organs.
4- *Mowālāt* (succession) should be observed in the *teyemmom* parts.
5- Order in performing *teyemmom* should be observed.
6- *Teyemmom* should be performed by the person himself, unless he has a disability, as is explained in ablution (see no. 38 earlier).

180. It is not required that the organs of *teyemmom* are pure from impurity if that is dry and not transferable, although this (being a requirement) is better; also the start of the time (of prayer) is not a condition.

(D) How to perform *teyemmom*

181. Performing *teyemmom* is as follows:
First: Strike the ground (i.e. earth) with the two palms together; placing them without striking is not sufficient, nor striking one before the other.
Second: Wipe with the two palms the whole of the forehead and its sides, between the edges of the hair to the top of the nose; it is better to include the eyebrows.
Third: Wipe the outer side of the right hand with the palm of the left hand, then the outside of the left hand with with the palm of the right hand.
When wiping the forehead and the hands, it is not necessary to do this from top to bottom; it is allowed to do the reverse in *teyemmom*, whether on the face or the hands. Also, it is no obligatory to wipe with the whole of the palm; wiping with part of it is acceptable. It is also sufficient to wipe the outer side of the hand and not the areas between the fingers as well.

182. Just one strike for both the face and the hands is sufficient in *teyemmom*; it is better, however, to do it with two strikes, one for the face and the other for the hands.

183. If the person cannot strike, just placing the hands is acceptable, and those cannot wipe with the palms may wipe with the outer side.

184. The presence of a splint or bandage on one of the *teyemmom* organs does not prevent one from striking with it or wiping over it. Yes, if the splint or bandage is covering the whole of the palm and the outer side is normal, it is an obligatory precaution to perform wiping both with the palm and with the outer side after striking the ground with the outer side.

(E) The rulings of *teyemmom*

185. The consequences of *teyemmom* are the same as those of ablution or washing. Just as it is allowable for a person who has performed ablution or washed to touch the words of the Qur'an, so it is the same if he has performed *teyemmom*. However, the following situation is excluded: If the person performs *teyemmom* because he is short of time, in this case he must keep to only the act for which he performed *teyemmom*.
As for the person who can only perform *teyemmom* because of illness or lack of water, he could offer his prayers both *adā'* or *qeδ≅≅ā'*, as in the case of being sick for a long time and he wishes to offer prayers during his illness.

186. It is allowed to resort to *teyemmom* even if there is still time, if the person does not know whether at the end of the time period the situation will change; therefore, it is not a condition to be certain that the justification (for resorting to *teyemmom*) will still be present and is only probable as well, although if it is only probable it is better to wait to see if the situation changes.

187. The *teyemmom* performed instead of washing for *al-H≅adeth al-Akbar* makes ablution unnecessary, unless *al-H≅adeth al-Aσ≅ghar* took place after it; this is except in the case of medium *istiη≅āδ≅≅eh*, the ruling for which is *teyemmom* instead of washing, then ablution or *teyemmom* instead of it for every obligatory act.

188. If more than one reason for *al-H≅adeth al-Akbar* takes place, such as when the menses start for a woman under *jenābeh*, just one *teyemmom* is sufficient, just as only one wash is sufficient for both if she can perform it.

189. *Teyemmom* becomes void in two cases:
a- If it was performed instead of ablution, in this case it becomes void with anything that renders ablution void, and (also) when the justification that prevented it (ablution) disappears and there is still time enough for ablution and the act (prayer etc).
b- If it was performed instead of washing, in this case it becomes void for whatever makes washing obligatory, and (also) when the justification disappears and there still time enough for washing and the act; it does not become void if *al-H≅adeth al-Aσ≅ghar* takes place after

it, but the person must perform *teyemmom* instead of ablution, if he was excused as well, otherwise he performs ablution, not *teyemmom*, if it is possible.

190. If the person becomes doubtful regarding carrying out the previous part of *teyemmom*, he must take notice of his doubt, even if he has already started with the next; however if the doubt is related to the correctness of the wiping after completion, he should disregard this doubt, even if he has not yet started with the next.

191. If the person becomes doubtful as to whether he did perform *teyemmom* or not, or whether the *teyemmom* has become void, or in the ruling regarding the prayers which he has just finished when he becomes doubtful regarding whether he did perform *teyemmom*, or regarding the presence of a *η≅ājib*, the ruling is as explained in ablution (see no. 108 and no. 122.)

Chapter Three

Rulings on the Three Types of Blood

The Menses (*al-H≅aiδ≅≅*)

Al-H≅aid is blood that comes out of the uterus of normal women to the outside at often-regular intervals, through the vagina (the normal outlet), or from places other than the vagina when that is impossible, either because of birth defect or for some other reason. This blood is often red or black, hot, thick, and may flow copiously accompanied by a burning sensation. These characteristics are needed to distinguish menstrual blood from the other types.
The rulings relating to the blood of the menses are as follows:

(A) The general requirements

192. The following requirements/conditions should be present so that the blood is regarded as *η≅aiδ≅≅*, i.e. menstruation:

First: The girl has reached nine (*Hijri*/lunar) years of age, so any blood coming out before this is not regarded as *η≅aiδ≅≅*, even if it has the same characteristics; but when doubt relates to *bolūgh* (reaching the Islamic legal age above), such blood is considered a sign that proves it (*bolūgh*); all the consequences of *η≅aiδ≅≅*, will not be valid unless it is certain that this age has been reached.

Second: The woman has not reached menopause, which takes place after completing 50 lunar years (= 48 Roman years, 7 and a half months), whether the woman is Qorashite (i.e. from the Arab tribe Qoraish), and thus belongs in ancestry to an-Naδ≅≅r bin Kināneh, or otherwise, although it is better for a Qorashite woman to combine both the acts of *mosteη≅āδ≅≅eh* (woman seeing the third type of blood, to be explained later) and all that the *η≅ā'iδ≅≅* woman (woman during the menses) abstains from until her age reaches 60 lunar years, when the requirements of the menses are present.

Third: The blood comes out, so if it stays inside the vagina it is not regarded as menses blood unless it comes by itself or by inserting a piece of cotton and seeing blood on it, in which case her menses have started and she is considered to be in that condition, even if the blood stays inside. This is regarding the start; the end of the menses, however, is when the bleeding stops from both the inside and the outside.
Whenever a woman feels blood coming from the uterus but not to the outside, she is not obliged to insert a piece of cotton to check, but can keep observing the purity rulings until the blood comes out by itself, although it is better to check in this case.

Fourth: The time that the blood is coming out has to coincide with her regular menses time, and its characteristics, according to the following:
a- For a woman who has regular menses, she regards herself to be menstruating when she sees the blood, even if it does not have the normal characteristics of her menses blood; the situations of women with regular menses will be detailed later.
b- For women who have no regular menses, the blood coming out must have the characteristics of menstrual blood. It should be noted that one characteristic is sufficient to identify the blood as menstrual blood, and it is not necessary to see all the mentioned characteristics. That said, details will be explained regarding women who are experiencing their first menses, as well as those who have irregular menses.

Fifth: The blood must continue to flow for a certain time, with the following conditions:

a- The period is not less than three days, so if it stops in less than that the blood is not menstrual blood.
The three days do not have to be consecutive, so if a woman sees blood one day then it stops the next day, and then blood comes out for two more days, or in a pattern similar to this, the three-day condition has been met. However, if such stoppages take place, it is an obligatory precaution that the woman, on the day in which she sees blood, combines both the acts of *moste*$\eta\cong a\delta\cong\cong eh$ and all that the $\eta\cong\bar{a}'i\delta\cong\cong$ woman abstains from. On the day of purity and the stopping of blood, she might have to wash from *isti*$\eta\cong\bar{a}\delta\cong\cong eh$ according to its type and carry out the acts/duties of the pure woman; this is because it is probable that she is no longer menstruating ($\eta\cong\bar{a}'i\delta\cong\cong$).
b- Blood is present even if inside the vagina – after it comes out or is brought out – on every day of the first three days throughout the 24 hours, even if it does stop for a short while, such as a matter of minutes; but if the bleeding stops completely during the day or night for one hour, for instance, and the woman becomes completely pure, the blood that she saw before the stoppage should not be regarded as menstrual blood and she must re-start counting the days after the blood starts coming out again. Thus, noting this point and the previous one, the blood must be present for three days, even if not consecutive days, but it must be continuous in each of the three days throughout the 24 hours.
c- The period of the bleeding must not be more than 10 days, as will be explained later.

Sixth: There must be, between each two consecutive menses, a period of no less than 10 days; so if a woman sees blood after eight days from the end of her previous period, this blood is not menses, but to be regarded as *isti*$\eta\cong\bar{a}\delta\cong\cong eh$; if 10 days have elapsed from the end of the previous period, then she may regard it as a new period/menses when the other conditions are present.

Seventh: The blood must not be one that is coming out as a result of a wound or abscess caused by illness, or by the penetration of the hymen in the case of a virgin.

193. When a woman sees blood, this is either one of these two situations:
1- She knows about the previous stoppage, so there is no problem about her acts as previously mentioned (the fifth condition just above).
2- She does not know, so she regards herself as $\eta\cong\bar{a}'i\delta\cong\cong$ (during her period); so if the bleeding stops she must wash and pray. Then if she sees blood on the second day, she must regard it as menstrual blood as well, and so on until this continues for three separate days when she discovers that she has her period, and so she abstains from the acts as any $\eta\cong\bar{a}'i\delta\cong\cong\cong$. Alternatively, if she discovers she is not $\eta\cong\bar{a}'i\delta\cong\cong$ and that she should have taken care in the two days in which she was seeing blood, in this case – as an obligatory precaution – she should perform (as $qe\delta\cong\cong\bar{a}'$) the prayers and fasting (if any) of these two days.

194. How the days are counted – whether the first three days, assuming blood was coming out on three consecutive days, or other than the three, such as counting the ten days of purity, or the days of her period – is as follows, taking an example of 10 days:
<u>First:</u> She sees the blood on Thursday morning, for instance, at dawn or before it; in this case she must count 10 days and 9 nights, so the 10 ends at sunset on Saturday. The same applies if she sees the blood on Wednesday evening, or at any time during that night; in this case she does not start the count from that time, but starts on Thursday morning.
<u>Second:</u> She sees the blood after dawn on Thursday; in this case she counts 11 days and 10 nights. So the 10 days end, in this example, on Sunday at the same hour in which she saw the blood on Thursday.

195. The menses may come when breastfeeding, but in pregnant women it is more likely that it does not. If the blood comes during the days of her normal period, and with the same characteristics as the period blood – especially if she sees it 20 days after her last period – it is better for her to combine the acts of the *moste*$\eta\cong a\delta\cong\cong eh$ and all that the $\eta\cong\bar{a}'i\delta\cong\cong$ abstains from.

(B) Categories of women according to the blood

It is evident from our explanations that identifying the period/menses cannot be done except through one of two methods: either through the fact that it occursat the same normal time of the period, or it shows the familiar characteristics of the menses. Since women are different in this regard, naturally the rulings differ accordingly. To explain this, we say:

196. In terms of their periods when blood comes out, women fall in six categories:
1- Those with time and duration periods (*weqtiyyeh* and *'adediyyeh*), who have precise periods in both timing and duration, such as the woman who sees blood at the beginning of every month for seven days, and this continues. This is the natural form that women should have in most cases.
2- Those with time-only periods (*weqtiyyeh*), whose blood comes every month but for periods that differ in duration, for instance lasting for three days on one occasion, five on another and seven on yet another.
3- Those with duration-only periods (*'adediyyeh*), who have a regular number of days, but the time it starts differs; so, for example, they may see blood at the beginning of the first month but in the middle of the next, but with the number of days (i.e. duration) the same in both months.
4- Irregular women (*mo*δ≅≅*teribeh*), who have had regular periods but then these start to become irregular in both timing and duration, and this pattern continues.
5- The forgetful woman (*nasiyet al-'Ādeh*), who is used to having a period, but she forgets when it starts and how long it lasts.
6- The first timer (*mobtedi'eh*), who sees blood for the first time in her life.

197. A woman is to be regarded having (regular) periods if she repeatedly sees blood, as in the first three categories, on two consecutive and similar occasions; so she starts her acts from the third month according to her period.

198. A woman with regular periods might experience irregularities or differences in her period; if this happens once, it does not affect the regular nature of her period, but if it happens in two consecutive months, the first period is cancelled and here:
a- if she continues in the new form, she is now having a new period and she must act accordingly.
b- if she does not continue, she should regard her period as irregular, and the rulings for irregular women become valid, starting from the fourth month or the fourth time in which she sees blood.

199. It is not necessary for the woman who has time-only period (*weqtiyyeh*) to see the blood at that time exactly, but if the blood shows one or two days before the normal time, or one or two days after it, she should continue to regard it as *weqtiyyeh*, as long as seeing the blood took place during these days of the period.However, if she sees blood more than two days before her period, then she should lookat its characteristics: if they are similar to her normal menstrual blood, she can regard it as a period; otherwise it is *isti*η≅*ā*δ≅≅*eh*. Then if the period/menses arrives, she should consider herself to be having her period, even if the blood does not have the characteristics of menstrual blood.

(C) The rulings for the first-timer and the woman with irregular periods

200. If a woman sees blood for the first time in her life, or if she has had regular periods but they have become irregular both in time and duration, she must depend on the blood characteristics, and regard the situation as a period if the blood has the characteristics of menstrual blood, and as *isti*η≅*ā*δ≅≅*eh* if the blood as the characteristics of *isti*η≅*ā*δ≅≅*eh* blood. If the blood is of one colour there is no problem; but if its colour was different (such as red and black on one occasion, or black, red and yellow on another), the principle here is that she regards the darker colour (i.e. the black in the first example, and the black and red in the second example) as menses, and the rest as *isti*η≅*ā*δ≅≅*eh*.

201. If the bleeding that the first-timer or the woman with irregular periods sees does not last for more than 10 days and it has the characteristics of menstrual blood, as is the most common case for women, the whole is regarded as menses whatever the number of days, up to a maximum of 10.
But if it lasts more than 10 days, the rulings for the first-timer and the irregular woman differ as follows:
The first-timer: she should check the number of days of her relatives – her mother, grandmothers, aunts (both sides, father's and mother's), cousins (both sides, father's and mother's) and the like, and look to see if their periods are the same, so that she follows that pattern and regards the rest of the days as *istiηāδeh*; but if their periods are not the same, then she should regard her period of the first month as six or seven days (she has the choice in this), then she combines, through to the tenth day, the acts of *istiηāδeh* and all that the *ηā'iδ* abstains from. In the following months, she should regard the first three days as menses, then combine the acts up until the sixth or seventh day, and regard the rest as *istiηāδeh*; she should keep to this final ruling until her period becomes regular.
As for the irregular woman: she should regard her period as lasting six or seven days, and the rest as *istiηāδeh*, and does not need to question her relatives.

(D) The regular woman

Because of the numerous possibilities of this case, we will explain it under two categories:

First: When the bleeding does not last for more than 10 days
202. If the woman with a regular period sees blood and she knows that it will not last for more than 10 days, the rulings are as follows:

The first case, if she has periods of both regular timing and duration her ruling is that she starts her period the moment she sees the blood and remains in this condition until she becomes pure in the last days of her period, regardless of the blood characteristics, whether her period lasts 10 days or less. We have mentioned before that it does not matter if the blood starts coming one or two days earlier or later than its normal date.

The second case, if she has a regular period as in the first case above, but the bleeding continues after the days of the period, her ruling is as follows:
a- If she was already in a state of *istiηāδeh* before the starts of the menses, and the blood of the menses starts when the other bleeding has finished, here she finishes the days of her period according to her regular duration and regards the blood that comes later as *istiηāδeh*.
b- If she was not in a state of *istiηāδeh*, but was pure before her menses started, in this case she should resort to her own judgement, as follows:
1- She may decide with certainty that the bleeding is going to last for more than 10 days; here she ends her period according to her regular duration, and regards the rest as *istiηāδeh*.
2- She hopes that the bleeding is going to stop no later than the 10 days; here she can add at least one day to her period, regarding herself as still during her period, then act as under *istiηāδeh*; also, she can add two days or the rest of the 10 days to her regular duration of her period, acting as *ηā'iδ* throughout that duration.
3- She decides with certainty that the bleeding will stop at 10 days or before, this being not a mere probability; in this case she should stay as *ηā'iδ* until the end of her regular duration, then what occurs after this is regarded as menses if the blood has the characteristics of menstrual blood, otherwise it is *istiηāδeh*.

The third case, if her period was time-only (*weqtiyyeh*), her ruling will then be *ηā'iδ* in the first three days, whatever the characteristics of the blood. Then after that she checks if the blood has the characteristics of the menses, she regards it as such, until the bleeding stops at or before 10 days; but if it does not, it is *istiηāδeh*.
Here again, it does not matter if the blood comes earlier by one or two days, as is the case with the woman with periods of regular time and duration.

The fourth case, if her period was regular in duration only (*'adediyyeh*), this woman must differentiate according to the characteristics when she sees the blood; here a number of different situations may arise:

a- All the blood has the characteristics of the menses; in this case there are two possibilities:

- if the bleeding stops according to her regular period, the ruling is that all of it is menses.
- if the bleeding lasts for longer than her regular period, the ruling is different according to her judgement whether she hopes or is certain that the bleeding will stop before the 10 days, as in the second case.

b- If all the blood has the *istiηāδeh* characteristics, in this case she is under *istiηāδeh*, regardless of the amount of blood, be it little or abundant.

c- If some of the blood has menses characteristics while the rest does not, in this case she regards herself to be having a period if the blood has the normal menstual characteristics and conditions, but as isti□□ā□□□eh when otherwise, regardless as to whether the duration is the same as her period duration or more or less, as long as all occurs within the 10 days.

Second: When the bleeding lasts for more than 10 days

203. If the regular woman sees blood and she knows that it will last for more than 10 days, here there can be several cases:

The first case, if her periods are of regular timing and duration, she regards the days equal to her regular period as her menses and the rest as *istiηāδeh*, regardless of the blood characteristics. Here, we can assume the following:

a- She sees the blood at the usual time, so she regards what is more than the regular duration up to what is more than the 10 days as *istiηāδeh*.

b- She sees it before her usual time or after it, or before and after it so that her period days fall in between; in these cases she regards her regular period days as the menses, as differentiated from the blood before and after it.

c- She sees the blood during some of her regular duration and outside it, such as: if her period lasts normally six days at the start of the month, but she does not see blood until in the third day of the month and it continues for more than 10 days, in this case she regards herself to be having her period during the days that coincide with her regular period days, i.e. three days, and regards what occurs outside that as *istiηāδeh*, and she should not complete the missing days from those that fell after her regular period days to make her menses six days long. The same ruling applies if the assumption is the reverse, i.e. when she sees blood before her regular date by eight days and the three from her period.

The second case, if her period is of regular duration only, she should check the characteristics as follows:

a- The blood on all the days has menses characteristics, so she regards as menses the same number of days of her regular period and the rest as *istiηāδeh*.

b- All the blood has the *istiηāδeh* characteristics; in this case all of it is *istiηāδeh*.

c- Some of the blood has menses characteristics and some the *istiηāδeh*'s; here no particular weight is given to the fact that it lasts for more than 10 days, since the ruling factor is the characteristics; the assumed case in this is that the period lasts less than 10 days, most of which will be distinguished according to the blood characteristics. The rule can be formulated as follows: for the woman with duration-only periods, when her blood becomes different and lasts for more than 10 days, and the blood she sees during her regular period days has menses characteristics, her ruling is to regard the number of days equal to her regular period as menses and what occurs beyond this, and which lasts more than 10 days, as *istiηāδeh*, although it has the characteristics of the menses blood. Let's take this example: a woman sees blood for 11 days and her period normally lasts for seven days; she saw blood which had *istiηāδeh* characteristics from the first to the sixth day, then till the eleventh day it had menses characteristics; in this case she regards the last seven days as her period and what came before as *istiηāδeh*; the ruling is the reverse if the case is reversed, and so on.

The third case, if her period is time-only, her ruling is to regard herself to be during her menses when she sees the blood for up to three days, regardless of the blood characteristics,

then after that: if the blood retains menses characteristics, she regards it as such up till the sixth or seventh day (she counts from the beginning of the first three days, not after them), and what follows after, until it goes beyond the 10 days, she regards it as *istiηāδeh* regardless of its characteristics. However, if the blood after the three days had *istiηāδeh* characteristics, she regards it as such until it goes beyond the 10 days.

(E) The woman who forgets her period

204. The ruling regarding the woman who has had a (regular) period then forgets it depends on the category she is classed in, as follows:

First: If she has a duration-type period, the ruling will – as previously explained – depend on the characteristics, and here there are two situations:

a- The bleeding does not last longer than the 10 days; in this case she must regard as menses as the blood which has menses characteristics and regard as *istiηāδeh* what is otherwise.

b- If the bleeding continues for longer than the 10 days, here are two possibilities:

1- If she thinks that her period might well last less then than seven days, then she should follow that, regarding that period as menses and the rest as *istiηāδeh*.

2- If she thinks that her period might last more than seven days, here she must combine the acts of *istiηāδeh* and all that should be abstained from during the menses during the days beyond the seven days until she reaches 10 days, then she regards the rest that cannot be menses as *istiηāδeh*. For example: a woman sees blood at the beginning of the month and the bleeding lasts beyond the 10th day and stops on the 13th, and she thinks that her period might it nine days, here she regards herself to be having her period for seven days, then combines the acts until the ninth day, then *istiηāδeh* from the 10th to the 13th.

Second: If she has a time-only period, here there are two cases:

a- The bleeding stops within 10 days, but lasts for more than three days; here she regards as menses the part that has menses characteristics and as *istiηāδeh* the part that had *istiηāδeh* characteristics.

b- The bleeding lasts beyond 10 days; here are two possibilities:

1- She knows that her period falls within 13 days, for example, but she cannot tell which; here she must combine the acts of *istiηāδeh* with all that women in menses abstain from throughout the 13 days.

2- She does not know whether her period does fall during these days; in this case, if the blood changes its characteristics she must regard as menses that which has menses characteristics on the condition that it does not last for more than 10 days and not less than three days, and as *istiηāδeh* that has *istiηāδeh* characteristics. If the blood has the same characteristics throughout that period and is like the menses type, she regards her menses as lasting six or seven days and the rest as *istiηāδeh*, but if it had the characteristics of *istiηāδeh* throughout that period she should regard all of it as *istiηāδeh*.

Third: If she has a time and duration period, here there are three possibilities:

a- She forgets the time but remembers the duration; here the ruling is the same as for the woman who has time-only periods but has forgotten it, but when she sees the blood with menses characteristics and for more than 10 days, and she does not generally know whether it falls within her period days, she must regard the days equal to her period as menses and the rest as *istiηāδeh*.

b- She forgets the duration but remembers the time; here she must regard herself as in menses from the moment she sees the blood, whatever its characteristics, for three days, and must regard the period after that, up till the 10 days, as menses if it has the same characteristics, and as *istiηāδeh* if otherwise. However, if the bleeding lasts for more the 10 days, her ruling is the same as for the womanwho has a duration-only period and has forgotten it (see above).

c- She forgets both the time and duration; the ruling can be taken from the two cases just above. For example: if she sees the blood and it stops within the 10 days, she should regard all of it as menses if it has the characteristics of the menses, but if it lasts beyond the 10 days

and she knew in general that the days coincided with her period days, she must combine the *istiηāδeh* acts and all that the *ηāʼiδ* abstains from, even if a certain duration for her period is probable for her; this is because the time consideration is more important and telling than the duration consideration. But if she does not know whether the days coincided with her period days, here she must observe the duration consideration; thus if she thinks that there is a probable duration for her period, she should regard it as menses as was explained for women who forget their duration period; and so on.

(F) General rulings

205. It is possible that sometimes the woman sees blood for three days of more, then it stops for several days, then she sees it for three days or longer; there are two sets of cases here:

First: The total number of days of blood and stoppage is 10 or less, and the woman has a (regular) period, here there are two cases:
a- One of the two episodes of bleeding occurs at the time of her period while the other has the characteristics of the menses; here she regards the whole thing as a single period including the days of purity and stoppage.
b- One of the two episodes of bleeding coincides with the time of the period or the characteristics of the menses, while the other does not conform to one of them; here she should regard the blood conforming to one of these two factors as menses and the other as *istiηāδeh* and the periods of stoppages as purity.

Second: The total number of days is more than 10 days; here are two cases:
a- The woman has a time and duration period; in this case she should regard what is within the period as menses, regardless of the blood characteristics, and the days of purity as such, and the second blood as *istiηāδeh*, even if it has the characteristics of menses, and she does not have to complete the shortfall in her (usual) period days from the second blood if the days that fell within her (usual) period days were fewer than usual. The same ruling applies to women who have duration-only periods if the blood has the characteristics of the menses.

b- The woman does not have a (regular) period; here there are many situations:

- The blood changes colour; in this case she should regard that which has the characteristics of the menses as period, and the rest as *istiηāδeh*, and the stoppage period as pure days.

- The blood keeps the same colour and has menses characteristics, so she regards the first blood as menses, the stoppage period as pure days and the second blood as *istiηāδeh*.

- All the blood has *istiηāδeh* characteristics, so she regards all of it as *istiηāδeh*, with the stoppage time as purity days.

206. If she has a third episode of bleeding with *istiηāδeh* characteristics between two episodes that have menses characteristics, there are two sets of cases:
a- If the total is more than 10 days, there are twopossibilities:
- One of them falls within the days of the period, but not the other, so she regards the first as menses.
- None of them falls within the days of her period, or she did not have a (regular) period; in this case she regards the first blood as menses.
- She has a duration-type period and some of the second blood completes the duration with the *istiηāδeh* in between; then she makes the time equal her duration period as menses as well.
b- If the bleeding does not last beyond 10 days, she regards the whole thing as menses, including the bleeding which has the *istiηāδeh* characteristics.

207. If the *ηāʼiδ* thinks it probable that she has become pure, she must check and make sure of that by inserting a piece of cotton in the blood outlet, leave it there, then take it out to see if it was free of blood. If she knows that this purity is temporary, even if for a short period, here she must regard herself as if the bleeding has not stopped yet. But if she is certain that the blood will not return, or is doubtful regarding its return, she must wash and pray; then if the blood does not return within the 10 days, what she did was correct, but if it does return

before the elapse of the 10 days from its start, she returns to the menses status as appropriate (as explained and detailed earlier), and the stoppage of one or two days does not affect her period/menses status. For example: a woman sees her period for four days, then becomes pure, washes and prays for two days, then she sees blood for three days; here she regards the whole of the nine days as menses, dismissing that what she did in the two days in between as void.
The checking that we mentioned is to ascertain her purity; but if she comes to know her purity without checking, she is not obliged to carry out that check and can wash and pray.

An-Nifās (post-natal blood)

An-Nifās is the blood that appears during or after childbirth and as a result of childbirth. Like the menses, it is a kind of *al-H≅adeth al-Akbar*, even if the birth was by Caesarean section or other surgery. The details regarding *nifās* are as follows:

(A) The general conditions

208. The blood is not considered as *nifās* unless two conditions are present:
First: It comes after childbirth, following it by a short or long time but within the ten days that follow the childbirth. What comes out before childbirth, even if more than three days before it, is *isti η≅ā δ≅≅eh*.
Second: This blood must be seen during the first ten days; what is seen after the ten days is not *nifās*.

209. The first ten days mentioned above are the maximum duration for *nifās*, but there is no minimum duration for it.

210. It is not a condition to have a purity period between one *nifās* and another, so if a woman gives birth to twins there is a *nifās* for each one, and if there are fewer than ten days between them, the *nifās* of the first ends when the second is born.

211. A period of purity of no fewer than ten days must elapse between the current *nifās* and the next period/menses, so the blood seen by the woman during the ten (days) of purity is *isti η≅ā δ≅≅eh* until ten days have elapsed following her *nifās*, and she becomes able to act as *η≅ā'i δ≅≅* after that, provided that the conditions of the menses are met.

212. The counting of *nifās*, i.e. ten days begins from the moment that the first part of the baby appears, even if its whole body is not out. The details of this are exactly the same as in counting the days of the period (see no. 194).

213. The blood seen is *nifās* regardless to whether the foetus is complete or not, alive or dead, or if a miscarriage took place or whether the spirit has entered it or not. That said, there is a problem in a ruling of *nifās* if the miscarriage was still a mere *mo δ≅≅gheh*, i.e. a piece of flesh with no distinctive features.

214. A woman might not see any blood after giving birth until ten days have elapsed; if blood is then seen after this, it is not *nifās*, but either menses or *isti η≅ā δ≅≅eh*, according to her situation – i.e. whether it coincides with her period time if she has a time-type period, or whether it has the characteristics of menses blood if she does not have a time-type period, or whether it does not conform to either of these situations.

(B) *An-Nifās* rulings

215. If she does not see blood immediately after giving birth, but after the elapse of ten days, there are two possibilities:
a- The bleeding does not last beyond ten days; in this case her *nifās* is regarded as that period in which blood is seen only, unless she knows that that blood is not a result of her childbirth, in which case it is not absolutely certain to regard it as *nifās*.

b- The bleeding does not last for more than ten days; then she regards herself in *nifās* from the moment she sees it, as if she gave birth at that time, and up to her suitable period, which is the end of her period days or the elapse of ten days if she does not have a (regular) period.

216. If she sees blood after childbirth then it stops within the ten days, then all that she has seen is *nifās*, whether she has a (regular) period or not, and whether the blood was continuous or otherwise, but in the latter case (not continuous) she regards the purity time periods in between as *nifās* (as well).
However, if the woman has a duration period lasting less than ten days, if the bleeding goes on beyond her regular period duration and she hoped that it would stop before the ten, she has the choice, then, either to add two days or more to her *nifās* (as long as this addition is within the ten days, then she regards the rest as *istiη≅āδ≅≅eh*), or to stay in *nifās* to the end of the ten days.

217. If a woman sees blood after giving birth and it continues beyond ten days, there are two possibilities;
a- If she has a duration period, then she regards her period as *nifās* and the rest *istiη≅āδ≅≅eh*.
b- If she has no duration period, then she regards her *nifās* as ten days and the rest *istiη≅āδ≅≅eh*.

218. If a woman has bleeding but it is not continuous, and she has a (regular) period – let's say six days – and this bleedinglasts beyond ten days, there are two possibilities:

1- She sees the blood immediately after giving birth, and here there are two further possibilities:

a- Blood is seen for two days after giving birth, but it then stops for two days then continues again until beyond the ten days; here she regards the first blood as her *nifās*, as well as the second blood and the purity days in between, so as to complete her period duration, and what occurs beyond this is *istiη≅āδ≅≅eh*.

b- Blood is seen for three days, then stops for three days; in this case she has completed her period, so if she sees blood after that and it continues beyond the ten days, the ruling is that she regards the first blood as *nifās*, the stoppage duration as purity and the whole of the second blood as *istiη≅āδ≅≅eh*.

2- She does not see blood after giving birth immediately, such as in the case where a woman, whose period lasts six days, has bleeding on the second day after birth, but this stops for two days then comes again and continues beyond the ten days, in this case she regards the first day as pure, then the rest is like in (a) above, but with adding what is short from the first blood to the second blood, as long as this addition makes a total fewer than the ten, until she completes her period duration;then she regards what comes after it as *istiη≅āδ≅≅eh*.

Note (1): The previous ruling applies in all its cases if the stoppage takes place more than once during the days of the period.
Note (2): The previous rulings apply if the woman did not have a (regular) period, but she should regard herself as in *nifās* up to the ten days, then regard as *istiη≅āδ≅≅eh* what occurs beyond this; this is in contrast to the woman who has a (regular) period and keeps to the duration of her period.

219. The bleeding might stay with the *nefsā'* (woman in *nifās*) for several weeks; the ruling in such a situation is as follows:
1- She finishes her *nifās* as detailed just above (no. 218), either by completing her normal period duration, if she has a duration period, or by completing ten days if otherwise; then she washes from *nifās* and carries out the acts of *istiη≅āδ≅≅eh*.
2- She continues to regard herself in *istiη≅āδ≅≅eh* up to ten days from the end of the normal (Sharī'ah) *nifās*, then she regards herself as follows: if her normal period time occurs at the time that she was used to before her pregnancy arrived, then she regards herself as in her menses, otherwise she has to check the characteristics of the blood; if it has menses characteristics, she regards herself in menses as well, otherwise she should stay as in

istiηāδeh until the time of her normal period arrives, or until the blood starts bearing the characteristics of the menses, if she does not have a time-type period.

220. If a woman who has a (regular) period forgets her period, in this case her ruling in *nifās* is the same as her ruling in the menses, although the concern in *nifās* is limited to forgetting the duration, since the blood seen is *nifās* blood, which is related to childbirth not to the fact that she has a time-type period.

Al-Istiηāδeh

(A) Defining *istiηāδeh* and its degree

221. The woman is considered *mosteηaδeh* (i.e. having *istiηāδeh*) whenever she sees blood that is neither menses nor *nifās* because of the absence of the necessary conditions for each of them. So, blood seen by women before reaching *bolūgh* (the Islamic legal age) or after menopause, for less than three days or more than ten days, and which is not due to a wound, abscess or defloration of the hymen, as well as in *nifās* when blood is seen before giving birth or after ten days, is neither menses nor *nifās*, but is *istiηāδeh*.
And in the cases where such blood may either be menses or *istiηāδeh* the matter depends on its characteristics, for the blood of *istiηāδeh* has different characteristics to that of the menses as explained earlier – it is yellow, cool, thin, coming out without a burning or stinging sensation, which is what distinguishes it from menses blood. Since we said that the *nifās* blood has no particular characteristics that distinguish it, this means that distinguishing *nifās* from *istiηāδeh* is not achieved by checking the characteristics, but by the existence of the conditions of *nifās*.

222. The *istiηāδeh* blood has no minimum or maximum limits, nor a minimum time for purity; also, it has no time or duration period; any blood may be regarded as *istiηāδeh* blood at any time that it is seen, even if for a few moments, whether the flow is continuous or not, regardless of the length of the period of continuation or stoppage.

223. For *istiηāδeh* to be present, the blood must be coming out from its usual outlet, either as normal which is the vagina, or from an outlet other than the vagina if this takes place as a result of deformation or health reasons; it is also *istiηāδeh* if it comes out from elsewhere besides its normal outlet, such as if the woman is used to it coming from the vagina and then it starts coming out from another outlet, or if she is used to it coming out from an outlet other than the vagina then it starts coming out from a third outlet.

224. The blood is not regarded as *istiηāδeh* unless it goes outside, even if through absorption by a piece of cotton, then if this remains inside the woman, she is still having *istiηāδeh*, since the *ηadeth* of *istiηāδeh* is present as long as the blood is inside the vagina – as explained in the menses – until the woman becomes completely pure.

225. The *istiηāδeh* has three degrees, according to the amount of blood coming out, something that is ascertained by inserting a cotton piece into the blood location; these are:

First, *istiηāδeh qelīleh* (little): This is present when the cotton comes out a little stained with blood but not to the extent of the cotton being wholly soaked with blood; some parts of the cotton are stained and some clean.
The ruling in this case is:
1- To replace the cotton which the woman uses to stop the blood flowing out, or to purify it, for every prayer, as an obligatory precaution.
2- To carry out ablution for every prayer, whether the obligatory daily prayers or the recommended ones.

Second, ***istiη≅āδ≅≅eh motewassiτ≅eh*** **(medium):** This is present when the cotton comes out lightly soiled with blood; the blood does not flow out of the cotton, but it has affected all of the cotton, unlike in the case of the little *istiη≅āδ≅≅eh*.
The ruling in this case is to replace the cotton, as above, as an obligatory precaution, and to wash once a day at any time that the medium *istiη≅āδ≅≅eh* takes place; so she washes at dawn for the dawn prayer, at noon for noon prayer, and so on. In addition, she has to perform ablution for every obligatory prayer; the washing does not cancel the need for ablution.

Third, ***istiη≅āδ≅≅eh kathīreh*** **(heavy):** In this case, the cotton comes out intensely impregnated with blood, so that blood is flowing out of the cotton.
The ruling in this case is to wash three times for the three prayer times, but ablution is not obligatory for these prayers unless a *η≅adeth aσ≅ghar* (urination etc) takes place after the wash or during it, in which case she should perform ablution for every prayer; or if a *η≅adeth aσ≅ghar* takes place between two prayers, in which case she should perform ablution for the next prayer; all this is in addition to the replacement of the cotton or purifying it as an obligatory precaution.

226. If heavy *istiη≅āδ≅≅eh* takes place after dawn prayer, then only two washes are needed that day, one for the noon and afternoon prayers and one for the sunset and evening prayers; if it takes place after the noon and afternoon prayers, only one wash will then be needed.

227. If *istiη≅āδ≅≅eh* takes place while praying, the prayer must be stopped and the acts of *istiη≅āδ≅≅eh* carried out before praying can begin again. However, if it takes place after finishing the prayer, there is no need to repeat the prayer.

228. If washing causes intense difficulty, or if the woman fears harm, her obligation will be *teyemmom* instead of washing; in this case, all the consequences of washing apply, so if washing cancels the need for ablution, the *teyemmom* will cancel that need as well, otherwise ablution must be performed after *teyemmom*, or (another) *teyemmom* if ablution is not possible.

229. If the woman cannot identify the kind of *istiη≅āδ≅≅eh* she has, she then acts as in her previous case if she has had a previous case, but if she has not had a previous case, she should act according to the probable higher degree, but combining this with the acts for the lower degree as a precaution. For example, if she doubts whether she has a heavy or medium type, she must wash for every prayer and perform ablution for every prayer as well. However, if blood is not flowing continuously, quite possibly a ruling of little *istiη≅āδ≅≅eh* will apply, if there is doubt between it and another type.

230. It is a condition for the validity of the acts of worship of the *mosteη≅aδ≅≅eh* (woman in *istiη≅āδ≅≅eh*) to check herself before performing it (the worship) as an obligatory precaution, so that she can specify which degree of *istiη≅āδ≅≅eh* she has to act accordingly. Hence, if she performed ablution or washed before checking, then prayed, her act becomes void if she finds out that her case has called for other acts; however, if her acts conformed with the degree she is in, in addition to the good-deed intention (*qaσ≅d al-Qorbeh*) – such as if she did thisinadvertently – her acts are valid.

231. In the cases where washing and ablution are to be combined, ablution may be performed before washing, even if it was not necessary to do so.

232. The woman in *istiη≅āδ≅≅eh* must, at each of the three prayer times (after ablution or washing) try, using any means, to prevent blood from coming out during praying; if the blood does overcome her precautions and is seen during the prayer, she must repeat the prayer if she did not try hard enough; it is better that washing and ablution are repeated as a precaution. However, if the bleeding is heavy to such a degree that it is not possible to prevent it, in this case its flow to the outside during the prayer would not render the wash void, nor the prayer, as long this is not a result of her failure to achieve (possible) protection.

233. The *mosteη≈aδ≈≈eh* must rush to prayer or washing immediately, so if she delays this to an extent that is regarded as failure to do so, she must repeat her acts once more for the obligatory prayer. Here, if she is praying two prayers together (i.e. noon and afternoon, or sunset and evening, in immediate succession), she must go to the second prayer immediately after carrying out the first. However, if she is praying them separately (i.e. with a time gap in between), she must repeat the acts for the second prayer.

(B) The rulings regarding the change of the degree of *istiη≈āδ≈≈eh*

The degree of blood may change during *istiη≈āδ≈≈eh*, even during a single day, as it changes from a lower degree to a higher degree or the opposite. To detail this:

First: Changing from a lower to a higher degree

234. If the *istiη≈āδ≈≈eh* changes from little to medium, or from little or medium to heavy, in these two cases the previous state is removed and the woman should act according to the new state, if this takes place before the prayer or during it; if this takes place after it, it has no consequence on the previous prayer and she should act according to the new state for the next prayers. Let's explain this point through the following examples:

- A *mosteη≈aδ≈≈eh* woman moves from little to medium *istiη≈āδ≈≈eh* at noon; in this case she washes for the two prayers, noon and afternoon, and performs ablution for every prayer.
- She moves from medium to heavy *istiη≈āδ≈≈eh* at noon; here she must – in addition to the wash she carried out in the morning for the medium *istiη≈āδ≈≈eh* – wash for the two noon and afternoon prayers without ablution; also for the two sunset and evening prayers if the heavy state continues.
- She has the medium *istiη≈āδ≈≈eh* and prays after washing, or before starting the prayer it changes to heavy *istiη≈āδ≈≈eh*; here she has to repeat the wash for the heavy *istiη≈āδ≈≈eh* and pray; this is because her wash for the medium *istiη≈āδ≈≈eh* is not sufficient for the heavy *istiη≈āδ≈≈eh*; but if there is no time for washing, she performs *teyemmom* instead, and if there is no time for *teyemmom*, she keeps to her previous act, but it is good to perform *qeδ≈≈ā'* (repeat the acts) after (the elapse of) the time as a precaution.

Second: Changing from a higher to a lower degree

235. Changing from a higher-degree *istiη≈āδ≈≈eh* to a lower-degree *istiη≈āδ≈≈eh* takes place in a sequence, for each stage of which the ruling is different:

a- If she goes from a higher to a lower-degree *istiη≈āδ≈≈eh*, she must act according to her previous degree for the first prayer she attends, then according to the new degree for the second prayer. For example: she has heavy *istiη≈āδ≈≈eh* before noon then changes to medium *istiη≈āδ≈≈eh* at noon (*dhohr*); in this case she must wash for the heavy *istiη≈āδ≈≈eh* and pray the noon and afternoon prayers without ablution, then act according to medium *istiη≈āδ≈≈eh* for the sunset and evening prayers, i.e. not to wash again but to perform ablution for every prayer.

b- If she moves from medium *istiη≈āδ≈≈eh* to little *istiη≈āδ≈≈eh* at noon, then if she has already washed for the medium *istiη≈āδ≈≈eh* in the morning, she does not have to perform anything except ablution for every prayer, otherwise she will have, in addition to that, to wash for the medium *istiη≈āδ≈≈eh* for the noon and afternoon prayers, performing ablution for every one, but to perform ablution only for the sunset and evening prayers.

c- If she moves from the heavy to the little degree at noon, she must wash for the noon and afternoon prayers without ablution, then perform ablution only for the sunset and evening prayers.

236. The change may take place from a lower to a higher degree then to the lower in the same day, the ruling for which can be found from those previously stated. For example: if she moves from the medium to the heavy *istiη≈āδ≈≈eh* at noon, she must wash for the latter even if she had washed for the medium in the morning; then if she moves to the medium *istiη≈āδ≈≈eh* in the evening, she must, in observation of the previous state, wash for the

sunset and evening prayers and pray without ablution, then act according to the medium-degree state on the morning of the following day, washing once for the day and perform ablution for every prayer.

237. It is not a condition for the above rulings to come into force that the change takes place during the time of the prayer, so if it takes place before the start of the time, such as before noon, or after midnight but before dawn, and she –for example – had a medium *istiη≅ādδ≅≅eh* and changed to heavy then back to medium, she must act according to the change to the heavy although she was back to medium; so she must wash for the noon and afternoon prayers despite her wash in the morning for the medium *istiη≅ādδ≅≅eh*; likewise if it was little in the morning then changed to medium or heavy, then back to little *istiη≅ādδ≅≅eh*, in this case she must observe the previous state and wash for it; and so on.

(C) The ruling regarding the stoppage of blood

238. If the *mosteη≅aδ≅≅eh* knows that the blood is going to stop for a period long enough to perform the prayer with all its requirements, then she must delay her prayer till that time and offer it then; she must go to the prayer immediately if that stoppage period falls at the beginning of the prayer time. If she offers the prayer outside that time, her prayer is void and she must repeat it during the stoppage period with any other obligatory duties according to her state. That said, if the stoppage period falls at the beginning of the prayer time but she disobeys (and delays her prayer) until she sees the blood (again), she will have committed a sin and must offer her prayer, with all its acts, during the period of bleeding.

239. If the *mosteη≅aδ≅≅eh* finds that the bleeding suddenly stops temporarily after she has already fulfilled her duties and prayed, she must repeat the prayer with all its acts for as long as there is enough time, even if only for the acts and part of the prayer. The same applies if the stoppage takes place during the prayer or purification, as an obligatory precaution.

240. If the blood of the *istiη≅ādδ≅≅eh* finally stops (permanently), there are two possibilities:
a- She becomes pure after offering the prayer; her acts are valid and she must carry out the same acts of her previous state for the next prayer. For example: if the stoppage takes place after the noon prayer, she must repeat her acts for the afternoon prayer, and if it takes place after the sunset prayer, she must repeat them for the evening prayer, and so on.

b- She becomes pure after the acts but before the prayer, during the acts or during the prayer; here she must repeat the acts and the prayer as an obligatory precaution, even if the time left is only enough for the acts and part of the prayer. Here are three examples:

1- A woman during medium *istiη≅ādδ≅≅eh* washed in the morning and prayed, then became pure at noon; she must wash and perform ablution for the noon prayer, then perform ablution for the afternoon prayer, then after that resume her acts of worship in the normal way.

2- A woman during heavy *istiη≅ādδ≅≅eh* washed for and prayed the dawn prayer without ablution, then washed at noon to offer the noon and afternoon prayers but found, after washing or during the prayer that she had become pure; here she must, as an obligatory precaution, repeat the wash and offer her prayer without ablution, then resume her acts in the normal way.

3- A woman during little *istiη≅ādδ≅≅eh* peformed ablution for the noon prayer for example, then found that she had become pure before or during the prayer; here she must, as an obligatory precaution, repeat the ablution for the noon prayer, then another ablution for the afternoon prayer, then resume her prayers in the normal way.
And if the *mosteη≅aδ≅≅eh* during the medium or heavy *istiη≅ādδ≅≅eh* did not see blood since starting the previous wash for her previous prayer, then discovers that that stoppage was a permanent one, she is not obliged then to repeat either the wash or the prayer.

241. If the woman becomes doubtful whether the stoppage is temporary or permanent, or she doubts whether the stoppage period will be sufficient for the acts and prayer, or that it will not

be sufficient even for the acts and part of the prayer, in these two cases she must repeat the acts as if she is not doubtful.

242. What has been mentioned regarding the necessity of not leaving a gap between the wash or ablution and the prayer during *istiη≅āδ≅≅eh* does not apply when these acts are performed after the woman becomes pure and the bleeding stops; she is then allowed to leave a gap between the wash or ablution and the prayer.

Finally, the acts which women during the ***menses***, *nifās* or *istiη≅āδ≅≅eh* must abstain from

These are acts that are forbidden (*η≅arā m*) or recommended not to be carried out (*mekrūh*) by women during their period, *nifās* or *istiη≅āδ≅≅eh*.

(A) During the menses and *nifās*

243. The *η≅ā'iδ≅≅* (woman during her menses) is not allowed to perform either obligatory or recommended prayers, the obligatory circum-ambulation of the Ka'beh, also the circum-ambulation that is part of the recommended pilgrimage or *'omreh* and all acts of worship in which purity from the menses or *nifās* is a condition, such as fasting, *i'tikāf* (staying in the mosque for several days on end), recommended prayers etc.

244. It is obligatory on women during both menses or *nifās*, after they become pure, to offer as *qeδ≅≅ā'* fasting for (the days of) Ramadan and the vow fasting that was specified but then coincided with the *η≅adeth* (menses or *nifās*) and so they were unable to offer it; however they are not obliged to offer prayers during that time, whether the daily prayers, *āyāt* (signs, such as earthquake) prayers or vow (*nethr*) prayers specified for a certain time. That said, they must offer the prayers which they could not perform on the day of the *η≅adeth*, if sufficient time has elapsed (before the onset of the *η≅adeth*) for offering the prayer at its conditions; also they must offer what they could not on the day of their purity, if enough time was left (after the end of the *η≅adeth*) for the prayer with its pre-requirements; otherwise, they are not obliged to do so in both cases.

245. Intercourse is forbidden for women during menses or *nifās* after the blood is seen outside the vagina, also in the anus as an obligatory precaution; but all acts of pleasure apart from intercourse are allowed, although it is recommended not to indulge in such acts between the belly button and the knee. And when blood stops, intercourse becomes allowed, even if she has not yet washed, although it is better to purify the place itself before that.

246. If intercourse takes place between a man and his wife during her menses, it is recommended that he pays (as *kaffāreh*) one (*shar'ī*) dinar if the act takes place at the beginning of the menses, half a dinar if in the middle of it and a quarter of a dinar if at the end. There is no *kaffāreh* on the wife, but she would have committed a sin by agreeing with him to perform the act. There is no *kaffāreh* on the man for intercourse during *nifās*, although he would have sinned.

247. It is forbidden for women during menses or *nifās* to enter and stay in mosques, the details of which are the same as explained for persons during *jenābeh*, but it is not forbidden to read the verses of *sejdeh* nor to mention the chapters themselves. However, touching the words of the Holy Quran is forbidden, and they should observe the precaution of not touching the word 'Allah' and the attributes of God the Most High.

248. Both divorce and *dhehār* (announcing – usually as a means of punishment – that one's wife is like his mother, so making sexual acts with her forbidden) of the woman during the menses or *nifās* are void; this is on the condition that actual intercourse (after marriage) has taken place and there is no pregnancy and the husband is present or, if absent, he has the ability to enquire about the state she is in.

(B) During *istiη≅āδ≅≅eh*

249. All acts, obligatory and recommended, are valid for women during *istiη≃ādδ≃≃eh*; prayer is obligatory on her as explained earlier, fasting as well. It seems that the validity of the *mosteη≃aδ≃≃eh* fast does not depend on her carrying out her daytime washes; as for the nighttime washes, they have nothing to do with the validity of the fast, as will be explained later in Fasting.

250. Intercourse is allowed to the *mosteη≃aδ≃≃eh* regardless of the degree of *istidhadeh* and even if she has not washed; however it is better not to do this (intercourse) during medium or heavy
isteη≃aδ≃≃eh until after washing. Also, she is allowed to enter mosques. That said, the *mosteη≃aδ≃≃eh* is not allowed to touch the words of the Holy Quran before the wash and ablution, but is allowed to do so after them, although it is better to abstain from this completely; however, not touching the word 'Allah' and His attributes is a matter of precaution that should not be disregarded.

Chapter Four
Rulings Relating to
the Dying and Recently Deceased

Introduction

1- The obligation to make a will

251. When a person is on the verge of death in a way that strengthens the conviction that the end is near, he must repent without delay and pay back all financial obligations due to God and people, such as *khoms*, *zekāt* and deposits/trusts (of others); if he is unable to do this, he should ask someone he trusts to do so after his death. He must also carry out all worship duties, such as pilgrimage, prayer and fasting, and if he is unable to do so he must ask someone to do them on his behalf, unless he trusts his eldest son to perform them after his death. In addition, he must appoint a guardian to his children who have not reached the legal age, if the normal guardian (who is the grandfather from the father's side) is not present, if protecting them and their property depend on it. And whereas such a will is not obligatory, it is (nonetheless) recommended, especially if the dying person wants a third or any part of his property to be spent on charity.

2- What is to be done when death approaches (*iη≅tiδ≅≅ār*)

252. The Muslim *moη≅teδ≅≅ir* (person during *iη≅tiδ≅≅ār*, i.e. when death becomes very near) must – if he/she is capable of doing so – turn towards the direction of the *qibleh* (Mecca), as an obligatory precaution, otherwise it becomes a duty on others, as an obligatory precaution, to turn him/her in that direction, be they old or young, sane or insane. The way to do this is to make the person lie on his/her back with the soles of the feet facing in the direction of the *qibleh* so that if the person sits he/she will be facing the *qibleh* with his/her face and front. If death occurs, it is an obligatory precaution to keep the person pointing in the direction of the *qibleh* at all times until praying for him/her starts, but if this is not possible, the obligation is cancelled.

3- The signs of death

253. The Islamic Sharī'ah has not established for us a precise definition of death, and although it is commonly accepted that death means that the heart stops beating and breathing stops, it is probable that death actually takes place with the death of the brain, as this is the part responsible for man's life in general. In any case, when the brain ceases to function, and the body shuts down completely and this is beyond doubt, it becomes no longer obligatory to continue using the modern machines that keep the heart beating; and so if such a machine is in place, it is allowed to turn it off, since the patient is not considered naturally alive, but rather the activity in his body is maintained by the machine alone, which provides an artificial life for the heart.

4- The persons responsible for the newly deceased

254. All Muslims are under the obligation to carry out the duties regarding the newly deceased – pointing the body towards the *qibleh*, washing, *tekfīn* (wrapping the body with the

kefen, i.e. the shroud, see below), *teη≅nīτ≅* (applying camphor to specific parts of the body, see below), praying and burial – an obligation under the conditions of sufficiency (*wojūb kifā'ī*), so that if some carry it out the others are relieved of the obligation, but if they ignore it everyone will have sinned. In any case, whoever takes on this duty must have the permission of the *waly* (family/guardian) of the deceased, who is the nearest person(s) to the deceased as far as inheritance is concerned. The exception to this is the husband, who has more rights in this than his deceased wife's relatives. Moreover, the precaution should not be ignored in giving the right to adults at every level of inheritance (when considering this matter). But when all of these are not present, an Islamic authority (jurist) should take control of the affairs of the deceased, and then the control may be passed on to just individuals amongst the believers.

255. *Bolūgh*, sanity and Islam are not obligatory conditions for anyone who is carrying out the duties for the dead that do not require the intention of *qorbeh* (i.e. the deed offered in compliance with God's commands); it seems that things like prayers for the dead and washing him/her are acceptable if performed by a child who is aware of his or her duties, provided that they are performed in the Islamically correct manner.

256. The executor (*waσ≅y*) who is entrusted with carrying out the duties for the deceased does not have to ask the permission of the *waly*, although doing this is better.

257. The martyr (who is one killed in an Islamically approved struggle for the protection of Islam and Muslims), if he dies on the battlefield before the battle ends, so that other Muslims find him dead after the battle, should have neither washing nor *tekfīn* carried out, but they should pray for him and then bury him in the clothes in which he was killed, unless they were torn as a result of the fighting, or if the enemy took his clothes off, in which case *tekfīn* should be be carried out, even if he is stained with blood.
As for the person sentenced to death, in this case the Islamic authority orders him to carry out the wash of the dead, then to do the *tekfīn* with the cloth and the shirt (the first two pieces of *kefen*), and *teη≅nīτ≅*; *tekfīn* with the full cover (the third piece of the *kefen*) is carried out after he is killed, and then prayers for him are performed and he is buried. Washing the blood from his *kefen* is not obligatory.

258. It is acceptable to charge a fee for carrying out the duties of the dead, if this does not invalidate the intention of *qorbeh*; this renders acceptable and allowed the money paid to those who carry out these duties as a profession, as there is no problem in it even if the reason for doing so is the desire to earn money, as long as that does not exclude the intention of *qorbeh*.

259. All the duties mentioned are obligatory for the incomplete corpse, such as a dead person who has lost limbs, or the skeleton without flesh. But if a part of the body is found that includes the torso, or if the torso alone is found, it is a recommended precaution to carry out the washing and *tekfīn* as appropriate, and to carry out *teη≅nīτ≅* ifone of the places for *teη≅nīτ≅* is present, then to perform the prayer and the burial. However, if the torso is not found, but rather only one of the deceased's bones that includes some flesh, then this should be wrapped in a cloth and buried, and there is no need to pray or to wash it; likewise if flesh is found without bones.

260. If a Muslim specifies in a will the duties to be performed after his death, the prayers for him and the burial, the expenses for these may be taken from the third of his estate as in his will, otherwise they must be paid from the original (full) estate, taking priority over any other duty such as debt, *khoms* or pilgrimage, not to mention the inheritance and other legacies; it should be taken out of the full estate provided that the duties of the dead are carried out at the minimum level that is called for Islamically and at a level that conforms to the deceased's (social) status, unless the heirs wish to spend more, in which case such additional costs are to be taken from the share of the adults not the young.

261. The expenses for the duties of the deceased person's wife is obligatory on the husband, if he can afford this without difficulty and if he is not prevented from controlling his money, unless if they die together or if she has requested in her will that these duties are to be paid for from her estate; in these two cases, the expenses must be met from her estate. In any case, it makes no difference if the wife is young or old, sane or insane, these obligations apply whether the marriage has been consummated (by intercourse) or not, whether she is the wife by permanent marriage or by term/temporary marriage – as an obligatory precaution, the obligations apply even in the case of a *nāshiz* (a woman who has been declared disobedient of her husband), as aslo,as an obligatory precaution, in the case of a woman who has been divorced by a revocable divorce (*rej'ī*), but not in the case of one who has been divorced by an irrevocable divorce (*bā'in*). Equally, it makes no difference if the husband is young or old or sane or insane; but in the case of the young or the insane, the expenses are to be met by their guardians from their estate.

(A) Washing the dead

262. Every dead Muslim must be washed, male or female, young or old, sane or insane, whether the corpse has a complete body or is just a skeleton without flesh, or missing some of parts such as a head, hand and the like; but if the remains do not include the torso, washing is not obligatory, though it is better. As for a miscarriage, if the embryo is older than four months, it must be washed and wrapped with a *kefen*, otherwise it must be wrapped with a cloth and buried after washing.

263. The person performing the washing has to be the same as the deceased in two things:
1- The same in gender, i.e. a dead female must be washed by a female and a male by a male, even if no seeing or touching is involved, unless the washer is one of the deceased's unmarriageable relatives (*me η≅ārim*), in which case a male can wash the female and vice versa, but then the *'awreh* (private parts) must be covered. Also excluded from this condition are cases where the deceased is young – apart from unmarriageable relatives; so it is allowed for men to wash young female children and for women to wash male children who are not aware of sexual matters, although it is better if the male does this for a female child who is no more than three years old. Also excluded from this condition is the washing of one spouse by the other; in this case it is not necessary to cover the private parts.
2- The same in Islam, i.e. both the deceased and the washer must be Muslims, but similarity in the school of thought is not obligatory.

264. If the sex of the deceased is not known, it is allowed to resort to *qor'ah* (like tossing of a coin but in a certain way), but it is better for both the male and female to wash the body from behind the clothes.

265. When a person of the same religion is not available, it is allowed that a person from among the People of the Book (Christians and Jews) carries out the washing, and the intention of *qorbeh* is not essential.

266. It is a condition for the validity of the wash of the dead that all the conditions that have been mentioned for ablution and washing are met: the purity of water, its purity and freedom of use; the freedom of the organs of the deceased's body from impurities (*nejāseh khebethiyyeh*); the removal of any *η≅ājib*; the order (*tertīb*); the availability of of water etc, in addition to the intention.

267. The deceased must be washed three times in the following order:

First: with water mixed with the crushed leaves of the *sidr* (beri) plant.

Second: with water mixed with camphor.

Third: with pure water that has not been mixed with anything.

268. Order (*tertīb*) must be observed in each of the three washes. This is done by washing the head and neck first, then the whole of the right side, then the whole of the left side; it is an

obligatory precaution to wash the private parts with each side. In contrast to the wash from *jenābeh*, it is not valid to wash the dead by immersing the whole body under water.

269. When mixing the water with *sidr* or camphor, care should be taken not to mix in so much of these substancesthat it invalidates the *motlaq* (i.e. not mixed) state of the water.

270. If a pilgrim, whether on the pilgrimage or *'uomreh*, dies in the state of *iηrām*, camphor is not to be mixed with the water of the second wash, but to be replaced by washing with pure water, unless the death took place after completing the circum-ambulation of the Ka'beh in pilgrimage or *'omreh*.

271. If *sidr*, camphor or both are not available, the dead should be washed with pure water with the intention of using an alternative to the substances that are unavailable (*bedeliyyeh 'an al-Mote'athir*); it is better to add a *teyemmom* for each wash in which pure water is used instead.

272. If a person dies with *jenābeh* or menses, there is no need for a (another) wash for this; the wash of the dead is sufficient.

273. It is not a condition to wait for the body of the dead to become cold before starting the wash; washing before this is valid.

274. If urine or semen comes out from the dead person during or after the wash, it is not obligatory to repeat the wash, but only to purify the place of the impurity; the same applies if the impurity came from the outside.

275. If it is not possible to wash the dead due to a lack of water or the like, *teyemmom* must be performed once instead of the three washes, although it is better to carry out the *teyemmom* three times for the three washes, while the intention of using the alternative to washing is obligatory. In this case, *teyemmom* using the hand of the living person is sufficient, although carrying it out using the hand of the deceased is better.

276. If it is possible to perform the washing after the *teyemmom* and before the burial, the *teyemmom* becomes void and washing is obligatory; but not if this becomes possible after the burial, unless the corpse is uncovered in the grave for some reason; in this case it is an obligatory precaution to wash it, and if it is washed after taking it out, *tekfīn*, *teηnīτ* and prayer must be repeated, before burying it again. The same ruling applies if *sidr*, camphor or both were unavailable and the deceased was washed without them.

277. It is obligatory to wait until any bleeding stops if the deceased is wounded, or is someone who has died as a result of an accident, before washing them; but if this is not possible, the water should be poured in such a way that it overwhelms the location, even if for just one moment, to drive the blood away from the source of the bleeding and thus making the wash valid. If blood comes out after this, the wash is still valid, although the source must be purified and wrapped with a bandage to stop the flow of more blood.

278. If the deceased's body has a splint or bandage on it, if is was possible to take it off then this is an obligation; otherwise the body must be washed by wiping over the bandage or splint; it is an obligatory precaution to add *teyemmom* to it, unless the splint or bandage is present on the organs of *teyemmom*, in which case washing is sufficient.

279. If a dead person is buried without washing, or if after burial it is found that the washingwas not correctly performed, the body must be exhumed and washed, even if a long time has elapsed and the body has become merely bones. This applies only if this does not dishonour the dead person; otherwise exhumation is not allowed. And in the case of exhumation and washing, *tekfīn*, *teηnīτ* and prayers must be carried out again before reburial.

280. In the case of an accident that has caused the deformation of the corpse to the extent that it is not possible to distinguish the hands and face, when washing is not possible, the *teyemmom* is not obligatory, since there is no longer a place for it.

(B) The teη≅nīτ≅

281. *Teη≅nīτ≅* must be done to the dead, male or female, young or old, even the miscarried fetus if it is older than four months. *Teη≅nīτ≅* is touching with camphor the seven areas of *sojūd*. The seven *sojūd* areas are: the forehead, the inner part of the two palms, the two knees and the two big toes. It is better if the person carrying out this process uses his palm, and it is better that the amount of camphor used is around 32.5 gm. When camphor is not available, *teη≅nīτ≅* is no longer obligatory. Order in doing the seven *sojūd* areas is not obligatory, neither is the intention of *qorbeh*.

282. *Teη≅nīτ≅* is to be done after finishing the wash, and it can be carried out before, during or after *tekfīn*.
283. It is a condition that the camphor used is free (to use), a powder, has odour/scent and is pure.

284. It is recommended that the deceased's joints, upper part of the torso, chest, the interior sides of the feet, the outer sides of the hands and the armpits are wiped with camphor, but it is recommended not to put it on the face, or to allow it to enter the eyes, nose or ears.

285. *Teη≅nīτ≅* is not obligatory, and it is forbidden for the person in *ihram* for pilgrimage or *'omreh*, unless if he/she died after completing the circum-ambulation of the Ka'bah in pilgrimage or *'omreh*.

(C) The *tekfīn* (shrouding)

286. It is an obligation under the conditions of sufficiency (*wojūb kifā'ī*) to bury every dead Muslim with a shroud (*kefen*), even the miscarried fetus if over four months old; but if less than four months old, it must be wrapped with a piece of cloth and buried, but no intention of *qorbeh* is necessary.

287. Every dead body has to be shrouded with a *kefen*, which consists of three pieces, placed in the following order:
1- *Al-Mi'zer* (loin cloth), which covers the area between the navel and the knee.
2- *Al-Qamīs* (shirt or tunic), which covers the area between the two shoulders and the middle of the leg.
3- *Al-Izār*, which covers the whole of the dead body from head to feet.

288. If the three pieces are not available, anything available can be used, even if it is only one piece of cloth covering the whole body; and if such a cover for the whole body is not available, anything that can cover most of the body may be used, and so on. For lack of a better option, whatever is available should be used.

289. The *kefen* must be free to use (*mubāη≅*), free from any impurity as applies to what is allowed when praying as an obligatory precaution. It must not be made from pure silk, even for women and children as an obligatory precaution, but silk is allowed if it is mixed with a greater proportion of another textile, not including gold brocade even in very small quantities; and it must not made from the skin of an animal that is forbidden to eat, or its hair or fur, nor from the skin of an animal that can be eaten, or its wool or fur; also, it must not be taken from the skin of a dead animal. In addition, every piece must be a complete cover for the area underneath, so it is not sufficient to make the whole *kefen* out of a single piece of cloth as a complete cover, or that the *kefen* is like the kind of textile clothing which is commonly regarded as a garment; and it is not acceptable to wrap the dead with threads or wool before they have been woven into cloth.

290. It is recommended that two freshly cut/green (tree) branches are included in the shroud, and it is better to place one of them on the right side, stretching from the shoulder bone downwards and bound to the body, and the second on the left side like the first but to be placed over the *qamīs* (the second piece of the *kefen*) before wrapping with the *izār* (the third

piece of the *kefen*). It is better to use a palm tree branch (*nekhl*), otherwise a branch of *sidr* or pomegranate, otherwise of *khallaf*, or, failing these, any freshly cut/green branch.

(D) The prayer for the dead

291. It is an obligation under the conditions of sufficiency (*wojūb kifā'ī*) to perform prayer for every dead Muslim (*σ≅alāt al-Meyyit*), even if it is only a skeleton, whether the deceased was an adult or young personof more than six years of age, or if they had learned and understood the meaning of prayer before this age; but is only recommended for someone below that age. It is not recommended for the miscarried fetus or the stillborn child. As for the incomplete body, if it has a torso, or if only the torso exists, the prayer is still obligatory, otherwise not, even if there is some bone in the remains.

292. Certain things have to be done when praying for the dead:

1- The body should be put on its back, so that the head is on the right of the person(s) praying and the legs to his (their) left.

2- The corpse should be in front of the praying person(s) and near to him (them), and there should be no big gap between them except when people are praying behind an imam (if the prayer is congregational) and the line is very long (if it kept as one line only).

3- The dead person must be present in front of the praying person(s); prayer for the absent is not valid.

4- There must be nothing like a wall, screen, curtain or the like between the praying person(s) and the dead, but this does not apply if the corpse is inside a coffin, even if locked.

5- Neither the praying person(s) nor the body should be higher than the other by a large distance.

6- The dead person being prayed for must be a specific person known in a way that cannot be confused with another, although it is not a condition to know his/her name, or even whether the body is male or female; in the latter case the pronouns in the prayer can still be appropriate, since the word *meyyit* (Arabic for 'dead') is masculine, and the word *jenāzeh* (Arabic for 'corpse') is feminine.

7- All considerations in the daily prayers should be observed in the prayers for the dead, such as the intention of *qorbeh*; facing the Ka'beh; standing still; the *mowālāt* (succession) between the several *tekbīr* (saying '*Allāhu Akbar*', God is the Greatest), proclamations and the supplications; the abstention from talking during prayers, or laughing loudly or turning away from the *qibleh* (the direction of the Ka'bah); and also the order, as will be explained. However, it is not a condition that the clothes of the praying person(s) should be free (*mubāη≅*), nor the place, or to cover the private parts, or to insist on purity from *khebeth* in dress and body, or purity from both small or big occurrences (*η≅adath*, *aσ≅ghar* and *akbar*), or that the prayer are conducted by men; so it is acceptable for a woman to carry out the prayer for a man. But if the prayer is congregational, the rulings of congregational prayers apply.

8- The prayer should be offered after the washing, *tekfīn* and *teη≅nīτ≅*.

293. It is allowed that more than one person offer the prayer separately for a single dead person at the same time; and it is also allowed to carry out more than one set of congregational prayers at the same time. It is recommended that the prayer is performed as a congregation, in which case the conditions that apply to the leader of prayer (the *imam*), suchas being just, must be observed, as well as the conditions that apply to congregations, such as the lack of a separating wall or the like; and if the conditions of congregational prayers are not met, the obligation to offer it as a congregational prayer no longer exists, even if the reward of the congregation will not be achieved. In this prayer, the people should not rely on the leader's supplication, but they themselves must recite the supplications specific to the prayers for the dead.

294. If there are more than one dead person, it is allowed to offer one set of prayers for two or more, making the pronoun in the supplications dual (*mothennā*) or plural (*jem'*) as appropriate.

295. A person can join a congregational prayer for the dead at any one of the five *tekbīr*s, but he has to recite what is specified for his part, not simply follow from where the imam has reached, and when the prayer ends he must stay to complete the prayers, as long as the corpse is in front of him; but if they do not let him finish (i.e. start to lift it up), he should perform the rest of *tekbīr* only, leaving out the recitals.

296. If it is found that the prayer was void, it must be repeated even if after the burial, in which case the prayer should be offered at the grave. The same applies if the dead person is buried without prayer, regardless of the time that has elapsed, unless it is certain that the corpse has disintegrated, in which case prayer is no longer obligatory.

297. There is no specific way in which to position the bodies if there are several to be prayed for, as long as the necessary conditions are met; and it does not matter if some of them are somewhat distant from the praying person(s), as long as they (the corpses) are placed one beside the other. It is best to place them so that the head of the second corpse is beside the middle part of the first, and so on, like steps.

298. It is acceptable to repeat the prayers for the dead as a recommended deed (*musteη≅abb*), even if after the burial, if the dead person was gracious, religiously speaking, and if one day and night have not yet elapsed, otherwise it is not recommended (*mekrūh*).

299. It is allowed that the prayer is offered in only the obligatory (brief) form, or to offer it in its long form, which is better. <u>The long form is as follows</u>:
The praying person proclaims that he will pray – or has the intention (in his/her mind) of praying – for this dead person in compliance of God's commands:
'*Newaitū an oσ≅ellī 'alā hāthā al-Meyyit qorbeten ila-Allah te'ālā*' (I intend to pray for this dead person, seeking the nearness to God, the Most High.),
then he/she starts the prayers saying:
'*Allāho akbar*.'
(God is the greatest.)
'*Ashhado an lā ilāhā illa-Allah, waη≅dehū lā sherīka leh, ilāhen wāhiden ahaden σ≅emeden ferden η≅ayyen qayyūmen dā'imen abeden, wa ashhado anna Moη≅ammeden 'abdohū wa resūloh, arselehū bil-Hodā wa dīn al-Haqq liyothhirahū 'ala-Ddini kollih welew kerihel-Moshrikūn*.'
(I bear witness that there is no God but Allah, the one only without any other God with Him, the Living, the Eternal One, Ever-Living, and I bear witness that Muhammad is His servant and messenger, He has sent him with the guidance and the Faith of Truth so that He may exalt it above all religions, much as the pagans may dislike it.)
'*Allāho akbar*.'
(God is the greatest.)
'*Allāhomma σ≅ellī 'alā Moη≅ammedin wa āli Moη≅ammed, wa bārik 'alā Moη≅ammedin wa āli Moη≅ammed, werη≅em Moη≅ammeden wa āla Moη≅ammed, afdala mā σ≅ellayta wa bārekta wa teraη≅η≅amta 'alā Ibrāhīma wa āli Ibrāhīma, inneka η≅amīdon majīd, wa σ≅ellī 'alā jemī' al-Anbiyā'i wel-Morselīn*.'
(O God, bring Your prayers (i.e. blessings) on Muhammad and the progeny of Muhammad, and bless Muhammad and the progeny of Muhammad, and be merciful to Muhammad and the progeny of Muhammad, with Your best prayer, blessings and mercy that You bestowed upon Abraham and the progeny of Abraham, You are worthy of praise and Glorious, and bestow Your blessings to all the prophets and messengers.)
'*Allāho akbar*.'
(God is the greatest.)

‘*Allāhomma ighfir lil-Mo’minīn wel-Mo’mināt, wel-Moslimīn wel-Moslimāt, al-Aη≅yā’ minhom wel-Amwāt, tābi‘-illāhomma baynenā wa baynehom bil-Khayrāt, inneka ‘alā kolli shay’in qedīr*.’
(O God, forgive the male and female believers, and the male and female Muslims, the living and the dead of them, and make us, O God, good successors to them with Your goodness, You have power over all things.)
‘*Allāho akbar*.’
(God is the greatest.)
‘*Allāhomma inna hathal-Mosejjā qoddāmenā ‘abdoka wabno ‘abdika wabno ametika, nezela bik wa anta khayro menzūlin bih, allāhomma inneka qebeδ≅≅ta rūhehū ilayka, weqed ihtāja ilā rehmetik, wa anta ghaniyyon ‘an ‘athābih; allāhomma innā lā na‘lamo minho illāh khayren, wa anta a‘lemo bihī minnā, allāhomma in kāna moη≅sinen fezid fī iη≅sānih, wa in kāna mosī’an fetejāwez ‘an sayyi’ātih, weghfir lenā weleho; allāhomma ohshorhū ma‘a men yetewellāho wa yohibboho, wa ab‘idho mimmen yetebere‘ū minhū wa yebghedohū, allāhomma alη≅iqhū binabiyyika wa ‘arrif baynehū wa bayneh, warhemnā ithā teweffaytenā yā ilāhal-‘ Ālemīn; allāhomma oktobhū ‘indeke fi a‘lā ‘illiyīn, wekhlof ‘alā ‘aqibihī fil-Ghābirīn, waj‘alhū min rofeqā’i Mohammedin wa ālihi-T≅āhirīn, werη≅amhū wa iyyānā biraη≅metika yā arη≅amar-Rāη≅imīn*.’
(O God, this person laid in front of us is Your servant and son of Your (male) servant and (female) servant, he has come onto You and You are the best one to come to, O God, You have taken his soul to You, and he is in need of Your mercy, and You do not need to torment him, O God; we know only good things about him, and You know him better than we, O God, if he was doing good, increase your bounties to him, and if he was doing bad, forgive his bad deeds, and forgive him and us; O God, bring him on the Day of Judgement with whomever he supported and loved, and take him away from whomever he disowned and hated; O God, make him join Your Prophet and make the two of them acquainted with each other, and bring Your mercy on us when You take our souls, O the God of all things; O God, let it be written that he is to be placed in the highest place (in paradise), and be the one looking after his offspring and those he leaves behind, and make him a companion of Muhammad and his pure progeny, and be merciful to him and to us, we are asking You by Your mercy O You are the most merciful of all.)
‘*Allāho akbar*.’
(God is the greatest.)
And the prayer ends.

The obligatory brief version is:
‘*Allāho akbar*; *Ashhado an lā ilāhā illa-Allah, wa ashhado anna Moη≅ammeden resūlo Allah.’*
‘*Allāho akbar*; *Allāhomma σ≅ellī ‘alā Moη≅ammedin wa āli Moη≅ammed.’*
‘*Allāho akbar*; *Allāhomma ighfir lil-Mo’minīn wel-Mo’mināt*.’
‘*Allāho akbar*; *Allāhomma ighfir lihathal-Meyyit*.’
‘*Allāho akbar*.’
It is better to say after finishing the prayer: ‘*Rebbenā ātinā fid-Dunyā η≅eseneten wa fil-Ākhireti η≅eseneten wa qinā ‘athāban-Nar*.’
(Lord give us what is good both in this world and in the hereafter and keep us from the torment of the Fire.)
And if the dead person is female, the person praying should say after the fourth *tekbīreh*: ‘*Allāhomma inna hāthihil-Mosejjāt qoddāmenā amatoka wabneto ‘abdika wabneto ametika* etc’ and make the rest of the pronouns feminine as appropriate.

300. In the prayer for the dead, there is no *athān* or *iqāmeh* (the call and shorter call to prayer), but it is recommended to call it by saying: ‘*Aσ≅-Σ≅alāt, aσ≅-Σ≅alāt, aσ≅-Σ≅alāt*’, i.e. ‘prayer’ three times.

301. It is obligatory to recite the obligatory parts of the prayer in Arabic, but reading in Arabic is also better in the other, recommended parts.

302. If the person praying doubts the number of *tekbīr* he has reached, he should decide on the least; however, if he has reached the third *tekbīr*, for example, and becomes doubtful regarding whether he did attend to the first or not, he should disregard his doubt as long as the doubt assailed him after finishing it.

303. It is recommended that the person praying is pure from *al-H≅adeth al-Akbar* or *al-Aσ≅ghar*, even if by *teyemmom*, and that the leader of the congregation should recite the *tekbīr* and supplications loudly (*jahr*), but those praying behind him should recite in a whisper (*ikhfāt*), and they should make a lot of supplication for the dead in the fourth *tekbīreh*, as well as for the believers in the third *tekbīreh*.

(E) The burial

304. It is an obligation under the conditions of sufficiency (*wojūb kifā'ī*) to bury a dead Muslim, i.e. to place him in the ground so as to protect his body from wild animals and to protect people from the smell (of the disintegrating body); so it is not sufficient to place the dead in a coffin or building over the ground, even if the above aims are met, except when it is not possible to bury them underground. And it is not a condition to place them in soil, but rather it is allowed to place them underground inside a coffin or the like.

305. It is obligatory to place a dead person in his/her grave on his/her right side, facing the *qibleh* (the direction of the *Kā'beh*) with the face and the whole of the body, regardless as to whether the body is complete or deficient, such as a body without a head or vice versa, or if only the torso exists on its own; in fact this applies to every part in which this direction is possible. If the body was not placed in that direction, it continues to be obligatory even if after burial, in which case it must be exhumed and placed as appropriate, unless this would entail dishonouring the dead, in which case the obligation no longer exists.

306. If a non-Muslim woman dies and with her dies an embryo fathered by a Muslim, it is an obligation to place her in the grave with her back in the direction of the *qibleh* so that the face of the embryo faces the *qibleh*; this is even if the soul (*rūh*) had not entered it.

307. If a Muslim dies on board a ship at sea, if it is possible to delay the burial until they reach land, then it must be delayed; otherwise it is an obligation to carry out the washing, *teη≅nīτ≅*, *tekfīn* and prayer, then to place the body in a large barrel/vessel or any coffin-like container, seal it very well, and then throw it into the sea. But if such a container is not available, a heavy object should be fastened to the body before throwing it into the sea.

308. If the direction of the *qibleh* is not certain, the body should be directed according to its most probable direction, so if one direction seems more probable, the dead must be directed towards it. Otherwise the direction condition no longer applies, provided that it is not possible to delay the burial to ascertain the direction.

309. It is not allowed to bury a Muslim in a non-Muslim cemetery, nor the non-Muslim in a Muslim cemetery, except in compelling circumstances. Also, burial is not allowed in locations where it would dishonour the dead, such as rubbish dumps, sewage systems and the like, nor in misappropriated places, or places that are specifically dedicated (*mawqūf*) to things other than burials, such as mosques or Husayniyyehs, even if their guardian grants permission.

310. To face the (eventual) situation of burying dead Muslims in non-Muslim cemeteries, as in countries of expatriation, it is an obligation under the conditions of sufficiency (*wojūb kifā'ī*) on believers to strive to secure a cemetery exclusively for Muslims.

311. It is not forbidden to bury a dead person in the grave of another even before its disintegration, although it is recommended not to do it (*mekrūh*). But it is forbidden to dig up the grave and uncover the corpse before its disintegration. If someone disobeyed this and exhumed the grave, or if the body was disinterred as a result of a natural accident, in this case it is allowed to bury the other dead person here, although the precaution to abstain from doing

this should not be ignored. As for the burial of two dead persons in one grave at the outset, it is recommended to abstain from doing it (*mekrūh*).

312. If the dead person has asked (in his will) to be buried in certain sacred tombs, or in his home country, and this is not possible until after a period of time, it is not allowed to place him above ground and build a temporary tomb while waiting; rather, the obligation is to bury him under the ground, even if inside a locked box like a coffin.His body can later be taken out in order to bury him in the place he wanted, provided that this does not involve dishonouring his sanctity; if would involve that, those conducting the relocation must wait until the danger of such dishonour disappears before transferring him to the place he wanted.

313. It is not allowed to exhume a grave except in the following situations:
1- If the burial was performed in a place that was misappropriated as a result of aggression, ignorance or forgetfulness, and the owner will not allow the body to remain on his land; as well as if the coffin was misappropriated, or that misappropriated money was buried with it, or his money that is supposed to be transferred to his heirs.

2- If the burial was carried out without washing or shrouding, or if it is discovered that these were done incorrectly. However, digging up the grave is allowed only if no dishonour or harm to the dignity of the dead person would be done. The same goes for the situation in which the dead person was not placed in the direction of the *qibleh*.

3- If it is only through seeing/examining the body that a right is proved, or if it brings protection from a serious harm (*mefsedeh*) or achieves a reasonable outcome (*me σ≅le η≅ah*), or in order to solve the crime to which the dead was subject, or for any such things which relate to proving a right or a claim so that legal consequences follow.

4- If the exhumation is in the interests of the dead person, such as if he was buried in a place that brings him dishonour, like a rubbish dump, or a place in which there is fear for the body from a flood, wild animals or enemies. And it is allowed to exhume the body if it might be subject to such things in the future.

5- To transfer the body to the place where in his will he asked to be buried, or if the guardian grants permission if the burial in the current place is not according to the will or has not been granted the guardian's permission

314. For the burial, it is recommended to dig the grave to a depth equal to a man's height or up to the shoulders; or in hard ground to make a *la η≅d* (an excavation), in the direction of the *qibleh*, of an area that can be sat in. In soft ground a cut should be made in the middle of the grave, similar to a river, then the body should be placed in it, covered over like a ceiling, and then the soil should be heaped up over the grave. It is also recommended that the grave is covered with a dress when a woman is being entered. Also recommended is to recite the specific supplications etc when handling the body and when placing it in the *la η≅d*, and that the person who is doing this should be barefooted, with the buttons on his clothes unfastened, and without any head cover. And when the body is placed in the grave, the coffin nodes beside the head should be unfastened, to uncover his/her face, so the cheek can be placed the ground on a pillow of sand. In addition, it is recommended that soil from the soil of Imam Husain (as) is placed in the grave, and to recite – as a way of reminding and encouraging him/her – the two *shehādeh*, i.e. the oneness of God and the message of Muhammad (sawa), and the correct fundamentals. Then to close the *la η≅d*, the person carrying out these duties should leave the grave from the feet end and the persons present – not the relatives – should heap over the soil using the outer parts of their hands and other things that are mentioned in the specialised books.

315. The scholars have mentioned that it is recommended for the deceased's next of kin to inform the believers about the death of the believer, so that they attend the funeral and walk behind his coffin, and perform the prayer for him and ask for God's forgiveness of him; it is recommended that the believers should not delay in this. There is no limit to the extent to whichthe ceremony for the dead might be accompanied, but it is better to continue to the

burial place, and at the least until the congregational prayer for the deceased; there are a lot of narrations encouraging that.

316. During the ceremony it is *mekrūh* (recommended not), to laugh or play, or to talk in anything other than *thikr* (God's praise), supplication, asking forgiveness, or to walk too quickly in a way that is not respectful to the dead; in fact the walking should be at a moderate speed.

(F) Washing after touching the dead

317. It is obligatory to wash after touching the body of a dead person– including a miscarried fetus into which the soul had entered – if the touching took place after the corpse had become cold and before washing it as appropriate.

318. It is obligatory to wash after touching any amputated organ that contains flesh and bone, but not (if only) flesh on its own is present, or bone on its own, even if it is a complete skeleton, although the precaution of washing from touching the mere bone is good/better.

319. There is no difference if the touching that took place is intentional or otherwise, or if the touching or the touched organs were internal or external. However, this excludes touching by the hair, touching the hair of the dead by the face or hand, or touching the hair of the dead by the hair of the living, as all these do not need washing.

320. It is not obligatory to wash when touching the corpse of the martyr who is to be buried without washing, nor the one killed as a (Islamic legal) punishment if he/she washed before his/her execution. The same applies, i.e. no washing, to touching a dead person who had *teyemmom* instead of washing, or one who had the first two washes, or one of them, carried out with pure water because of lack of *sidr* or camphor; but it is good in the last two cases, as a precaution, to wash after touching, with the intention of *me τ≅lūbiyyeh* (requirement) and then to perform ablution afterwards.

321. It is not obligatory to wash after touching the clothes of the dead, or their remains such as blood, sweat, urine or the like; but it is obligatory to purify the hand of such remains ifspreading wetness is present. Parts such as the hand or dress will not become impure when touching the body of the dead before washing if spreading wetness is not present, although it is better to purify.

322. If a person doubts whether the touching occurred before or after the body became cold, or if the touching was to the body or the clothes or the hair, washing is not obligatory; however, if a person knows that he did touch the body of a dead person after it became cold, but he doubts whether this was before or after washing the dead, in this case he has to wash.

323. It is forbidden for a person under *η≅adeth* – in touching the dead, and before washing it – every act that is forbidden when one is under *al-H≅adeth al-Aσ≅ghar* before ablution, and the things that are allowed there are allowed here; so they are not different except that the former has to wash after the touch, for it is one of the things for which washing is obligatory. How to perform the wash is the same as for the rest of washes that have been mentioned, including the fact that it excludes the need for ablution.

Section Two

Prayer

Aσ≅-Σ≅alāt

Aσ≅-Σ≅alāt (prayer) is regarded one of the most important acts of worship decreed by God; it is narrated in the *H≅adīth* that it is 'the pillar of religion; if it is accepted every other act of worship (by that person) will be accepted, and if it is rejected every other act of worship (by that person) will be rejected'; great reward will be bestowed upon whoever performs it and grave punishment upon whoever abstains from it.

There are five types of obligatory prayers:

1- The daily prayers, which are five in number: *aσ≅-Σ≅obη≅/Fejr* (dawn), *adh-Dhohr* (noon), *al-'Aσ≅r* (afternoon), *al-Maghrib* (sunset) and *al-'Ishā'* (evening). *Al-Jomo'ah* (Friday) prayer is also included with these, in place of Friday's noon prayer.

2- *Al-Ayāt* (signs) prayers.

3- *At-T≅ewāf* (circum-ambulation) prayer during pilgrimage; it is mentioned in the book *Menāsik al-H≅ajj* (Rituals of the Pilgrimage).

4- Prayer for the dead, as explained in the previous chapter.

5- The obligatory prayer that the person must offer on the behalf of others, such as *al-Ijāreh*, i.e. hiring a person, or offering the unperformed prayers of the dead father by his eldest son, or offering a prayer related to a vow, or the like.

As for recommended prayers (*mostaη≅abb*), there are many of these, such as the daily *newāfil* (singular *nāfileh*, i.e. additional prayer), *istisqā'* prayer (asking God for rain in times of drought or scarce rainfall) etc.

Chapter One

The Daily Prayers

(A) The times of the obligatory prayers and their additional prayers

324. The times and numbers of the *farā'iδ≅≅* (obligatory) prayers, their number of *rak'ah* (from *rokū'*, i.e. bowing) and their *newāfil* (additional prayers) are as follows:

1- *Aσ≅-Σ≅obη≅/Fejr* (morning/dawn) prayer: two *rak'ah*. Its time stretches from true dawn to sunrise; true dawn is the light that starts to rise horizontally, forming like a white thread stretching along the horizon then continues to stretch in length and breadth. The best time to offer this prayer is when it is still dark and continues until the sky is lit with morning light.

Its *nāfileh* (additional prayer) is two *rak'ah*, to be offered before the obligatory prayer; its time is between the start of the false dawn – which is the light that takes the shape of a rectangle stretching upwards like a white pole and surrounded by darkness, before the true dawn – and continues till the beginning of the eastern redness (*η≅omreh meshriqiyyeh*) just before the appearance of the sun's disc. It is allowed for anyone praying the night prayer (*σ≅alāt al-Layl*) to make it part of the additional prayer before dawn, or to offer it separately, after finishing the night prayer and its acts.

2- *Adh-Dhohr* (noon) prayer: four *rak'ah*. Its time is from *zewāl* until before sunset as long as there is enough time to offer the four *rak'ah*. *Zewāl* means the zenith of the sun, which is the moment the sun starts moving towards sunset, at the time that is exactly in the middle between sunrise and sunset. But the best time to offer it is between *zewāl* and the time when the shadow reaches four-sevenths (4/7) of the *shākhis* [1].

Noon's additional prayer is eight *rak'ah*, to be offered before it as twos (like any dawn prayer), and its time continues until the end of the noon time for as long as there is enough time to offer it and the obligatory prayer.

This applies to all days other than Friday, when there is an alternative to the noon prayer which is Friday prayer. Friday prayer is two *rak'ah*, preceded by two sermons, and its time is between the *rak'ah* of the sun until the time of the astronomical afternoon, which is when an object casts a shadow the length of its size. The rulings of this prayer will be detailed later.

3- *Al-'Aσ≅r* (afternoon) prayer: four *rak'ah*. Its time starts after the elapse of the time for offering the noon prayer, after *zewāl*, and continues until sunset when the sun's disc drops completely below the horizon; its best time lies between the time when the *shākhis* makes a shadow of two-sevenths (2/7) of its length until the time when it makes a shadow of six-sevenths (6/7) of its length. *Al-'Aσ≅r* prayer must be offered after *ad-Dhohr* prayer.

The afternoon additional prayer is eight *rak'ah*, to be offered before it, i.e. like noon's additional prayers; its time coincides with that of the afternoon prayer.The additional prayer of Friday is twenty *rak'ah*, four to be offered before *zewāl*, then eight after it, before Friday

[1] A *shākhis* is a rod placed in the ground perpendicularly, and is used to measure the shadow.

prayer, or before noon prayer if one has missed the Friday prayer, then eight *rak'ah* before the afternoon prayer. It is allowed to offer all of these before *zewāl* if one thinks one might miss them.

4- *Al-Maghrib* (sunset) prayer: three *rak'ah*. Its time is from sunset until before midnight as long as there is time enough to offer the *'ishā'* (evening) prayer. Sunset takes place when the sun's disc drops completely below the horizon, although it is better to delay performing it until the eastern redness has disappeared. As for identifying midnight, it is the time that lies exactly in the middle between sunset and dawn. The best time to offer the sunset prayer stretches until the disappearance of *shefeq*, which is the redness that colours the horizon from the west; this is for non-travellers. For travellers, its best time continues until the quarter of the way into the night.

Sunset additional prayer is four *rak'ah*, to be offered after it as twos, and its time coincides with that of the obligatory prayer.

5- *Al-'ish ā'* (evening) prayer: four *rak'ah*. Its time is after sunset and after the period for the *maghrib* prayer and continues until midnight (defined just above). Its best time is from the disappearance of *shefeq* until a third of the night has passed. It must be performed after the *maghrib* prayer.

The evening additional prayer is two *rak'ah*, to be offered, sitting, after it, and its time coincides with that of the obligatory prayer.

That said, the time for the sunset and evening prayers for someone facing conditions beyond their control – such as sleep, forgetfulness, the menses etc – stretches until dawn, in which case it is to be offered as *adā'* (i.e. at its normal time, or not *qeδ≅≅ā'*, i.e. after the elapse of the allocated time). Anyone who has delayed their prayers intentionally must – as an obligatory precaution –offer them without delay after midnight and before dawn, without appeal to either *adā'* or *qeδ≅≅ā'*.

325. The first part of the time allocated for the noon (*dhohr*) and afternoon (*'aσ≅r*) prayers is a specified time for the noon prayer and the last part is a specified time for the afternoon prayer; (likewise) the first part of the time allocated for the sunset (*maghrib*) and evening (*'ishā'*) prayers is a specifed time for the sunset prayer and the last part is a specified time for the evening prayer; and what is between the two times specified for the noon and afternoon iscommon to both; and what is between the two times specifed for the sunset and evening is common to both. The advantage of this becomes apparent when a woman sees the blood of her period after the elapse of just enough time to pray the four *rak'ah* of the noon prayer: if she did not pray, she only has to offer the noon prayer as *qeδ≅≅ā'*. The same applies if she becomes pure when there is just enough time to offer the afternoon prayer; in this case she only has to perform this (afternoon) prayer.

326. If a person offers afternoon prayer in the time specified for the noon prayer, or if he offers it in the common time but before performing the noon prayer, in this case there are two possibilities:

1- If he did this intentionally, his prayer is void and he has to repeat it after the noon prayer.

2- If he did this through lack of awareness or out of ignorance regarding the order of the two prayers, then there are two further possibilities:

a- If he realises this during the prayer, he should regard what he is doing as the noon prayer, finish it, then pray the afternoon prayer after it.

b- If he realises this after finishing the afternoon prayer, it is valid as an afternoon prayer and he only has to offer the noon prayer.

327. It is allowed to offer the noon and afternoon prayers together and the sunset and evening prayers together, i.e. the latter immediately after the former (whether offering the additional *newāfil* or not), although separating them is better, in which case one may follow the best times explained above (no. 324).

328. It is obligatory to make sure that the time of prayer has arrived before starting it, something which can be ascertained by knowledge and being satisfied as to the validity of

that, such as by looking at the sky etc. Also, it is acceptable to resort to reasonable (not absolute) knowledge; here information from a trusted person who knows the time is sufficient, as is what is provided by the astronomical calendars published by knowledgeable and expert parties.

329. If a person checked the time and thought that it had arrived, but after praying he finds that he was mistaken, then if the whole of his prayer fell outside the time, it becomes void and he has either to repeat it in the time or as *qeδ≅≅ā'* outside it. However, if he has managed one *rak'ah* within its specified time, then his prayer is valid.

330. If a person who has not prayed yet doubts whether there is still time, he should decide that the time has not yet elapsed, and does not need to check this, even if he is capable of checking and asking. His prayer in these circumstances would be valid, even if some or all of it fell outside the time.

331. It is not allowed for the person to delay offering the prayer until there is no time to offer it complete in all its parts and conditions; so if someone delays it intentionally or out of compelling reasons, he must hasten to offer it as long he has time for one *rak'ah* with purity even if by *teyemmom*. It must be noted that when the time of the noon and afternoon prayers does not allow for more than one prayer with all or some of its *rak'ahs*, then this will be identified as the afternoon prayer; the same applies for the sunset and evening prayers. In any case, if making things faster depends on using summaries in some of the acts, it is permitted to recite the Fātiη≅ah chapter without a chapter after it and to say '*Sobη≅ān Allāh*', for example, once in the *rokū'* and *sojūd* (prostration), in addition to leaving out the recommended acts.

332. In countries where the night or the day becomes shorter or longer than normal, even as short as half an hour, Muslims who live in these countries must follow the times of the country itself as long as times for dawn, noon and sunset can actually be specified, even if the differences are very small.

(B) The dress code for praying

There are certain dress requirements concerning what people should wear when offering prayers:

First: Their clothing must cover the *'awreh*

333. It is obligatory on both men and women to cover their *'awreh* during prayer. The *'awreh* is the genitals and the anus in the man and the whole of the body except the face, hands and feet in the woman.

334. All things that can cover the *'awreh* may be used, even if they are not made of textiles or sewn; however this excludes things such as tree leaves or mud, except when other suitable materials are not available.

335. The minimum requirement for the cover is that the material should not be so thin that the skin beneath it is clearly visible to an onlooker.

336. If the *'awreh* is uncovered during praying – as a result of wind, or being unaware or ignorant of the fact – from the beginning of the prayer, or if the person praying knows this but forgets to cover up, then if he/she becomes aware of this or remembers it after finishing the prayer, their prayer is valid; and if he/she becomes aware of this or remembers it during the prayer, he/she must hasten to cover up and their prayer is valid. It is not obligatory on others to inform the person praying regarding this.

337. If the person praying fails to find something to cover the *'awreh*, even if it is just mud or paint, there are various alternatives:
a- If he can pray in a pit or a dark place, that prevents others from seeing him, he should do so.

b- Failing the above, then he must pray in a place where he is sure no one can see him, even if at a place where people do not normallygo.
c- Failing the above, he must pray in a seated position, so that his *'awreh* is not visible, bowing for *rokū'* and *sojūd* to a degree that renders these acts valid; but if he is not sure that his *'awreh* will not show when doing this, he should perform them by nodding.
338. The prayer offered by a girl that has not reached *bolūgh* (Islamic prayer age) with her head, hair and neck – but not other parts of her body – uncovered is valid.

Second: Their clothing must be pure

339. Dress for prayer must be pure and free from any *khebethiyyeh* impurity, as explained in the chapter on purity. This only applies to any form of dress that is suitable, in terms of its size, for covering the *'awreh*, and includes the actual covering area of the clothing or whatever is joined or attached to it; however, purity is not a condition for things that are not suitable as a cover, such as head caps or socks, as will be explained.

340. If only two sets of clothing are available as a cover but it is not known which one is pure and which is impure, the prayer must be repeated, wearing the first for one and the second when repeating the prayer.

341. If an impurity fell on the dress and the person prayed without knowing this, and if he remained ignorant of it until he finished his prayer, his prayer is valid; but if he comes to know about it during the prayer, and if there is time, it is an obligatory precaution to stop the prayer, purify the dress or change it, then start the prayer again. However, if there is no time even to offering one *rak'ah*, the person must hasten to take it off and change it or purify it in a way that is not considered to invalidate the prayer, then continue his prayer. But if changing or purifying is not possible, then he should continue his prayer with the impurity on his dress and his prayer is valid.

342. If a person prayed with an impurity due to forgetfulness, his prayer is void and he must repeat it within the time or after it; the same applies if he remembers this during the prayer.

343. The purity of the dress and body is a condition in the case of every impurity apart from things whose impure state does not affect the prayer or its validity. These are:

1- Blood from wounds and abscesses of a size and intensity that make purifying for the majority of people quite difficult. This includes the edges of the wounds and abscesses, or areas where blood normally spreads to, as well as the areas in the dress that are next to the wound or abscess, but not the distant areas. The same applies to the blood or wounds and abscesses when it is mixed with things like pus, medicine etc.

2- Small amounts of blood, spread over an area of less than the size of a *dirham* (it is a precaution to regard this as the size of the bone of the first finger), whether on the body or dress, and whether it is the blood of the person himself or someone else's. However, not included are the three specific kinds of blood: the menses, *nifās* and *istiηϰāδϰϰeh*, as well as the blood of any inherently-impure thing or a dead animal, or blood that is mixed with another; also not included are the things that have become impure by blood, and the blood of animals whose meat it is forbidden to eat, as an obligatory precaution.

3- Any clothing that is not sufficient to cover the *'awreh* on its own, such as socks, head caps, neck ties, belts etc, provided that it is not taken from a dead animal or an inherently-impure thing; also, it should not be taken from parts of an animal whose meat it is forbidden to eat, or from its remains, even if this is very small, such as the hair of a cat attached to the dress.

4- Carried inherently-impure or impure things, whether these are what are needed for prayer or not, and whether it is a dead animal, an inherently-impure thing or otherwise, although one should observe the precaution of not carrying an inherently-impure thing.

344. If it is unavoidable to pray with impurity on the body or clothes, the person should pray with it instead of praying naked, on the condition that the reason that this is unavoidable is certain to remain until the end of the time allocated for that given prayer; but if this is not the

case, and the reason disappears before the end of the time of that prayer, it is not obligatory to repeat the prayer, nor to offer it as *qeδ≅≅ā'* after the time.

Third: The clothing must be free (to use)

345. It is a condition that the clothing covering the *'awreh* must be free (to use) as an obligatory precaution.

346. Praying wearing misappropriated clothing occurs in many instances:
1- The person knows and is intentionally wearing such clothing; in this case the prayer becomes void. The same applies if he forgot, and if he was the one who misappropriated the clothing.
2- The person is ignorant and has not made the necessary effort to know about it; it is better to render the prayer void, and to act accordingly.
3- The person is ignorant but has an excuse, or does not know that the thing has actually been misappropriated, or forgot, but he is not the one who misappropriated the clothing; in all these cases the prayer is valid.

347. The prayer wearing misappropriated clothing is accepted when there is a compelling reason that remains in force for the whole of the time allocated for the given prayer; otherwise it is precautionary to delay performing the prayer until it is possible to find clothing that is free.

Fourth: Their clothing must be free from parts of the dead

348. It is a condition that the clothing of the person praying is not made from formerly living parts of a dead animal that has a 'fluid' soul, or even a dead animal that has no 'fluid' soul, as an obligatory precaution, whether the dead animal was one whose meat it is allowed to eat or not. This does not include animals allowed to be eaten, the *tethkiyeh* (being slaughtered in the Islamic way) of which is doubtful, about which we spoke in the chapter on impurities that it is allowed to pray with.

Fifth: Their clothing must be free from parts of animals not allowed to be eaten

349. It is a condition that the clothing is not made from the skin or hair of animals that are not allowed to be eaten but were slaughtered in the Islamic way. Therefore, the presence, for example, of a cat's hair on the clothing of the person praying will not invalidate the prayer nor will his carrying some of the animal's parts, such as an ivory rosary and the like.

350. Excluded from what is mentioned above is the skin and fur of martens, squirrels, beavers, *qemāqim* and fennec foxes; praying with these is allowed, provided that, for the skin, the animal was slaughtered in the Islamic way.

351. It seems that the ruling regarding animals whose meat is not allowed to be eaten does not apply to animals which have no 'fluid' soul, although their inclusion with the ruling is better. Also, the ruling does not include animals whose meat became forbidden for external reasons.

Sixth: Their clothing must be free of gold

352. It is not allowed for men to wear gold in prayer and at other times; the 'wearing' includes all that the word commonly means, such as dresses and jewellery, even pocket watches that hang from the dress and eye glasses with golden frame, as an obligatory precaution for both. Things that are not commonly regarded as part of 'wearing', however, such as gold teeth, gold tooth crowns, are not included (in this ruling); the same applies to things that are carried/held, or plated in a way in which the plating is regarded as colouring. As for women, they are allowed to wear gold at all times.

353. If a man prays wearing gold intentionally, he has sinned and his prayer becomes void, but it does not become void if this occurs as a result offorgetfulness, being unaware, or ignorance.

Seventh: Their clothing must be free from pure silk, if such clothing is of the kind that is sufficient on its own as clothing to offer prayers, and this concerns what is commonly

regarded as clothing (see no. 352 for the distinction between what is regarded as clothing and what is not.)

354. It is forbidden for men to wear clothing made from pure silk, except for compelling reasons, and if a person wears such clothing intentionally, knowing the ruling, and prays wearing it, his prayer is void. As for women, they are allowed to wear silk at all times.

355. It is acceptable for buttons, hems etc of clothing to be made of silk, though it is better that any silk hem or sleeve is not longer than (the width of) four fingers.

356. It is allowed to wear silk mixed with other textiles if the other substance/material is a greater proportion than the silk.

(C) The place of prayer

357. It is a condition for valid prayer that the place of *sojūd* (prostration), on which the person praying places his seven prostration spots, is free and not misappropriated, if the person is touching the actual ground, but if he prays over a free table placed over misappropriated land, his prayer is not void.

358. A prayer offered in a misappropriated place becomes void if the person knew of its misappropriation and the prohibition and he (nonetheless) went ahead (intentional); but if he was ignorant regarding the misappropriationor the prohibition ruling, or forgot the misappropriationbut he was not the one who did the misappropriation, the prayer is valid.

359. It is more probable that a woman may pray in front of a man or to his side without a partition, although it is better to separate them by the measure of a handspan (*shibr*), an arm's length (*thirā'*) or ten arms' lengths, or by a partition such a wall, with no distinction here between 'foreign' women (i.e. not his wife or unmarriageable women) or otherwise.

360. It is a condition for the validity of a prayer that the place is stable, not like a place where there is disturbance which prevents standing, bowing or prostration, such as would be the case if one prays while riding a walking animal or sailing in a ship that is moving sideways violently in high waves. If stability is lost in this manner, the prayer is void except in compelling circumstances. That said, stability meaning complete stillness is not important, although it is better to abstain from praying in transport vehicles in which stability is not possible, except in compelling circumstances.

(D) The direction

361. It is obligatory to face the *qibleh*, where possible, in all obligatory prayers, including their auxiliary, forgotten parts. The same applies to the additional prayers (*newāfil*) when stability is secured, as an obligatory precaution, but not if they are offered when walking or riding. It is better to face the *qibleh* when performing the *sehw sojūd* (unawareness prostration).

The *qibleh* is the place where the sacred Ka'beh, in Mecca, is; for a person praying near to it, facing it is secured by facing the actual Ka'beh, while a distant person needs only to face himself/herself in its direction.

362. In identifying the direction of the *qibleh*, it is sufficient to have belief based on the witness of two just individuals, or one just person, or one truthful, trustworthy person, or by relying on the *qibleh* to which Muslims face in their prayers, graves and praying niches; the compass is also something that can be satisfactorily relied upon in this regard.

363. If such belief is not secured, then belief arising from some related evidence is sufficient, but if this is not secured either, in this case a person can pray in the direction he thinks most probable, although it is safer then to pray in four directions.

364. If one intentionally prays in a direction other than that of the *qibleh*, and does so knowingly (that it is not the correct direction), the prayer is void and must be repeated in the time allocated for the prayer or after it as *qeδ≅≅ā'*, even if the direction in which prayer is

offered falls with in the permitted angles to the left and right. But if someone prays in a direction which he believes to be that of the *qibleh* then finds out that it is wrong, in this case if the difference is less than 90° to the right of the *qibleh* or to its left, he does not have to repeat it, even if he realises this during the prayer; but he has to correct his direction to continue praying. However, if the difference was 90° or more, it is obligatory to repeat the prayer if its allocated time has not elapsed, even if his realisation of his wrong direction takes place during the prayer; in that case he must stop and repeat it after correcting his direction, but he does not have to repeat if he realises this error after the end of the allocated time.
There is no difference in this ruling between the case of certainty or probable belief, nor between probable belief that has weight and any other; also, there is no difference between one who was forgetful and one who was unaware; indeed, this ruling applies even in the case of lack of knowledge or probable belief regarding the *qibleh* and praying to the probable direction or any direction. However, a person who is ignorant of the ruling has to repeat it inside the allocated time, or offer the prayer as *qeδ≅≅ā'* outside it, if the error was to a point to the left of the *qibleh* or its right of 90° or more, and also if the error was between those extremes to the right and left (i.e. less than the 90°) as an obligatory precaution.

365. For the sick perosn who cannot stand, when praying sitting he must face the *qibleh* with his face and body as if he is praying standing; when he prays lying on his back, he should make his feet face the *qibleh* so that if he sits up his face would be facing it; when he prays lying on his side, he must make his front facing the *qibleh*, lying on his right side, otherwise on his left.

366. If it is compelling that one must pray in places like a ship or an aeroplane and cannot face the *qibleh* during the whole of the prayer, even ifone turns to its direction when the ship turns away from it, then it is sufficient to turn in that direction when reciting the *tekbīreh of iη≅rām* ('*Allāho Akbar*' at the start of the prayer) and the parts during which one is able to face the *qibleh*, and the prayer is valid.

(E) *Ath*ān and *iq*ā*meh*

367. It is recommended to recite the *athān* (call to prayer) and *iqāmeh* (shorter call) before starting the prayer, especially for the obligatory daily prayers, when offering them in the time or afterwards as *qeδ≅≅ā'*, when travelling and otherwise, whether in a congregation or alone, men and women, but these are not recited in the additional prayers, nor in the obligatory non-daily prayers.

368. There are eighteen parts to the *athān*, in their order:
Allāho akbar (4 times)
Ashhado an lā ilāha illā-Allāh (twice)
Ashhado anna Moη≅ammeden resūlo-Allāh (twice)
H≅ayya 'alaσ≅-Σ≅alāt (i.e. hasten to prayer) (twice)
H≅ayya 'alel-Felāη≅ (i.e. hasten to salvation) (twice)
H≅ayya 'alā khayril-'Amal (i.e. hasten to the best of actions) (twice)
Allaho akbar (twice)
Lā ilāha illa-Allāh (twice)
The *iqāmeh* is seventeen parts long, and like the *athān* but with a small difference:
1- The *tekbīr* (*Allāho akbar*) is uttered twice not four times.
2- After reciting '*H≅ayya 'alā khayril-'Amal*', '*Qed qāmitiσ≅-Σ≅alāt*' is to be recited twice.
3- The *tehlīl* (*Lā ilāha illa-Allāh*) at the end is uttered once not twice.

369. The sentence '*Ashhado anna 'Aliyyen waliyyo-Allāh*' is not part of the *athān* or *iqāmeh*, nor an obligatory or recommended part; it is better to abstain from it in the *iqāmeh*.
370. Reciting the *athān* and the *iqāmeh* is strongly recommended (*istiη≅bāb mo'ekked*) when offering prayer in its correct time, especially the sunset and dawn prayers. Also this is

stronger for men, especially the *iqāmeh*; in fact recital of these by men is a precaution that should not be ignored.

371. The recital of *athān* and *iqāmeh* does not apply in the following situations:
a- For a person who is joining congregational prayer for which the *athān* and the *iqāmeh* have already been recited, even if he did not hear them, whether the congregation has already started or is about to start, and for the latter the case there is no difference in this ruling between the leader of the prayer or the others.

b- For the person entering the mosque before the congregation has left, whether he intended to pray as leader or otherwise; this is if the congregation did have the *athān* and *iqāmeh* recited, or if they did not recite them because they were preceded by another congregation, in this case the recital applies for the entering person.

c- For the person who listens to the *athān* and *iqāmeh* recited by another person, provided that he hears all the parts and there is no gap between the recital he hears and his prayer, regardless of whether the person reciting is a leader, or someone praying behind a leader, or someone who is praying on his own, and the same applies for the listener. However, if there is a problem in being satisfied about hearing the leader only or the followers only, the way to relieve such problem is to hear both the leader and the followers of the congregation.

372. It is a condition for the validity of the *iqāmeh* to have purity from *η≅adeth*, and to be standing and facing the *qibleh*; this is not a condition for the *athān*, although it is recommended.

(F) The intention for prayer

Intention (*niyyeh*) is obligatory for both obligatory and recommended prayers, as well as in all acts of worship; it was mentioned earlier, but let's explain two things:

373. Since it is part of man's nature to carry out acts after awareness has impinged and the act has been initiated, it is difficult to imagine an act of worship taking place without it passing through the conscious mind of the person, especially after starting the pre-requirements of the act. Therefore, the intention matter is not something difficult that needs long explanations. That said, it is conceivable that acts may take place without intention, such as if performed by a sleeping person or one who is completely unaware, but this is obviously not valid and most acts are not like this.

374. A person at prayer has to continue in his intention until the end of the prayer. If he has started the prayer then wants to interrupt it, there may be several reasons:
a- That he commits something that invalidates the prayer (listed below); in this case the prayer definitely becomes void.
b- That he performs some or all parts while he is intending to stop the prayer or while he is pondering about it; in this case it becomes void as well.
c- That he abandons the intention to stop the prayer or his hesitation before performing any part, or before committing any invalidating act, so he resets his intention to continue the prayer; in this case his prayer will be valid.

(G) The *tekbīreh* of *iη≅rām*

375. The *tekbīreh* of *iη≅rām* is the first act of the prayer; it is the reciting of '*Allāho akbar*'. The moment the person recites it, he has started the prayer, making it forbidden, then, to do anything that is not allowed, which invalidate the prayer. The *tekbīreh* is not one of the pillars of prayer, so the prayer becomes void when it is left out intentionally, but not if it is forgotten out of absent-mindedness; likewise if it is added (i.e. one more time) intentionally, but not if added out of absent-mindedness; so if someone adds another one intentionally, the prayer becomes void and he must recite a third *tekbīreh*, and if he adds a fourth one, he must recite a fifth one, and so on; it is valid in odd numbers and void in even numbers.

376. The *tekbīreh* of *iη≅rām* must be performed standing and in Arabic, and there must be no other speech attached to it, neither before nor after.

377. It is recommended to add six *tekbīreh* in addition to the *tekbīreh* of *iη≅rām*, after it, or before it; it is better to set the intention to make the last one the *tekbīreh* of *iη≅rām*. Also, it is recommended that when someone is performing *tekbīr*, to do this when his hands are brought up to the level of his ears, or in front of the face, or the *naη≅r* (the upper part of the chest), with the fingers of both hands touching, including the thumb and the first finger, with the palms facing the *qibleh*.

378. If someone recites *tekbīr* then doubts whether this was the *tekbīreh* of *iη≅rām* or if it is for the *rokū'*, he should regard it as the former; and if the doubt of its validity assails him after finishing it, he should regard it as correct; and if he has doubts that he performed it at all and he has already started the recital act that follows, he should regard it as having been performed.

(H) The Recital and *thikr*

By recital is meant: the Fātiη≅ah and (another) chapter (*sūreh* of the Qur'an) in the first two *rak'ahs*. By *thikr* (literally mentioning) is meant: the four *tesbīη≅ahs* (see no. 385) in the other, third and fourth, *rak'ahs*.

First: The recital of the Fātiη≅ah and (another) chapter

379. It is obligatory to recite the Fātihah chapter in every obligatory or recommended prayer, except the prayer for the dead. As for the recital of another chapter, it is better to recite a complete chapter after the Fātiη≅ah, although it is sufficient to read part of the chapter; for the *nāfileh* (additional prayer), reading another chapter is not obligatory.

380. The *besmeleh*, i.e. saying '*Bismillāh ar-Raη≅mān ar-Raη≅īm*' (In the name of God the Beneficent the Merciful), is part of every chapter (of the Qur'an) and so it must be recited with it, except the chapter of Barā'ah, which is known as the Tawbeh (Repentance) chapter. It is not obligatory to choose the chapter (you are going to recite) before reciting the *besmeleh* so that the *besmeleh* is the one at the beginning of that specific, chosen chapter, so it is acceptable that one recites the *besmeleh* then chooses any chapter.

381. It seems that it is not forbidden to recite the (four) *'azā'im* chapters in which prostration (*sejdeh*) is obligatory upon reciting the prostration verse in each of them (these chapters); so it is acceptable to recite them in the obligatory prayers. But if the person praying does this, he only needs to nod as a sign of prostration, and it is better to carry out one recital prostration (*sejdeh* of *tilāweh*) after the prayer. The same applies if one listens to a prostration verse while praying.

382. It has not been proven to us that the two chapters of Fīl (Elephant) and Qoraish are one chapter, nor the two chapters of Δ≅oη≅a (Mid Morning) and Inshirāη≅ (Comfort), so it is allowed to recite only one of the two chapters, even the recital of part of the chapter according to our ruling allowing the recital of part of a chapter.

383. It is allowed to recite two complete chapters in one *rak'ah* in obligatory prayers, although *mekrūh* (recommended not to do), but it is not *mekrūh* in *newāfil*.

384. It is allowed to choose to recite another chapter while reciting a chapter, as long as the person has not reached the middle, except in the two chapters of Tawη≅īd (Oneness) and Kāfirūn (The Non-believers) in which it is an obligatory precaution not to do so. In any case, if the person has already passed the middle, it is not allowed to choose another chapter, whatever it is.

Second: The *tesbīη≅ahs*

385. It is up to the praying person, in the third *rak'ah* of the sunset prayer and the third and fourth *rak'ahs* of the evening, noon and afternoon prayers, to choose to recite the Fātiη≅ah chapter on its own (i.e. without another chapter after it) or to recite the *thikr* – the four *tesbīη≅ahs* – which are: '*Sobη≅ān Allāh, wel-H≅amdo Lillāh, wa lā Ilāha ill-Allāh, wa-Llāho akbar*' (Praise be to God, and Gratitude to God, and There is no God but Allah, and God is Greatest) – without there being any distinction between the leader of prayers or the followers, although it is better for them, as well as for the person praying on his own, to choose the *tesbīη≅* over the Fātiη≅ah. It is sufficient to recite the *tesbīη≅ahs* once; it is better to repeat them three times, however. In addition, it is better to add *istighfār* (asking for forgiveness) by saying after completing them: '*Asteghfiro-Llāha Rabbī wa atūbo ilayh*' (I ask God, my Lord, forgiveness.) It is obligatory to recite *thikr* whispering, as is the case in the *besmeleh* of the Fātiη≅ah chapter, if the person chooses to recite it instead; this is in all prayers.

386. It is not obligatory to do the same thing in the last two *rak'ahs* regarding recital or *thikr*, so it is up to the person to choose reciting in one and *thikr* in the other.

387. If he chooses to recite but his tongue goes for *thikr*, or the reverse, what his tongue utters is valid and there is no need to repeat it.

(I) The *Rokū'* (bowing)

Rokū' means bowing to the extent that the fingers reach the two knees; its place (in the order of prayer acts) is after the recital and the *thikr* of *tesbīη≅as* and is obligatory in every *rak'ah* once, in both obligatory and other prayers, except for the *āyāt* (signs) prayers; it is a *rokn* (i.e. one of the pillars of prayer), and any shortfall in it, intentionally or otherwise (*sehw*), or addition to it, intentionally but not as a result of inattentiveness (*sehw*), renders the prayer void.

388. <u>In *rokū'*, there are two things:</u>

1- **Standing**, which is obligatory in two situations:

a- The person praying is standing when he bows for *rokū'*; this is a *rokn* (pillar) without which, whether intentionally or through lack of attention, the prayers becomes void.

b- The person praying lifts up his head after *rokū'*, to stand upright and stable, then goes down for *sojūd* (prostration); this is an obligatory act, but not a *rokn*, so the prayer becomes void if it is ignored intentionally only, but not if ignored through lack of awareness.

2- ***Thikr***, the best of which is: '*Subη≅āna Rabbiyel-'Adh īm(i) wa biη≅amdih'* (Praise be to my Glorious Lord and (mentioning his worthiness of offering) gratitude to Him); saying '*Subη≅ān-Allāh*' three times is also sufficient, even any *thikr* – *taη≅mīd* (*al-H≅amdo Li-Llāh), tekbīr* (*Allāho akbar*), or *tehlīl* (*Lā ilāha illa-Llāh*) – if it is repeated three times. It is allowed to combine the first form and any other, also for the sick, or anyone who finds himself short of time short, to recite '*Subη≅ān-Allāh*' once.

389. It is obligatory that the *thikr* is recited in Arabic; it is also obligatory to be stable when reciting the *thikr*; so if the person intentionally does not keep stable when reciting it, and he intends to recite it to perform his prayer, the prayer becomes void; however, the prayer is valid if the lack of stability was unintentional.
It should be noted that one is not allowed to start reciting the *thikr* before reaching the bowing position and becoming stable in it; also not allowed to rise up to the standing position until after completing it (*thikr*) in the bowing position (with stability).

390. The person who is not able to bow standing should lean on something in order to do this, but if he fails in this also, he should, as an obligatory precaution, perform what he is able to do and, while standing, nod with his head instead of bowing,; this is if he is able to stand. However, a person who is unable to stand must bow sitting, in which case it is sufficient to bow so that his face is in line with his knees.

391. If a person doubts while standing whether this standing position is before or after bowing, i.e. doubts whether he has performed *rokū'* or not, he should regard it as before *rokū'*, (so should perform it).

392. If he doubts his performance of *rokū'* while prostrating, he should regard it as done and should continue his prayer.

393. If he doubts the correctness of *rokū'* after he has lifted up his head from it, he should regard it as correct; the same applies if he doubts the correctness of the *thikr* after finishing it (the *thikr*).

394. It is not obligatory to place the palms over the knees when bowing; it is recommended only.

(J) The *Sojūd* (prostration)

Sojūd is obligatory in every *rak'ah* twice (i.e. two *sejdehs*); the two *sejdehs* together are a *rokn* (pillar), and any shortfall in it, intentionally or otherwise (*sehw*), or addition to it, intentionally but not as a result of inattentiveness (*sehw*), renders the prayer void.

First: The rulings of the two *sejdehs* (prostrations)

395. There are several obligatory things in prostrating:

First: Placing the seven prostrating spots on the ground; they are:

1- The forehead, in which any part of it – as an area – is sufficient to secure prostrating, although it is better to place larger area on the ground.It is obligatory for the forehead specifically to be placed on something that is valid for prostrating over, as shall be explained below.

2- The two hands, on which prostrating must be performed, on their palms, and they must be placed stretched out; but if it is not possible to use the palms, the exterior parts of the hand are to be used, otherwise the person places the part of his hand that is nearest to the hand, such as the interior part of the arms, otherwise their exterior parts, and so on.

3- The two knees, it is sufficient to place the minimum, since it is not obligatory to put one's weight on them.

4- The two big toes, the tips of which must be placed on the ground; so the interior or exterior parts of the feet are not sufficient.

Second: *Thikr*, which is obligatory in prostrating as in bowing, however if the greater *tesbīη≅ah* is chosen, the person must recite: *'Subη≅āna Rabbiyel-A'lā wa biη≅amdih'* (Praise be to my Most High Lord and (mentioning his worthiness of offering) gratitude to Him).

Third: Stability of the prostrating limbs when reciting the thikr, especially the forehead which must not be lifted up then placed because would result in a second, additional prostration.

Fourth: Lifting the head from the first prostration, sitting upright and stable, then going down for prostrating again; but this is not a *rokn*. The sitting after the second prostration and before standing up, known as rest prostration, is not obligatory, although it is better to perform it.

Fifth: Having the forehead place and the place he stands on at one level, so it is not acceptable if one of them is higher than the other by a distance of more than (the width of) four fingers, regardless to whether the difference is gradual or sharp; this is not a condition in the other prostrating spots unless that nullifies the prostrating form.

Second: What is allowed to prostrate over

396. It is obligatory when prostrating to place the forehead on one of two things:

First: Earth, which is of two kinds:

a- Natural: such as soil, rock, sand etc; these are allowed for prostrating without any problem.

b- The baked earth provided that the baking has not change its nature into something else, such as cement and limestone, in which case it is better not to prostrate over these; however if

by this process it has become something that, its nature is other than earth, such as glass and the like, it is not allowed to use this.

Second: Plants, in which two conditions are to be observed:

a- It should not be suitable for wearing as clothes, i.e. what man has used and made for his needs, whether clothing or bedding, rugs or curtains, this includes clothes, bedlinen, carpets and other textiles. In other words, it is a condition that the plant is not a raw material for making textiles, whether it has been made into textiles or not.

b- It should not be suitable for eating, i.e. what man uses as food and nutrition taken from plants such as wheat, barley, fruits and vegetables, even tree leaves if they are eaten, whether cooked or in need of cooking; however, other leaves that are not eaten and wood are valid to use for prostrating.

397. It is sufficient to regard something as edible if a group of people, or a certain nation, eats it, i.e. it is not a condition to regard it as suitable for eating to be actually consumed by all people, unless eating it is considered odd and rare, in which case prostrating over it is allowed.

398. Prostrating is allowed on writing paper even if it has been manufactured from materials that are not allowed to be used in prostrating.

399. It is not a condition that what is allowed for prostrating, whether the earth or plant matter, should be dry. That said, dryness is a condition if the forehead cannot be placed stably without it, for instance on mud, to the extent needed for stability.

400. It is a condition that there is no partition between the forehead and the thing it is placed on when prostrating, so one must be cautious regarding any soil that might have become attached to the forehead in the first prostration, in which case it must be removed so that the second prostration is valid.

401. It is a condition that the thing used to prostrate over is pure from any *khebethiyyeh* impurity, whether it was one that can spread to other things or not.

402. If the person praying is praying then loses whatever is suitable to prostrate on and there is still time, he must stop the prayer, lay down something suitable for prostrating, then start the prayer afresh. However, if time is short, he is allowed to prostrate on things that are made of textiles such as the edges of his dress, a prayer mat or any other such thing.

Third: Shortcomings in prostrating

403. As mentioned earlier, the two prostrations together are a *rokn* in prayer, but a single prostration is not, hence the prayer does not become void by an addition to it or shortfall in it, whether intentionally or as a result of inattentiveness.

404. If the forehead is lifted from the prostrating place unintentionally, such as if the person praying goes down forcefully and his forehead is lifted because of the force of the collision, or if he fears something so he lifts his head as a reflex, in these cases if he is able to stop his head from going down again to prostrate, it would be counted as one prostration even if he did not perform *thikr*; if he cannot hold his head up and it goes down to prostrate, it would (also) be counted as one prostration, but he has to perform *thikr* if he has not done so before.

405. There are many situations in which *sojūd* is forgotten:

First: If one prostration is forgotten, here there are two possible scenarios:

a- That he remembers this before the *rokū'* of the following *rak'ah*; in this case he has to go down to the sitting position and perform the prostration, then continue his prayer as appropriate; after he finishes the prayer, he must perform the two *sehw* (unawareness/inattentiveness) prostrations since he added one standing.

b- That he remembers it after starting the *rokū'* of the following *rak'ah*; here he should continue in his prayer, perform the (forgotten) prostration after the prayer as *qeδ≅≅ā'* and perform the two *sehw* prostrations after it.

Second: If he forgets two prostrations from one *rak'ah*, here are two possible scenarios:
1- That he remembers them before the *rokū'* of the following *rak'ah*; in this case, he has to sit to perform them as in (a) above, in addition to performing the two *sehw* prostrations after finishing the prayer.
2- That he remembers them after starting the *rokū'*; here the prayer becomes void.

Third: If he forgets one or two prostrations from the last *rak'ah*, then he remembers them after *teslīm* (last part of a prayer), here:
1- If no long gap has elapsed and he has not done anything that invalidates the prayer, in this case he should perform the forgotten part, then repeat the *teshehhod* and *teslīm*.
2- If no long gap has elapsed but he did do things that invalidate the prayer, intentionally, such as speaking, the same ruling (in 1) applies.
3- If a long gap has elapsed, or if he did something that invalidates the prayer, whether intentionally or out of inattentiveness, such as *al-H≅adeth al-Aσ≅ghar*, in this case if the forgotten part was one prostration, he should perform it as *qeδ≅≅ā'* and his prayer is valid; but if the forgotten part was two prostrations, his prayer becomes void.

406. If he doubts whether he did perform the prostrating or not, then if this doubt occurs after leaving the prostrating state, i.e. if he has already started the *teshehhod* or while rising to stand up, he should regard the prostrations as having been performed, but if the doubt occurred before that, he should regard it as unperformed and should, therefore, perform it.

407. If he doubts, after he has lifted his head from prostrating, that what he has just performed was the first or the second prostration, he should regard it as the first and, therefore, perform a second one.

408. If he doubts the correctness of the prostrating after he has lifted his head, he should regard it as correct; the same if he doubts the correctness of the *thikr* after finishing it.

409. If he is unable to prostrate completely, he has to bow in a way that can commonly be regarded as *sojūd*, in which case he has to lift what he is prostrating on to his forehead; but if he is completely unable, he has to nod with his head, lifting what he is prostrating on to a height at which he can prostrate with stability; but if he cannot do that as well, he has to use his eyes: closing them to represent prostrating and opening them to represent rising up from it; and if he cannot do even that, he can set the intention in his heart and move his tongue with the prostration *thikr*. As for the rest of the prostrating spots, it is obligatory to place what he can in these places, otherwise not.

Finaly: The ruling regarding *sejdeh* of *tilāweh* (the recital prostration)

410. It is obligatory to prostrate when reciting or listening to the recital of the following *sejdeh* verses: as-Sejdeh:15, Foσ≅σ≅ilet:37, an-Nejm:62 and al-'alaq:19. In addition to prostrating when listening to a person reciting any of them, it is obligatory to prostrate when listening to them from machines (i.e. radio, cassette recorders, VCRs, CDs and the computer). The prostration must be repeated when the recital is repeated from its source time after time. This one must hasten to do where possible, otherwise it can be delayed until it is possible. The way it is done is the same as in prayers, but without the conditions of prayers, including the *thikr*; it is recommended however.

(K) The *Teshehhod*

Teshehhod is an obligatory part of the prayer and <u>its form</u>, as an obligatory precaution, is: '*Ashhado an lā ilāhā illa-Allah, waη≅dehū lā sherīka leh, wa ashhado anna Moη≅ammeden 'abdohū wa resūloh; allāhomma σ≅ellī 'alā Moη≅ammedin wa āli Moη≅ammed.'*
(I bear witness that there is no God but Allah, the one only without any other God with Him, and I bear witness that Moη≅ammed is His servant and messenger. O God, bring Your

prayers (i.e. blessings) on Moη≅ammed and the progeny of Moη≅ammed.) The rulings regarding this part are as follows:

411. It is obligatory to recite *teshehhod* once after the last prostration of the second *rak'ah* in every prayer that consists of two *rak'ah*s, twice in every prayer that consists of three or four *rak'ah*s, once after the last prostration of the second *rak'ah* and once after the last prostration of the last *rak'ah*.

412. There are conditions for *teshehhod*:
1- It must be in Arabic.

2- The person must be sitting stable for the length of time needed to recite the obligatory *thikr*; there is no specific way of sitting. The person who is unable to sit should perform *teshehhod* standing if he is praying like that.

3- Order and *mowālāt* (succession) must be observed in the parts and words of the *teshehhod*.

413. If the person praying intentionally does not perform the *teshehhod*, the prayer becomes void, but if he omits it that out of a lack of awareness and the unperformed *teshehhod* was the one in the middle, here are two possible scenarios:
a- That he remembers it before the *rokū'* of the following *rak'ah*; in this case he must go down, sit and perform *teshehhod*, then stand up and continue the prayer; after finishing the prayer, he performs the two *sehw* prostrations since he has added another standing.

b- That he remembers it after starting the following *rokū'*; in this case he should continue his prayer then perform the *teshehhod* as *qeδ≅≅ā'* after finishing the *teslm*.
The way to perform *teshehhod* as *qeδ≅≅ā'* is: after finishing the *teslīm*, he stays facing the *qibleh* without doing anything that would invalidate a prayer, as a recommended precaution, and sets his intention to perform *teshehhod* in *qorbeh* to Allah, then he starts reciting it, and when he finishes it he performs the two *sehw* prostrations for forgetting the *teshehhod*.

414. If he doubts whether he has performed the *teshehhod* or not, then if he is sitting or about to rise up to stand, but before he becomes actually in the standing state, he must perform it (i.e. *teshehhod*).
But if he has already reached a complete standing position, even if before starting the *tesbīη≅*, he should disregard his doubt regarding *teshehhod* performed.

(L) The *Teslīm*

415. *Teslīm* is obligatory in every prayer. It is the last part and reciting it brings the person out of the prayer, allowing him to do the things which, before it, would have invalidated the prayer. <u>It has two forms</u>:
First: '*As-Salāmo 'alaynā we'lā 'ibādi-Llāhi-Σ≅āliη≅een*' (peace be upon us and upon the good servant of God.)
Second: '*As-Salāmo 'alaykom*' (peace be upon you), and it is better to add to it: '*Wa raη≅mato-Llāhi wa berekātoh*' (and the mercy of God and His blessings).
It is for the individual to opt to recite only one of the two forms; however, if chooses the first, the second becomes recommended, and vice versa. It is also recommended to say before them: '*As-Salāmo'alayka ayyohan-Nabiyyo wa raη≅mato-Llāhi wa berekātoh*' (peace be upon you O Prophet and the mercy of God and His blessings).

416. All requirements of *teshehhod* (no. 412) apply for *teslīm*, including the ruling regarding being unable to do it in the normal way.
417. If *η≅adeth* takes place to the person praying before the obligatory *teslīm*, the prayer becomes void as an obligatory precaution.

418. If the person forgets *teslīm*, here are two possible solutions:

1- If he remembers it before the succession is lost and before he does anything that would invalidate the prayer, whether intentionally or out of lack of awareness, such as turning his back to the *qibleh* or *al-H≅adeth al-Aσ≅ghar*, in this case it is obligatory to perform *teslīm*.

2- If he remembers after the succession is lost or after he did something that invalidates the prayer, whether intentionally or out of lack of awareness, the prayer is valid, but it is better to repeat it (the prayer).

Epilogue

(A) *Tertīb* (order, sequence)

419. It is not enough to carry out the above acts of prayer haphazardly; rather, they have to be performed in precise sequence which gives the prayer a specific shape. The order of the obligatory acts is the order in which they were explained above, i.e. the person, after reciting (the recommended) call to prayer (*athān*) then the shorter call (*iqāmeh*), sets the intention (*niyyeh*), then performs the *tekbīreh* of *ihrām*, followed by reciting (*qirā'ah*), then bowing (*rokū'*), then prostration (*sojūd*), then *teshehhod* and the last thing is *teslīm*.

420. If he violates the order, here are two outcomes:
First: If he does this intentionally, knowing that it is obligatory, in this case the prayer becomes void.
Second: If he does this out of lack of awareness, in this case if this did not involve a *rokn* (pillar) performed outside its designated place, then his prayer will still be valid, otherwise it becomes void. The details regarding this will be explained in the chapters explaining shortcomings in prayer.

(B) *Mowālāt* (succession)

421. To secure succession is to perform the parts of a prayer in a way that makes the prayer one continuous act, as would commonly be accepted. Therefore, it would not violate the succession if there is a short gap between each two successive acts, such as if the person praying lifts his head from *rokū'* but does not go down to *sojūd* immediately because he is waiting for someone to bring him something to prostrate on, until one minute or so has elapsed; also, the succession is not invalidated by performing a long *rokū'* or *sojūd* or the like. However, if long time elapses between an act and the one that follows so that the prayer can no longer be commonly regarded as a one continuous act, in this case the prayer becomes void, regardless of whether this was a result of intentional violation or simple lack of awareness.

(C) *Qonūt* (special supplication)

422. *Qonūt* is a supplication in which God the Most High is praised, glorified and beseeched in a certain way in prayer; its place in most obligatory and recommended prayers is after finishing the recital before bowing in the second *rak'ah* in every prayer except Friday, *āyāt* (signs) and Eid prayers where it is different both in number and place, as will be explained later.

423. *Qonūt* is a recommended part in every obligatory prayer, especially the ones offered in an audible voice, and more so in the dawn, sunset and Friday prayers; it is recommended in every recommended prayer, except in the two *shef' rak'ahs* in the night prayer, in which case if the person wants to perform it, it is a precaution to do so with the intention of *me τ≅lūbiyyeh* (requirement).

424. It is not conditional to recite certain things in *qonūt*, as any *thikr* or supplication that the person chooses is acceptable; it is better to recite what is narrated from the infallibles (*ma'σ≅ūmīn*) (as).

425. If *qonūt* was intentionally not performed, there are no consequences to this, but if this was due to absentmidedness and then it is remembered before reaching the bowing level, the person may stand up and perform *qonūt*, and if this occurs after reaching the bowing level, the

person should continue the bowing and may perform *qonūt* after standing up, before going down for prostrating. If *qonūt* is remembered after going down for prostrating, the person may offer it as *qeδ≅≅ā'* after finishing the prayer whilst sitting facing the *qibleh*.

426. It seems that there is no objection to performing *qonūt* using words that are incorrect as far as Arabic grammar is concerned if it can commonly be regarded as supplication; there is no objection to offering it even in languages other than Arabic.

(D) *Ta'qīb* (*thikr* and recitals after prayer)

427. *Ta'qīb* is performing *thikr* and supplication after finishing the prayer. The scholars have mentioned that it is recommended to recite *tekbīr* three times after finishing the *teslīm*, to perform the *tesbīη≅* of Fāτ≅imah (as), which is '*Allāho akbar*' 34 times, then '*Al-H≅amdo lil-Llāh*' 33 times, then '*Subη≅ān-Allah*' 33 times, to recite the Fātiη≅ah chapter and the verse of *Korsy* and other recitals as mentioned in the books of supplications and *H≅adīth*.

Chapter Two

The Rest of Obligatory and Recommended Prayers

(A) The Friday prayer

The Friday prayer replaces the noon prayer on Friday – as will be explained; it is two *rak'ahs* exactly like the dawn prayer, but the difference is that it has two *qonūts*: one before the *rokū'* of the first *rak'ah* and another after the *rokū'* of the second *rak'ah*; this is in addition to two sermons before the prayer.
Its rulings are as follows:

First: The conditions/requirements for the Friday prayer

428. For the validity of the Friday prayer, there are several conditions:

1- It must be offered in congregation (the rulings of congregational prayers will be explained later in a specific chapter.)

2- The number of participants must not be fewer than five, including the leader (*imam*).

3- Two sermons precede it, given by the leader of the congregation. This is done by the *imam*, who stands up, praises God and expresses gratitude to Him, advises the congregation on God fearing (*teqwā*), reads one chapter from the Holy Qur'an, then sits for a very short while, stands again, praises God and expresses gratitude to Him, asks God's blessings to Moη≅ammed (sawa) and the Imams (as) and forgiveness (*istighfār*) for the believers; he should talk about fearing God, call for justice, doing favours/good to people, reconciliation between them, social issues etc. The *imam* must raise his voice in both sermons so that (at least) a number of the followers can hear it. It is not obligatory that elements of the sermon other than the Qur'an be given in Arabic, although it is better, but if the congregation does not understand Arabic, he has to use the language that they understand.

4- Another Friday congregation within a distance of one *fersekh*, which is equal to 5.5 km, must not have been already in progress, otherwise the acts of both congregations would become void if the prayers started at the same time and both know of the existence of the other.

429. The time of the sermons is before the Friday prayer and after *zewāl*, so the *imam* cannot start them before *zewāl*, not even one part of them. The *imam* must stand during the sermon, but if he is unable to stand and there is no one else who is able to lead the Friday prayer, it is allowed for the former to give the sermon sitting, without the obligation of the prayer becoming void. Also, the people must listen during the sermon and abstain from talking.

Second: The rulings of the Friday prayer

430. Friday prayer is obligatory in the case of the presence of the infallible Imam or his specified deputy who was appointed by him. But it is also obligatory when he is not present, if the Friday prayer is performed by those who have the necessary requirements, it becomes obligatory on every Muslim who can attend and participate in it.

431. Some persons are excluded from the obligation to attend:

1- Anyone who finds it harmful or extremely difficult to attend.

2- Women.

3- The ill, the blind and the elderly.

4- Travellers who are on a journey that makes *teqσ≅īr* in prayers (i.e. praying shorter prayers) obligatory.

5- Those who live at a distance of around two *fersekh*, i.e. around 11 km (or more).

But if these do attend, their Friday prayer is valid and they do not have to pray the noon prayer afterwards.

432. For those for whom attendance at the Friday prayer is obligatory, it is not allowed to travel at noon on Friday, except if they are going to pass by a place where a Friday prayer is performed, so they will be able to attend it there.

433. The time of the Friday prayer starts at *zewāl*, and stretches to the time of the astronomical afternoon (*'aσ≅r*) as listed in the published calendars, so if it is not performed by then, the noon prayer, not the Friday prayer, becomes obligatory.

(B) The *āyāt* (signs) prayer

First: The reasons for obligation

434. The *āyāt* prayer becomes obligatory when the following take place:

1- An eclipse of the sun, which is when the sun becomes obscured by the moon; there are two types: whole and partial.

2- An eclipse of the moon, which is when it becomes obscured by the Earth's shadow cast by the sun; there are likewise two types: whole and partial.

3- Earthquakes on earth.

4- Every exceptional event that takes place on earth or in the sky, such as black wind (i.e. one that causes unusually severe darkness), lightning/thunder, tornado etc, provided that it generally causes fear in people.

435. If an obligatory reason takes place, the prayer of *āyāt* becomes obligatory on every person who is obliged to pray the other prayers; therefore, it is not obligatory on women during the menses or *nifās*, neither at the time nor after it (*qeδ≅≅ā'*).

436. If the sign takes place in a town or country, the prayer is obligatory on the people of that particular town or country, not other towns or countries that did not have that sign. Also, it is not a condition that one must sense it, as the obligation applies also to sleeping people, for example, as long as they are present in the place where the sign occurred.

437. The obligation of the prayer becomes repeated if the reason is repeated, so if an eclipse of the sun occurs, and an earthquake and a frightening episode of thunder and lightning/ take place at the same time at the same time, it becomes obligatory to offer this prayer three times. The same applies if an earthquake occurs twice or more, unless what happens after it is some sort of an immediate echo or aftershock, in which case it is only obligatory once.

Second: How to perform the *āyāt* prayer

438. The *āyāt* prayer consists of two *rak'ahs*, and each *rak'ah* consists of five bows and two prostrations. It may be offered in two forms:

First: The person praying says '*Allāho akbar*', recites the Fatihah and another chapter, then bows for *rokū'*, lifts his head and recites the Fatihah and another chapter, then bows for *rokū'*s, and so on, repeating this until he completes five bowing acts; then

when he lifts his head from the fifth *rokū'* and reaches an upright standing position, he begins prostrating, performing two prostrations; then he stands up and performs the second *rak'ah* exactly the same as the first, then performs *teshehhod* after the two prostrations, finishing his prayer with *teslīm*.

Second: (This is a shortened form.) The person recites the Fātiη≅ah in the first *rak'ah*, then spreads another chapter over the five bowing acts: he readsone verse from the chapter then bows (the first *rokū'*), then lifts his head and reads the second verse from the same chapter, then bows (the second *rokū'*), and so on until he achieves a complete chapter in the five *rokū'*s; then he stands up, then begins prostrating, and does the same in the second *rak'ah*, ending his prayer with *teshehhod* and *teslīm* as above. In this shortened form, the person must observe the following:

1- He must read a complete verse each time he is standing for *rokū'*, counting the *besmeleh* as one verse of the chapter.

2- He must complete the whole of the chapter in each *rak'ah*, so if there is more than one verse left in the fifth *rokū'*, he has to recite all the rest to the end of the chapter.

3- The Fatihah chapter is (coupled with) one (other) complete verse, so he does not have to recite the Fatihah with every verse when he is spreading the other chapter's verses over the bowing acts, but must recite the verse only when he lifts his head from *rokū'*; but if the chapter finishes before the fifth *rokū'*, he must recite the Fatihah again with a complete chapter or part of a chapter, and complete this chapter before the fifth *rokū'*.

439. The general conditions and rulings of the *āyāt* prayer are not different to those of other prayers, so purity, facing the *qibleh*, the dress or cover and the rest of what has been mentioned are obligatory.

Third: Its time and rulings

440. The time for an eclipse prayer stretches from the beginning of the eclipse until the last moment (when the obscured sun or moon is completely out of the eclipse); it is better to offer the prayer at the beginning of the eclipse. As for the other prayers, there is no time for them, so one should hasten to offer them as soon as the signs happen, but if one declines to do so until a short or long period of time has elapsed, the prayer must be offered without the intention of *qeδ≅≅ā'*.

441. If an eclipse of the sun takes place and the person does not know about it until after the darkness has left the disc, in this case if the eclipse was complete, *qeδ≅≅ā'* of the prayer becomes obligatory, but if it was partial, *qeδ≅≅ā'* is not obligatory.

442. There are several situations in which doubts may arise in the *āyāt* prayer:

a- If the person doubts the number of *rak'ah*s (is he in the first or second?); in this case the prayer becomes void.

b- If the person doubts the number of *rokū'*s (i.e. whether he is in the fourth or fifth *rokū'* for example), but before starting the prostrating; in this case he should regard it as the lowest number (the fourth in this assumed case) and complete his prayer accordingly.

c- If the person doubts the number of *rokū'*s after he has started the prostrating; in this case he should disregard his doubt.

d- If the person doubts whether he is in the fifth *rokū'*, so that he is about to finish the first *rak'ah*, or in the sixth *rokū'*, so that he is already in the second *rak'ah*; here the prayer becomes void since this is a doubt in the number of *rak'ah*s.

(C) The Eid prayer

443. The Eid prayer is specific to the day of Fiτ≅r – the first of Shewwāl – and the day of Aδ≅≅η≅ā – the tenth of Thol-H≅ijjeh. It occurs in two situations:

a- It is performed by the Infallible Imam (as) in congregation; in this case attendance is obligatory.

b- Other than in the above case, it is recommended, in congregation or otherwise.

444. The Eid prayer is not obligatory on the traveller, even if it is performed by the righteous *imam*; it is recommended that the traveller offers it in all cases however.

445. If it is performed in congregation, it is recommended that the *imam* gives two sermons after the prayer, separating them with a very short sitting as in the Friday prayer. However, it is not obligatory on the people praying to attend the sermons or to listen to them. Also, there is no certain (minimum) number required for it to be performed, nor does the condition of distance between it and any other prayer session apply, i.e. unlike the Friday prayer.

446. There is no call to prayer nor *iqāmeh* for the Eid prayer, but it is recommended that the caller calls by saying '*As-Σ≅alāt*' three times.

447. The time for the Eid prayer is from sunrise to *zewāl*, and there is no *qeδ≅≅ā'* in it.

448. The Eid prayer consists of two *rak'ah*s, like the dawn prayer, but there are additional things added to it. Its best form is the following: to recite the *tekbīr* '*Allāho akbar*', followed by the Fatihah and another chapter, five times in the first *rak'ah*, and to perform *qonūt* after each *tekbīr*, with supplication for what he wants for himself and his brethren, then to bow and prostrate after the fifth *qonūt*; then to perform *tekbīr*, after the Fatihaha and another chapter, four times in the second *rak'ah*, with *qonūt* after each of them, then to bow and prostrate and end his prayer (*teshehhod* and *teslīm*). When the person performs the last *qonūt* in each *rak'ah*, he should do so with the intention that it is required.

449. It is allowed to perform three *tekbīr*s in each of the two *rak'ah*s after the Fātiη≅ah, with *qonūt* after each one.

450. It is recommended that the chapter of ash-Shems (the sun) is recited in the first *rak'ah* and al-Ghāshiyeh (the Overwhelming Event) in the second, (both) after the Fātiη≅ah.

Chapter Three

Shortcomings/Lapses in Prayer

Al-Khelel in Aσ≅-Σ≅alāt

What is meant by shortcomings/lapses is anything that results in affecting the form and requirements of the prayer as commanded in the Sharī‘ah. We shall explain this in three parts:
a- Things that invalidate the prayer (*monāfiyāt*), which are the things that, according to the Sharī‘ah, render the prayer void.
b- Shortcomings (*khelel*): this is when the prayer lacks some of its parts and conditions/requirements.
c- Doubts (*shekk*): when doubts occur over the performance of the prayer, the number of *rak‘ah*s etc.

(A) Things that invalidate the prayer (*monāfiyāt*)

451. Each one of the shortcomings that we are going to mention is enough reason to render the prayer void:

First: Any act that separates the person from the commonly-accepted image of a person praying, such as knitting, taking off and putting on several dresses, breastfeeding while praying, eating and drinking (but not swallowing food residues in the mouth) and so on. Regardless of whether such acts are done intentionally or out of absentmindedness, they will render the prayer void.

However, things that do not nullify the image of the prayer, such as walking several steps, tidying the clothes on the body, pointing with the hand, moving the fingers and the like, do not render the prayer void. That said, these do not conform to stability (*iτ≅mi’nān*).

Second: Laughing, knowingly, loudly and with sound (*qahqahah*), even if it is uncontrollable. However, this does not include smiling, or what occurs unconsciously.

Third: Crying knowlinglyfor a worldly matter, as an obligatory precaution, including if it is uncontrollable; however the prayer will still be valid if this takes place unconsciously. The crying in question is one involving tears, even if it does not involve sound.

Fourth: *Tekfīr*, which is putting one hand over the other, and resting them on the lower part of the abdomen, which renders the prayer void as an obligatory precaution if the person believes it is part of the prayer; but if he does not do that as a part of the prayer, in this case it is more probable that the prayer remains valid. In any case, the prayer remains valid if this act takes placeunconsciously.

Fifth: Saying ‘*Āmīn*’ after the Fātiη≅ah chapter intentionally, as an obligatory precaution if the person believes it is part of the prayer, otherwise it remains valid.

Sixth: Speaking intentionally, even if without comprehensible meaning, with no differentiation, if intentional, between speaking that takes place with the person’s own will or otherwise (i.e. is forced upon him), nor whether the speech is to a second person or not.

However, if speaking takes place through absentmindedness, it stays valid. Also, there is no problem about hemming (clearing one's throat), blowing or moaning, nor if the speech consists of the *thikr* of God, supplication, verses of the Qur'an that are more than what is part of them.

452. It is obligatory that the person praying returns the greeting during the prayer, but using the same form/words as the ones used by the person greeting, so if the latter said '*Salāmon 'alaykom*', the person praying must reply with exactly the same words including the order, so he is not allowed to reply by '*'Alaykom as-Salām*' (unless, of course, the greeting was originally that). And it is not obligatory to use or not use the *alif* and *lām*, i.e. '*al*', whether they were used by the greeting person or not.
That said, if the greeting was directed to a group of people of whom the person praying is one, he is not allowed to reply when praying unless no one else replies.

(B) Additions and omissions in prayer

This is what is covered by the term '*khelel*': shortcomings, which may take place intentionally or out of absentmindedness. When they are intentional, there is a universal rule: 'Every time the person praying ignores his duty by omitting any of the parts or conditions of the prayer intentionally and knowing that that is a part or condition of the prayer, his prayer becomes void; the same applies if he added anything to his prayer intentionally and realizing that it is not allowed.'
However, such things may happen without intention or knowledge, the details of which are:

First: The cases in which the prayer becomes void

453. The prayer becomes void in the following cases:

1- If he omitted bowing in a certain *rak'ah* before (until) he prostrated the second prostration.

2- If he omitted both prostrations from a *rak'ah* before (until) he performed the bowing of the following *rak'ah*.

3- If he prayed without ablution or washing or *teyemmom* – according to his duty – or if something took place during prayer which made the ablution of washing void.

4- If he performed acts that resulted in nullifying the image of prayer.

5- If he prayed with an impurity – one that is not accepted in prayer – out of forgetfulness.

6- If he prayed with the *qibleh* to his right or left or back when he believed that it was in front of him and then he found out when the allocated time for that prayer had still not elapsed (see Chapter One (D)).

7- If he prayed before the start of the allocated time because of ignorance of the time, or through lack of awareness of it, or believing that the time had started; also in other cases (see Chapter One (A)).

8- If he added a full *rak'ah* out of absentmindedness, or omitted one; in the latter case, he can remedy the situation if he realises this before *teslīm*, or after it before doing any of the acts that invalidate the prayer, so his prayer will remain valid.

Second: The cases in which the prayer does not become void

These are two types: the cases in which the shortcoming can be remedied, and the cases in which the prayer remains valid even with that shortcoming.

<u>1- Shortcomings/lapses that should be remedied:</u>

454. The person praying must remedy the situation by performing the missed parts in the following situations:
a- If he missed the *tekbīreh* of *iη≅rām* out of absentmindedness or ignorance then realised before bowing, in this case he must perform *tekbīr* then start the recital again.

b- If he missed part of the recital or *thikr* then realised before bowing in that *rak'ah*, here he must perform what he missed and continue his prayer.

c- If he missed the bowing then realised before the second prostration of that *rak'ah*, here he must stand up to perform the bowing, then continue his prayer as normal.

d- If he missed two prostrations in a certain *rak'ah*, or one prostration, then he realised before the bowing of the following *rak'ah*, he must go down to prostrate then perform what should come after that (prostrating) as normal.

e- If he missed the *teshehhod* in (after) the second *rak'ah* and realised before bowing (in the following/third *rak'ah*), he must sit and perform it, then perform what comes after it.

f- If he missed two prostrations, *teshehhod* or *teslīm*, in the last *rak'ah* and realised before a *η≅adeth*, *aσ≅ghar* or *akbar*, takes place, or before the prayer image evaporates, he must perform what he missed and what comes after it.
In addition, he must perform the two *sehw* prostrations in some of the above situations, as will be explained later.

<u>2- Shortcomings which are not obligatory to remedy if they have taken place out of forgetfulness or ignorance of the ruling:</u>

455. It is not obligatory that the person praying remedy the parts missed in the following situations:

a- If he missed the recital or *thikr*, or part of them, and did not realise until after bowing.

b- If he missed the *thikr* in a bowing or prostrating and did not realise until after leaving that position.

c- If he missed the second prostration, in any *rak'ah*, or the *teshehhod*, or part of it, after the second *rak'ah* and did not realise until after he started the following (third) *rak'ah*, here he must perform what he missed as *qeδ≅≅ā'* after the prayer.

d- If he missed the second prostration of the last *rak'ah*, the *teshehhod* or the *teslīm*, and did not realise until after the elapse of a long time when the prayer image no longer held, in this case he must perform what he missed as *qeδ≅≅ā'* after the prayer.

e- If he missed the standing when reciting and recited sitting, then realised after he had finished the recital, in this case he should continue his prayer as normal and no remedy is necessary.

f- If he recited loudly (in an audible voice) when the prayer should have been performed whispering, or the opposite, in this case he should continue the recital as appropriate without any consequence. The same applies if he failed to achieve the state of stability when he was reciting the *thikr* in the bowing or prostrating.

g- If, during prostrating, he, out of absentmindedness, did not cover one of the prostrating spots – other than that of the forehead – on the ground and realised after he lifted his head from it, in this case he should continue his prayer without any consequence.

(C) The doubt (*shekk*) rulings

To begin with, we have to differentiate between three terms: *shekk*, *dhenn* and *iτ≅mi'nān*.

Shekk (doubt): When, to the person, the probabilities that the act has been performed or has not, are equal.

Dhenn (probable belief): When one of the two probabilities becomes, to him, stronger than the other.

Iτ≅mi'nān (satisfaction): When one of the two probabilities becomes, to him, so highly likely that it is almost certain that he/she can (almost) be completely satisfied with it.

As for *iτ≅mi'nān*, there is no problem in annexing it to certainty and knowledge as far as the consequences for prayer and other acts are concerned. Thus, if the person is satisfied that he has performed the act in question in the correct manner, or he is satisfied that he is in the second *raka'h* or the prayer, for example, he should depend on this satisfaction and continue his prayer on that basis.

It is more probable to annex *dhenn* to knowledge and satisfaction when it comes to acting according to it, with the consequence following the more probable probability, whether that probability is thinking that the act in question was performed or was not; this applies whether the *dhenn* is in the number or *raka'hs* performed or the acts of the prayer. So, if the *dhenn* is that he is in the second *raka'h*, for example, he should regard it as such, and if the *dhenn* is that he has prostrated two prostrations, he should regard it as such, and so on, acting in response to the *dhenn* as he does with certainty and *iτ≅mi'nān* (satisfaction).

The doubt (*shekk*), however, can fall into two categories: doubt in the acts and doubt in the number of *raka'hs*. With the latter, some render the prayer void, whilst others do not. All that will be explained here but after discussing some related matters.

456. If the state of the person changed from *shekk* to *dhenn*, or the opposite, he must act according to the second state.

457. The rulings of doubt that will be mentioned here cover normal doubting, so they do not cover the over-doubting person (*kethīr ash-Shekk*), which will be explained now. The over-doubting person is one for whom doubt in a certain act, or in every act, is repeated from him in a way that is more than normal; the criterion here is that the person doubts once in every three prayers; in the case of the hypochondriac (*wiswāsī*) who is overwhelmed by doubts until it becomes a health problem, doubts control the mind so that the person cannot be certain of anything, or cannot be certain even of a certain thing; the ruling regarding these persons is that they should act according to the state in which their performance is regarded as correct/acceptable. Therefore, the over-doubting person who doubts whether he/she has prayed or not, should regard himself/herself as having prayed, and the over-doubting person who doubts the number of *rak'ah*s, should regard himself/herself as having performed the higher number, unless the higher number invalidates the prayer, in which case he/she should regard himself/herself as having performed the lower number; and whoever doubts a lot whether he has bowed or not, should regard it as performed, and so on.

458. The over-doubting person is not allowed to make mention of his doubt, so if he disobeys and does make mention of his doubt about performing what he doubts, his prayer will still be valid if the doubted act was performed with the intention of *qorbeh*, although he has sinned by going along with his doubt, regardless to whether the doubted act was a *rokn*, such as bowing, or not a *rokn*, such as reciting.

459. If he doubts whether he is an over-doubting person or not, he should decide that he is not; and if he was an over-doubting person and doubted whether this state has disappeared, he should regard it still existing, so abide by the rulings for the over-doubting person.

First: Doubts in acts

460. Every time the person praying doubts whether he has performed one of the prayer duties – whether a *rokn* or otherwise – he should regard it as not performed and he should act accordingly.

The exceptions to this rule are the following cases:

1- If he doubts one of the prayer parts after leaving its allocated place (in the order of the prayer) and beginning the part that follows, even if this next part is recommended, in this case he should continue and disregard his doubt, such as when doubting the *tekbīreh* of *iη≅rām* while he is reciting the Fātiη≅ah, or doubting the Fātiη≅ah while he is bowing, or doubting the recital while he is in the *qonūt*, or doubting the bowing while he is prostrating; in all these and the similar situations, he can regard what he doubts as performed and continue his prayer without any consequences. However, if he has already passed the act he has been doing and started the act that follows, such as if he doubted the recital while bowing for *rukoo'*, or if he doubted the *sejdeh* while he was rising to stand up, in this case it is precautionary to acknowledge this doubt and to perform the doubted act in an undesignated/unspecific intent (*niyyeh moτ≅laqeh*).

2- If he doubts the correctness of the part after he has performed it and finished it, the ruling here is the correctness in any case, whether he has left the place or not. So, if he did *tekbīreh* of *iη≅rām* but doubted its correctness, he should regard it as correct even if he has not started the recital yet; the same when doubting the correctness of the *thikr* of bowing or prostrating after finishing it.

3- If he started the prayer with its conditions present, then doubts that these conditions still existed, or have been disturbed, during his prayers, such as if he started his prayer facing the *qibleh* then fears that he might have turned from it in some previous parts, in this case he should continue his prayer, disregarding his doubt.

461. If, after applying the above ruling, he discovers that indeed he did not perform the doubted part, in this case he should apply the rulings explained in the additions and omissions (*khelel*), applying the appropriate ruling to his case (see Things that invalidate the prayer (B)).

Second: Doubting the number of *rak'ah*s

What is meant here is the doubt that arises during praying, since there is no consequence if the doubt takes place after finishing it. This kind of doubt has many types: sometimes it renders the prayer void while in other cases it does not, and in the latter there are doubts which can be remedied while others cannot; so there are three types:

First: Doubts that have no consequences

462. Doubts that have no consequences are those doubts that, if they take place, do not invalidate the prayer, nor do they require a (remedial) act from the person praying; this may be:

a- When the person praying finds himself reciting *teshehhod* but he doubts whether he completed the second *raka'h* and that this *teshehhod* is for (after) it, or that he did not finish it and he was in the first *raka'h*, the *teshehhod* would, then, be because of his lack of awareness; in this case he should regard himself as in the second *raka'h* and complete his prayer.

b- When he finds himself reciting *teshehhod* in a 4-*raka'h* prayer, or has just finished it, but he is certain that he has proceeded beyond the second *raka'h* but doubts whether he finished the fourth, or if he is still in the third *raka'h* and that the *teshehhod* is due to his lack of awareness; in this case he regards himself as having finished the fourth and finishes his prayer without any consequence.

c- When he is performing *teslīm* in a 3-*raka'h* prayer, but doubts whether he finished the third *raka'h*, and so his *teslīm* is the required one, or if he was still in the second *raka'h* and this *teslīm* is performed out of lack of awareness; in this case he should regard it as the third *raka'h* and finish his *teslīm* with no consequences.

Second: Doubts that require a remedy

463. No prayer becomes void out of doubt in the number of *raka'h* – in a 4-*raka'h* prayer in particular – if the doubt is in the form of one of the following nine situations and the person praying remedies it as appropriate:

1- Doubt between two and three *raka'hs*, provided that the doubt takes place after finishing the *thikr* of the second prostration; in this case he should regard it as the third, finish his prayer then perform the *iη≅tiyāτ≅* (precautionary additional) prayer, which is one *raka'h* performed standing as an obligatory precaution when he is able to stand, or one *raka'h* performed sitting if he is unable to stand.

2- Doubt between three and four *raka'hs* in any place; in this case he should regard it as four, finish his prayer then perform the *iη≅tiyāτ≅* prayer, either one *raka'h* standing or two *raka'h*s sitting, but if he is unable to stand, one *raka'h* sitting.

3- Doubt between two and four *raka'h*s, provided that the doubt takes place after finishing the *thikr* in the second prostration; in this case he should regard it as four, finish his prayer, then perform two *raka'h*s standing, and for whoever is unable to stand, two *raka'h*s sitting.

4- Doubt between two, three or four *raka'h*s after finishing the *thikr* of the second prostration; in this case he should regard it as four, (finish his prayer) then perform (*iη≅tiyāτ≅* prayer

which consists of) two *raka'h* standing then two *raka'h*s sitting; whoever is unable to stand should perform two *raka'h*s sitting then one *raka'h* sitting.

5- Doubt between four and five *raka'h*s after the *thikr* of the second prostration; he should regard it as four, finish his prayer then perform two *sehw* prostrations.

6- Doubt between four and five when in a standing position; in this case he goes down to sit regarding himself to be in the fourth *raka'h*, perform *teshehhod* and *teslīm*, then perform one *raka'h* standing or two *raka'h*s sitting.

7- Doubt between three and five *raka'h*s when in a standing position; in this case he cancels his standing, turning his doubt into a doubt between two and four *raka'h*s, applying the ruling in (3) above.

8- Doubt between three, four and five *raka'h*s when in a standing position; in this case he cancels his standing, turning his doubt into a doubt between two, three and four *raka'h*s and applies its ruling (in (4) above).

9- Doubt between five and six when in the standing position; in this case he cancels his standing and sits down, regarding himself to be in the fourth, finishes his prayer then performs two *sehw* prostrations.

464. It must be noted that when dealing with one of the above doubt situations, the following cases are exceptions to the rulings above as explained herewith:

First: If the doubting person thought that one probability is stronger than the rest, which is *dhenn* (probable belief), he must act according to this *dhenn*; so if the person praying thought that it was more probable that he was in the third or fourth or second *rak'ah*, for example, he should follow his belief exactly as he would do when he is certain about the number or *rak'ah*s, and there is no consequence, and so no remedy applies.

Second: If the person doubts to an abnormal extent that would commonly be described as *kethīr ash-Shekk*, i.e. an over-doubting person, such as if he normally doubts at least once in every successive prayers, or twice in every six successive prayers, and so on; in this case, he should cancel his doubt and assume that he has performed the number about which his doubts have confused him, i.e. he should regard himself as having performed the higher number of *rak'ah*s; so if he doubted whether he had performed two or three, he should regard it as three; or three or four, he should regard it as four; he should finish his prayer in both cases, or other doubting cases, without any consequence or remedy required; this is unless the higher number would invalidate the prayer, in which case he should regard it as the smaller number and finish his prayer without remedy; for example, if he doubted between four and five *rak'ah*s, then he should regard it as four, since if he regards them as five the prayer would become void.

Third: If the doubt in the number or *rak'ah*s assails the leader (*imam*) or the follower and the former or the latter was certain about the number of *rak'ah*s, the doubting of them should depend on the other's memory, and whether his memory was at the level of certainty or *dhenn* – this will be explained later.

Fourth: If the person praying is offering a *nāfileh* prayer and he becomes doubtful regarding the number of *rak'ah*s, in this case it is up to him to regard it as the least probable number and finish his prayer without any consequences, or to regard it as the most probable number, provided that it does not invalidate the prayer, and finish his prayer without consequences.

465. It is not allowed for the person praying, as an obligatory precaution, to abstain from the remedy mentioned above when his doubt is similar to the above nine situations, and to opt to stop his prayer and start it anew; so if he was ignorant of the suitable remedy to the doubt that took place, he should follow what he thinks probable as a remedy to his situation, then should check after the prayer to see if what he did was the right remedy or not; if not he should then repeat his prayer.

466. When, to remedy the doubt, the standing has to be cancelled, he must, as an obligatory precaution, perform two *sehw* prostrations for the additional standing, but after finishing the remedial act(s) which is the *iη≅tiyāτ≅* prayer or *sehw* prostrations.

Third: Doubts that invalidate the prayer (without any suitable remedy)

467. In this third type, we explain the situations which, when doubt takes place, it renders the prayer void; these are the cases that can be described as: 'Every case other than the cases that we mentioned earlier in which the prayer stays valid, whether with or without remedy, falls in this type in which the prayer becomes void.' To explain, let's describe the following cases:

First: When the doubt of the person praying is not about the particular numbers of *rak'ahs*, rather he does not know in which *rak'ah* he is and without having a certain number that he may proceed from to remedy the doubt; in this case he has no choice but to stop the prayer and start again.

Second: When his doubt takes place when praying a daily prayer other than the 4-*rak'ah* prayers, such as if his doubt is between two and three *rak'ahs* in the sunset prayer or the first and the second in the dawn prayer, or other situations.

Third: When the person praying ponders the number of *rak'ahs* in a 4 *rak'ah* prayer without being sure that the second *rak'ah* has been completed and is correct, which takes place – as explained before – after finishing the *thikr* of the second prostration of this second *rak'ah*, such as if the doubt takes place after he lifts his head from the second prostration and he does not know whether this has been the first or the second *rak'ah*, or if the doubt takes place after lifting his head from the first prostration, not the second, whether that *rak'ah* he is performing is the second or third, his prayer becomes void, because he is not certain that he has performed a complete second *rak'ah*. This is why it is a condition that the doubt in some situations takes place after finishing the *thikr* of the second *rak'ah*.

Finally: Doubt rulings in the Friday prayer

468. All the rulings for the doubts in the number or *rak'ahs* explained above relate to prayers other than the Friday prayer; as for the Friday prayer, if the *imam* doubts the number of *rak'ahs*, he must turn to a follower who does remember, whether this follower is righteous or otherwise, male or female. The same applies if the follower doubts; in this case he turns to the *imam* who remembers. If one of them is in a *dhenn* state of mind, the other becomes like a remembering person to whom the doubting person turns.

469. It may happen that some of the followers remember and the others doubt; in this case the *imam* turns to the part that remembers; however, the doubting follower cannot, then, turn to the *imam*, but has to act according to his doubt, unless the turning of the *imam* to the remembering follower(s) turns his doubt into *dhenn*, in which case the doubting followers may turn to him.

470. Just as the *imam* and the follower turns to each other concerning the number of *rak'ah*s, the doubting one of them turns to the remembering one in the acts as well. So if the follower who did not fail to follow the *imam* in the prayer doubts whether he has performed one or two prostrations, he is allowed to turn to the remembering *imam* in this; but if he thought probable his failure to follow the *imam* in prostrating, then he is not allowed to follow the *imam* in this, but must decide on the lower number and perform another prostration; and so on in other possible situations.

Third: The *iη≅tiyāτ≅* (precautionary additional) prayer

This is the prayer that must be offered to remedy the doubt as explained in the doubting situations above, so as to remedy the doubt and the probable shortfall in the number of *rak'ah*s. Its rulings are as follows:

471. It is conditional in the *iη≅tiyāτ≅* prayer that all the conditions of the prayer, such as facing the *qibleh*, purity, cover etc, are present; when these are present, the person praying should offer it in the following way:

He sets in his intention and recites the *tekbīr* '*Allaho akbar*', then recites the Fātiη≅ah chapter without another chapter, whispering when reciting, including the *besmeleh*, as an obligatory precaution, then performs *rokū'*, followed by two prostrations, then *teshehhod* and *teslīm*; this is if it is one *rak'ah*. If they are two *rak'ah*s, he performs the *teshehhod* and *teslīm* in (after) the second *rak'ah*. There is no *athān*, *iqāmeh* or *qonūt*.

472. It seems that this prayer must be offered immediately after the prayer, and before doing any *monāfiyāt* (acts that invalidate prayers); thus it is not allowed to do any of the *monāfiyāt* with the intention of repeating the prayer; however, if such acts did take place out of choice or otherwise (forced), the person praying must repeat the prayer without the *iη≅tiyāτ≅* prayer.

473. If his doubt disappears and he believes that his prayer is complete and correct, then if this took place before the *iη≅tiyāτ≅* prayer, he does not need to offer it; but if it was during it, he is allowed to either stop it or to continue with the intention of a 2-*rak'ah nāfileh*.

474. All rulings regarding the additions and omissions through inattentiveness and the doubts in the acts in the obligatory prayers apply in the *iη≅tiyāτ≅* prayer; the *iη≅tiyāτ≅* prayer does not become void when doubt takes place regarding the number of *rak'ah*s, but the person praying should decide on the higher number unless it would invalidate it, in which case he should decide on the lower number, and his prayer is valid without the need for another *iη≅tiyāτ≅* prayer for the doubt in the (original) *iη≅tiyāτ≅* prayer.

475. If the person praying forgets a *rokn* in the *iη≅tiyāτ≅* prayer and cannot perform it, or if he added a *rokn* or a *rak'ah*, the prayer becomes void and he must repeat the original obligatory prayer.

476. If he doubts whether he did perform the *iη≅tiyāτ≅* prayer, he should regard it as unperformed unless this was after the elapse of the time of the prayer, or after he did something that would invalidate the prayer, whether intentionally or through lack of awareness; he should disregard his doubt and regard himself as having performed it.

Finally: *Sojūd as-Sehw*

This is the *sehw* prostrating, which consists of two prostrations, performed in a certain manner, to remedy some cases of shortcomings in the prayer. Although it is called '*sehw* prostrating', i.e. 'lack of awareness' prostrating, it is also a remedy for some cases of doubt. The rulings for this prostrating are as follows:

477. This prostrating is not obligatory in every *sehw* case that has been cited before; rather most of the *sehw* cases do not need this prostrating, except the following situations:

First: For the person who speaks during prayer through lack of awareness, imagining that he has finished praying or that he is not in a prayer at all. Prostrating is not obligatory for *monāfiyāt* other than speaking, such as laughing or crying through lack of awareness. And if the person praying wanted to recite a certain *thikr* or verse but his tongue went to another, or if he uttered some of its words wrongly, there is no obligation for a *sehw* prostrating.

Second: When there is doubt that the number of *rak'ah*s the person is in is four or five after finishing the *thikr* of the last prostration, and when doubting between five and six *rak'ah*s while standing, as mentioned previously.

Third: If he omitted one prostration as an obligatory precaution, or if he omitted the *teshehhod*, wholly or partly, or the non-*rokn* standing as an obligatory precaution, such as if he went down to prostrate after finishing the *thikr* of *rokū'* without (first) raising his head up, and all this provided that the place of remedying has been left; so if he performs the omitted part, his prayer will be valid without any consequences.

Fourth: If he added to his prayer the *teslīm*, wholly or partially, one word or part of a word from it, also if he added standing as an obligatory precaution, such as if he stood up to recite the *tesbīη≅* and remembered that he had not performed the *teshehhod*, in this case he should cancel his standing, perform *teshehhod*, then stand up to recite the *thikr*, so he had added one

standing. The *sehw* prostrating is not obligatory when adding parts of prayer other than these two. That said, it is better not to a keep to these situations only, i.e. to perform the *sehw* prostrating for every addition or omission.

478. The *sehw* prostrating consists of two prostrations, a *teshehhod* and a *teslīm*, and the *niyyeh* of *qorbeh* is obligatory, but it is not obligatory to specify the reason. Also, the person must secure the prostrating state by placing the forehead on what is suitable/allowed for prostrating and placing the six (other) prostrating spots, but neither facing the *qibleh*, nor purity from *η≅adeth* and *khebeth* or cover or any other prayer conditions, are obligatory, although it is better to observe them.
The best form of this prostrating is:
After the person praying finishes the *teshehhod* and *teslīm* of his prayer in which *sehw* (unawareness) took place, he stays sitting facing the *qibleh*, sets in his intention of *sehw* prostrating as compliance (*qorbeh*) to God, then performs *tekbīr* as a recommended act, then goes down for the first prostration, reciting in it the *thikr* specific for the *sehw* prostrating, then lifts his head to sit stably, then goes down again for the second prostration with the *thikr*, then lifts his head to sit stably, performs the *teshehhod* and *teslīm*, completing this prostrating.

479. *Thikr* is obligatory during prostrating, and it must include the *thikr* of God, also of His prophet (sawa) as an obligatory precaution; the person has the choice of these two forms:

a- 'Bismil-Lāh wa bil-Lāh, as-Salāmo 'alayka ayyohan-Nabiyyo wa raη≅matol-Lāhi wa berekātoh', or 'Bismil-Lāh wa bil-Lāh was-Salāmo…' i.e. adding 'wa' (= and) before the word 'as-Salāmo'.

(In the name of God and by God, peace be upon you O you the Prophet and God's mercy and His blessings.)

b- '*Bismil-Lāh wa bil-Lāh, wa σ≅ella-Llāho 'al ā Moη≅ammedin wa āli Moη≅ammed*'.
(In the name of God and by God, and God's prayers upon Moη≅ammed and the progeny of Moη≅ammed.)
The first form is better.

480. It is obligatory to perform the *sehw* prostrating after the prayer immediately, and before doing any of the acts that would invalidate the prayer, but failure to do this does not affect the correctness of the prayer, although the person would have sinned if he did that intentionally, in which case he must carry it out immediately when he remembers or feels regret or the disappearance of any obstacle if was present.
And if he has to perform *sehw* prostrating, *iη≅tiyāτ≅* prayer and *qeδ≅≅ā'* of a forgotten part, he must perform the *iη≅tiyāτ≅* prayer before anything else, then the *qeδ≅≅ā'* of the forgotten part, then the *sehw* prostrating.

481. The *sehw* prostrating has to be repeated if the reason is repeated, but things like speaking with many sentences or several words in one *sehw* is regarded as one; the same when through lack of awareness he performed *teslīm* in the three forms in one go; in these two cases only one *sehw* prostrating is obligatory. However, if he spoke one sentence or word then remembered, then again one word or a sentence, he must perform the prostrating twice; and so on.
But the order of the *sehw* prostrating does not need to follow the order of the reasons, especially given that it is not obligatory to specify the reason when setting the intention, as was mentioned earlier.

482. If he has doubts about carrying out an act that needs a *sehw* prostrating, he should disregard it; and if he has doubts about the number of *sehw* prostrating, he should decide on the lower number; and if he has doubts about performing it after recognising that it is obligatory, he should – as a precaution – perform it, even if his doubt takes place after the time for a non-delayed act has gone; and if he believed that he had carried out the obligation,

but after the *teslīm* he doubts it, he should disregard it and must perform the *sehw* prostrating; and if he doubts the obligation then after that realises it, he must carry it out, as mentioned; and if he knows that he has performed one prostration of the two *sehw* prostrations but doubts whether he has performed the second, he should perform it, unless if he is already in the *teshehhod*, and if he knows that he has performed two prostrations but fears that he has added a third one, he should disregard his doubt, but if he later realises that he did perform three, he should repeat the two *sehw* prostrations as a precaution; and if he forgot one prostration, in this case if he can carry it out before a long gap has elapsed, he should do that, otherwise he should perform the two *sehw* prostrations again.

Chapter Four

Prayer of the Traveller

For a traveller – according to certain conditions – the 4-*rak'ah* prayers are to be offered as *qaσ≅r* (i.e. shortened, or 2 *rak'ah*s); these are three prayers: *dhohr* (noon), *'aσ≅r* (afternoon) and *'ishā'* (evening. The other two, *fejr* (dawn) and *maghrib* (sunset) stay as they are, i.e the traveller prays them as *temām* (full). In addition, travelling affects the *newāfil* (additional prayers): the daily ones and the one after the evening prayer are cancelled, although the latter may be offered with the intention of being required.

(A) The homeland (*al-Waτ≅an*) and its categories

483. As a term, the homeland, i.e. place of residence, may be divided into four categories:

a- The original homeland: which is the homeland of the fathers and forefathers, even if the person was not born in it or has not resided in it, unless he has abandoned it altogether.

b- Permanent homeland: which is the town that the person makes his permanent residence, such as the Londoner who makes Birmingham his homeland.

c- Temporary homeland: which is the town that is adopted as a residence for work or studying for a relatively long time, or while in search of security or for other reasons, as long as the person has not abandoned his country/town altogether. The criterion for specifying the time period follows the common custom.

d- Locational homeland: which applies to someone who has no homeland of the two categories (b) and (c) above and has been forced as a result of his circumstances to go from one place to another, such as the bedouins, or the employee whose job forces him to move regularly without knowing the exact period of time he is going to spend in any particular place; for people such as these their place of their residence is their homeland throughout the period they reside in it.

484. It is possible that a person has more than one homeland.

485. The son or daughter living with his/her family and depending on them for their living expenses follows, in the homeland matter, his/her parents, even after becoming separated from them, unless he/she abandons it (their parents' home) altogether, quitting living in it. There is no difference if this parent has had a permanent, temporary or locational homeland – as far as the original homeland is concerned, the ancestry is sufficient to keep their original homeland.

486. The wife follows her husband's homeland unless she intends to take a separate homeland, although normally the wife's intention is to reside with her husband and live with him there; but she does not follow his original homeland unless the husband lives there, so if he takes her there with him for a visit, he must pray full prayers while she prays shortened prayers until she resides in it and makes it her homeland as well, according to certain conditions.

487. The homeland ruling is not nullified unless one decides to abandon it, which is deciding never to live in it and to leave it and reside in another place.
A person may be forced to abandon his/her homeland, such as the wife who has lived with her husband, outside her homeland, in a stable marriage without any fear (under normal circumstances) of leaving him and going back to her homeland as a widow or a divorcee; in this case she is regarded as compelled to abandon her original homeland although without intending to do so.

(B) When a state of travelling takes place

488. As far as the Sharī‘ah is concerned, a state of travelling takes place when the person intentionally covers the distance specified in the Sharī‘ah, which is eight *ferāsikh* (sl. *fersekh*), which equals to 43.2 km (we shall call it *shar‘ī* distance).

489. There are two ways to cover the *shar‘ī* distance, which makes praying shortened prayers obligatory:

a- One-stage journey, which is when the traveller covers this distance in one go.

b- Combined distance, which has two forms:

1- Having the two parts of the journey equal, which takes place when the traveller covers half the *shar‘ī* distance going to the destination and the other half coming back, or covers more than the half in one or both of them.

2- Having unequal parts to and from the destination, such as if going to the destination is 18 km and coming back is 26 km, or the reverse; it is better in this case to combine both *qaσ≅r* and *temām*.

490. There is no difference as far as the *shar‘ī* distance is calculated if the road is straight, bending, or circular.

491. The start of the calculation of the *shar‘ī* distance is from the last house in the town at the side he leaves from, and the end is the first house in the destination town at the side he enters from. The internal roads of the towns he crosses during his journey are to be counted in the *shar‘ī* distance, unless if he has things to do other than passing through, in which case the distance covered doing his other business is not counted as part of the *shar‘ī* distance.

492. The traveller must have the intention to cover this *shar‘ī* distance from the beginning of his journey, so if he covers a distance of less than that with the intention of leisure or searching for a missing animal, for instance, then decides to continue to another destination, the distance covered before his last decision is not counted as part of the travelling distance.

493. It is not conditional tthat the intention is completely voluntary, rather it is acceptable to be abiding by the wishes of others or to be accompanying them, such as the servant and children, provided that the others do intend to cover the *shar‘ī* distance.

494. If a person believes that he has covered the *shar‘ī* distance and so prays a *qaσ≅r* prayer, then he discovers that he is wrong, he must repeat his prayer as long as there is still time, otherwise he must offer it as *qeδ≅≅ā’* outside the time. But if he believes that he has not covered the *shar‘ī* distance and so prays *temām*, then discovers he is wrong, he must repeat his prayer within the time, but there is no *qeδ≅≅ā’* if its time has already elapsed.

(C) Acts that cancel the travelling state

It was explained above that the travelling state as far the Sharī‘ah duties are concerned, i.e. which makes *qaσ≅r* (shortened prayers) obligatory, takes place when the *shar‘ī* distance is covered with the intention and firm decision to cover it and the continuation of this firm decision until the end of the distance.

However, there are things that may take place, stop it or cancel it, putting the person in a new situation; these things are called ‘*qewāti‘ as-Sefer*’, which have three categories: passing through the homeland, staying in a place in a state of hesitation for thirty days, and the intention of residing in a certain place for ten days.

First: Passing through the homeland

495. If the traveller passes through his homeland while covering the *shar‘ī* distance, his journey has ended and he has to perform his prayers and fasting according to the residents' rulings. This is regardless of whether he does actually stay in the homeland or merely passes through it, or even goes around the houses along the boundary called *η≅add at-Terekhkhoσ≅*, i.e. the leave (to pray *qaσ≅r*) boundary. Therefore, if he knew from the beginning of his journey that he would not cover the *shar‘ī* distance before passing through his homeland, then

he is not regarded as a traveller from the outset, so he must pray *temām* from leaving his place of residence; but if he did not know and was surprised to find himself in – or was forced to pass through – his homeland, his journey has ended and he has to pray *temām* and fast, whether what he has covered was the *shar'ī* distance or less.

496. There is no difference, in terms of the homeland which ends the journey when passing through it, if it is the original, permanent or temporary homeland, even if he passes through it in a time other than the normal time of his living in it, such as the student who is residing in London to study if he passes through it during the summer holiday. However, the place of work which he does not live in does not end the travelling when passing through it for reasons other than the work itself.

497. If he decided, at the beginning of his journey, to pass through his homeland, within the distance, then after he has covered some distance on the road changed his mind, or something stopped him from passing through it, in this case he must pray *temām* as long as the intention of travel was not set in his mind when he started his journey; he – if so wishes – can commence a new journey afterwards. The same ruling applies if he started his journey doubtful and hesitant as to passing through his homeland or not while covering the *shar'ī* distance.

Second: The intention of residing for ten days or more

498. The ten days here equal ten days and nine nights if the intention takes place at the start of dawn or some time during the night before; however, if the intention takes place after dawn some time during the day, then he must count eleven days and ten nights; so if one's intention of residing takes place at noon on Monday, one has to stay until noon of Thursday week (the second Thursday) so that a ten-day residence would complete.
When the traveller sets his intention to reside, his travelling state ends and he has to pray *temām* and fast as if he is in his homeland, regardless of whether this affects the travelling state – if this takes place after covering the *shar'ī* distance – whether the intention was like that from the start of the journey or if that takes place suddenly or due to compelling reasons, not to mention if it takes place after covering the *shar'ī* distance and reaching a destination other than the homeland.
And if the traveller, when he started his journey, was not sure that he was going to set his intention to take up residence while covering the *shar'ī* distance, this would not affect his travelling intention, so he stays on the *qaσ≅r* for as long as he has not made up his mind on actually residing there. Likewise, his travel is not affected if he sets his intention to reside in a place which he likes while he was taking a break then changes his mind and resumes his journey before he has prayed a 4-*rak'ah* prayer as *temām*.

499. He must have his decision firmly on residing for ten days, so a residence state does not take place with hesitation or with reasonable probability that things might come up to stop him from doing this. And if his intention of residence does become firmly established but something comes up to end it unexpectingly, or if he decides to end it even if for no compelling reason, it is allowed to be ended, in which case if he leaves the town immediately, then in general what he prayed as *temām* and his fasting, if these took place, will remain valid, but if he does not leave immediately and stays for a day or more for some business or leisure etc, in this case there are several rulings, as we shall discuss in no. 506 and what follows.

500. When residing in urban places, he must stay in the place where he intended to reside throughout the ten days, so an intention of residence is not valid in two towns in which he spends one night in this and another in that; also it is not valid if he leaves the place of residence and travels a distance of more than the *shar'ī* distance combined, neither during the ten days nor after them, if he wants to keep offering his prayers as *temām*; but going out to the town's farms or nearby villages is acceptable, if spending just an hour or two or more, provided that it is shorter than spending the night.

The same applies when residing in rural areas – he must stay in one place, then leave it and return to it. For every place, there are some boundaries that are commonly known, such as a mountain, a valley, an oasis etc, so if he leaves it and spends the night in another place, it would commonly be regarded as spending the night in somewhere other than the place of residence; the same if he leaves the boundaries of his area (of residence) by a *shar'ī* distance.

501. The ruling regarding the single location of the place of residency makes no distinction between villages, small towns or large towns as long as it is commonly taken as one place. However, it must be noted that large towns/cities have three forms:
1- The town might have been small in its original form (in the past), then new districts were built on its edges, either in contact with it or gradually approaching contact; in this case these districts are regarded as a continuation of the town and an expansion of the lands around it, and the new suburbs are regarded as the same as the old districts of the town, i.e. part of the same town; so if the person resides five days in a suburb and five days in another suburb, the ruling of a resident for ten days in one town applies to him.
2- Two towns may lie one beside the other but separate from one another by their name and geography, but then the building expands in each of them until each extends in the direction of the other making their buildings come in contact and intermingled, as in Kūfeh and Najaf, Kādhimiyyeh and Baghdad and Manchester and Salford in Britain; nonetheless, they are not regarded as one town but they continue to be separate. In this case residing in one of them one day and in the other another does not make it a residence in one place for ten days, so the shortened prayers (*qaσ≅r*) must be offered and the fast must be broken.
3- In some cases, two towns have become attached to each other where one was once large and the other small, then the larger one overwhelmed the smaller one until the latter became commonly regarded as an annex to it and socially part of it, such as Beirut and the small villages which have become part of its suburbs such as Ghobeiri, Shiyyāη≅ and Borj al-Berājneh, so for the people the whole thing is now one city called Beirut, and similarly London with its suburbs that were once separate villages, such as Ealing, Streatham and Hackney.. In such cases the ruling regards all as one town, as in the first assumption.

502. If the traveller resides in a certain place for ten days but without the intention and firm decision to do so, in this case his travelling state does not end. For example, if he put a certain condition on his residence saying to himself: 'If it does not become colder, I shall stay in this town', then he stays ten days, in this case there is no consequence and he continues in the *qaσ≅r* state.

503. It is not a condition for the residence that ends the travelling ruling that the person has the prayer duty, so if a woman during her menses travels to a town with the intention of residence, and she becomes resident, so she must offer full prayers (*temām*) when she becomes pure.

504. If the traveller resides in a town and prays *temām* throughout the ten days, then after this he stays a while in his place of residence, here keeping on praying *temām*, he does not need the intention of residence for another ten days, but he stays on *temām* until he travels in any time he likes.

Also, after the elapse of the ten days, it does not affect his residence if he stayed in a place different to the one which he was residing in during the ten days, because the single location of the residency is conditional on the first ten days not the days that follow. That said, he must abstain from leaving and covering a *shar'ī* distance so as to stay on *temām*, so if he did leave and cover the *shar'ī* distance, his residence ends and his prayer becomes *qaσ≅r*, or he has to set the intention anew.

505. If the traveller came to a town and did not decide to reside in it and prayed *qaσ≅r*, he has the right afterwards at any time to set the intention of residing if he so wishes, provided that he counts the period starting from his decision (to reside); so if he decides on the fifth day of his presence in that town to stay in it until the fifteenth day, he will be regarded as resident

and he has to pray as *temām* from that date, as was explained in how to count the ten days (no. 498).
And if he takes the decision to reside during the noon, afternoon or evening prayers, he must pray in full.

506. If he changes his mind from the intention of residence after praying a 4-*rak'ah* prayer as *temām*, in the time that is not *qeδ≅≅ā'*, he must continue to pray *temām* for the rest of his prayers until he leaves the town on the day that he changed his intention or the days that follow. However, if he changes his mind from the intention of residence before praying any 4-*rak'ah* prayer as *temām*, his obligation will be *qaσ≅r*.
Regarding fasting, if he has prayed a 4-*rak'ah* prayer as *temām* as we mentioned, he must continue with his fasting and it is valid until he leaves the town; but if he has not prayed a 4-*rak'ah* prayer as *temām*, then except the day he is in, his fasting is not valid; and the fast will be void for the day he is in, if the change of the intention took place before *zewāl*, but will be valid if after *zewāl*.

507. If he changes his mind from the intention of a ten-day residence but doubts whether he has prayed as *temām* so that he would continue to pray *temām*, or whether he has not offered that prayer, he should regard himself as having not prayed a full prayer, meaning that he must pray *qaσ≅r* not *temām*.

Third: Hesitation between travelling and residing

This takes place when a traveller who has covered the *shar'ī* distance and arrived at a town or place but hesitated and failed to decide whether to reside in that place for ten days or to leave it, and he stays likewise without the intention to reside for ten days; in this case he should continue to pray *qaσ≅r* up to the thirtieth day, then he has to pray as *temām* and to fast starting from the first hour of the thirty-first day, even if he wants to leave that town on that day, or after two, three or more days, without the need to set an intention for residence of ten days or more.

508. In order that this ruling applies to the hesitant traveller, he must stay hesitant in one town during the thirty days, so if, during that period, he goes to another town or travels the *shar'ī* distance from it, even if not covered in one go, the succession of the thirty days would end and he must start counting again from the time he starts residing in one town. That said, the succession is not disrupted by leaving during the day to go to villages and nearby places that lie within a distance less than the *shar'ī* distance without spending the night there.
And when the thirty days are complete and he starts to pray *temām*, he keeps on praying *temām* as long as he is in that place (where he is hesitating between travelling and residing); but when he leaves it by a distance equal to or more than the *shar'ī* distance, the *temām* ruling will no longer apply and he is a traveller again, praying *qaσ≅r*, unless he sets the intention of residing for ten days or he becomes hesitant again for thirty days, in which case he must start praying *temām* on the thirty-first day. After the thirtieth day, leaving by a distance less than the *shar'ī* distance without spending the night will not change his status, as we have mentioned for the person whose intention is to reside.

509. To count the thirty days, if it is from the beginning of the day at dawn or the night before it, in this case it is thirty days and twenty-nine nights; but if it is after dawn, then it must include the first and the thirty-first days, thus the total is thirty-one days and thirty nights. And when counting the thirty days, it is not sufficient to regard it as a lunar month if that month ends up less than thirty, but rather one must add another day to complete thirty.

(D) Exceptions in the *qaσ≅r* ruling

The exalted Sharī'ah has excluded some persons who cover the *shar'ī* distance from the obligation of praying *qaσ≅r* (shortened prayer) and kept them on the *temām* ruling regardless of the distance they cover; this applies to two cases: the traveller

undertaking a journey for sinful reasons or in disobedience (*sefer ma'σ≅iyeh*) and the person who travels a lot (*kethīr as-Sefer*). The rulings regarding these are as follows:

First: The sinful traveller

510. A person is regardedas a sinful traveller in the following situations:
a- His aim from travelling is toavoid performing an obligation, such as running away from a lender who is requesting the return of the debt, and the traveller is capable of paying it in the place of residence.
b- His aim from travelling is to commit a forbidden act, such as adultery or killing someone without the right to do so.
c- That the travel itself is forbidden for him, such as if he vowed not to travel on a certain day then he disobeyed and travelled.

511. If the person uses a misappropriated vehicle, such as a car he had stolen, to travel, in such a case:
1- If his usage is for the purpose of running away, in this case he must pray *temām*.
2- If his usage is not for that purpose, in this case he is regarded as a traveller (prays *qaσ≅r*), although he has committed a sin by using a misappropriated thing.

512. Included under the sinful travel is every journey the aim of which is not regarded as reasonable, such as travelling to hunt animals for leisure, although it is not forbidden in itself.

513. One who is travelling for an aim in which both allowed and forbidden things are present is regarded as a sinful traveller, unless the forbidden aim is secondary and it is not regarded as a separate reason for travelling, such as if someone travels to work in a company knowing that he is going to shake hands with a woman (not one of his unmarriageable kinship), in this case shaking the hand is a secondary matter not sufficient reason on its own for the journey.

514. The person who is returning from a sinful travel should pray *qaσ≅r* if the return travel is a one-stage *shar'ī* distance and the return travel is not forbidden as described above.

Second: One who travels a lot

We mean by this someone for whom the travelling is repeated to an extent that it becomes a permanent state, in which case he is called '*kethīr as-Sefer*' or '*dā'im as-Sefer*' (travelling all the time); this applies to:

First: One whose job is travelling

515. What we mean by one whose job is travelling is someone to whom travelling itself is a job and profession, such as car drivers or aeroplane pilots and their assistants and others for whom travelling from one town or country to another is their profession and job, be it to take passengers or transport vegetables or merchandise etc. The ruling of such people is to pray *temām* in the journey to the destination, and on the journey back from the destination and at the place they stay in, and fasting will also be valid.

516. It is not a condition regarding those whose job is travelling that travelling continues all year round; rather it is valid when travelling is a profession for a certain season (i.e. winter etc) in the year, or certain season (i.e. religious etc) such as pilgrimage, and his travel is not for a very short period, such as one or two weeks, but it has to be longer than that; or that the duration of each trip may be short but he does it so many times during the year, such as the guides who go to pilgrimage, *'omreh* and visiting the shrines many times every year, so much so that their job is regarded as travelling.

517. If the person whose job is travelling travels for something which is not related to his job, such as if he travels to take his family or furniture free of charge, or if he travels on his own or with his family to visit a friend or to work on some official documents, then if he is someone who has taken travelling as a permanent job, not seasonal, he must pray *temām* during that travel as in his other travels; and if his job is travelling in certain seasons, the

ruling regarding him is also praying *temām* and fasting, if the journey takes place during his travel season not at other times when he does not travel.

518. It does not change the status of one whose job is travelling if he stops every now and then. However, the duration of any break or stoppage in his travel must be proportional to the distance of the journey he covers in his travel; so if someone who has the status of 'one whose job is travelling' travels from London to the sacred tombs during the seasons of pilgrimage, *'omreh* or visits will not change his status if he misses one or two travels during that year, while it may change it if his stoppage for one week or two weeks takes place if he is travelling between London and Birmingham, for example.
Therefore, the status of someone whose job is travelling does not – always – change if he stays in his homeland for ten days, or if he sets the intention of residing somewhere other than his homeland for ten days, as long as this is proportional with the nature of his job; so he must pray *temām* the moment he commences his travel again, whether he resided for that period of time for a compelling reason or not, although it is better to combine both *qaσ≅r* and *temām* on his first travel.
519. Someone who has just taken permanent travelling as his profession and started it, so that this status becomes his as would commonly be accepted and so that the Sharī'ah consequences apply, this is not necessarily subject to the condition that his travel gets repeated a certain number of times, three times for example; rather if this status is valid for less than that, he should start observing the consequences and pray *temām*. But if this status will not apply until a greater number of journeys have been completed, in this case he must wait until this has taken place before starting to pray *temām*.

Second: One whose travel is a pre-requirement for his job

520. What is meant by these people are those who do not take travelling and moving between places as a profession or job like the car drivers or ships' captains, but they have profession other than travelling such as accountancy or repair, but they choose to practise it through travelling, not just from one base, or that the profession itself requires travelling and wandering, such as shepherds or wood collectors; all these professions involve travel, but the travel is not their profession. However, despite the difference in the nature of the job, the rulings regarding both categories are the same with all the details above, such as the seasonal job, transport of the family, residing for ten days and so on.
Anyone in this category must pray *temām* in both his residence and travel and must pray like the person who is residing in his homeland.

Third: One who travels repeatedly to reach his work

521. The third case excluded from the *qaσ≅r* ruling applies when someone has to travel repeatedly and a lot in order to arrive at the place of the work that he lives from; this is when his residence is one town and his work in another and the two towns are separated by the *shar'ī* distance and he cannot do his job unless by going to it a lot of times, in which case the status of '*kethīr as-Sefer*' becomes valid; it is sufficient that he resides six days and travels to his place of work one day in a way that the total number of days in which he travels are four days in a month, whether separated over the days of the months and its weeks or occur close together in one part of it (the month), not to mention the person who travels in every day once or twice. The ruling regarding such a person is praying *temām* and fasting at the place of work and on the way to it, back and forth, unless his place or work is a residence for him, in which case he must pray *temām* at the place of work not on the way to it and back from it.

522. The status of travelling a lot must be something noticeable in his life, even if in a certain season every year, or for unusual reasons and continued for several months, such as for courses that takes six months for example. If this is not the case and travelling is repeated by him for an unusual reason over a shorter period of a month or two, for example, then he is not regarded as travelling a lot.

523. It is not conditional for the *temām* ruling to be (only) when someone whose travelling is for production and profit, but this ruling is valid for someone whose travelling has been repeated even for matters other than work, such as leisure, studying, medical treatment etc.

(E) The start of the *qaσ≅r* ruling

Although the principle of counting the *shar'ī* distance is from the last house in the town that the traveller is leaving, the ruling of *qaσ≅r* for the traveller does not start the moment he leaves the last house; likewise, he does not stay on *qaσ≅r* when returning to his homeland until he reaches the first house, rather for every town or place, even if rural, there is a boundary that the scholars call '*η≅add at-Terekhkhoσ≅*' (the limit of leave) from which the *qaσ≅r* ruling starts and to which it ends. The details are as follows:

524. What is meant by *η≅add at-Terekhkhoσ≅* is an imaginary circle that radiates from the last house of the town to the point where the traveller disappears from view from the houses, or rather the point wherethe onlooker at the last house would see the traveller as a ghost-like body with undefined features; whether the traveller himself can still see the houses of the town or their clearly defined features , and whether he can still hear the call to prayer (*athān*) or not, is not relevant, because the parameter is the disappearance of the traveller from being seen not the disappearance of the town from his eyes. In addition, this criterion is based on flat lands on which the person stays visible until he gradually changes to a ghost-like body, so there is no importance in the disappearance of the traveller because he hasgone down into a valley or entered a tunnel, where, were it not for the valley or the tunnel, he would still be seen.
Thus, the traveller, when leaves his town and passes the last of its houses, stays on *temām* until he leaves this boundary (*η≅add at-Terekhkhoσ≅*), at which point he starts praying *qaσ≅r*; and on his way home, he stays on *qaσ≅r* until he enters the boundary and starts praying *temām*.

525. There is no effect on the *η≅add at-Terekhkhoσ≅* if the towns are attached to each other, but the traveller should imagine that the land is empty without buildings then estimate this boundary as explained above and act accordingly. In this case, this might end at the beginning of the attached town, or in the middle, according to where the boundary falls.
Also, the dispersion of the houses in villages and their spread does not affect the way the last house is identified as the last of the houses of that town, even if it is on its own and at a distance from the rest of houses, but it should be at a relative distance that is not commonly regarded as being outside that town.

526. It seems that the matter of *η≅add at-Terekhkhoσ≅* is specific to travelling from the homeland and returning to it, so it does not concern someone who is not residing in a place other than his homeland for ten days, nor those hesitating for thirty days, who must start with the *qaσ≅r* ruling as soon as they leave the town, not waiting until they leave the boundary, although it is better to wait until they reach it.

527. If the traveller believed that he had passed *η≅add at-Terekhkhoσ≅* and so prayed *qaσ≅r* then he discovered that he had not yet reached it, in this case he must repeat the prayer; if he is still within the area of the boundary, he must pray it *temām*, and if he is outside the area, he must pray it *qaσ≅r*; and if he does not repeat it within the time, he must offer it outside the time as *qeδ≅≅ā'*, according to its state at the time that it should have been repeated.
If the person returning to his homeland thought that he had entered the boundary or *Terekhkhoσ≅* and prayed *temām* then discovered that he was still outside it, he must repeat the prayer; if he is still outside the area of the boundary, he must pray it *qaσ≅r*, and if he is inside the area, he must pray it *temām*; and if he does not repeat it within the time, he must offer it, outside the time as *qeδ≅≅ā'*, according to its state at the time that it should have been repeated.

528. To decide upon the obligation of the duty, a traveller must ascertain whether he has entered or left the *Terekhkhoσ≅* boundary; if in doubt, he must continue to act as he is doing currently: if he was leaving and doubted that he had passed the boundary, he must stay on *temām*, and if he was returning and doubted that he had entered it, he must stay on *qaσ≅r*.

529. If something takes place forcing the traveller to return and enter the boundary or *Terekhkhoσ≅* after leaving it, he must pray as *temām* until he leaves it (again).

(F) Shortcomings in the prayer of the traveller

The traveller might commit mistakes in the prayers he offers while travelling, offering a *qaσ≅r* prayer when it should *temām* and vice versa; such shortcomings are detailed as follows:

530. If is duty is *qaσ≅r* (shortened prayer) but he prayed *temām* (full prayer), one of the following situations will apply:

First: The act in contradiction to the *qaσ≅r* ruling was intentional and done with awareness; in this case the prayer is void and he must repeat it.

Second: The act occurs out of ignorance of the Sharī'ah that makes the *qaσ≅r* obligatory on the traveller; in this case his prayer is valid.

Third: He knows that the Sharī'ah makes the *qaσ≅r* obligatory on the traveller but he imagined that the Sharī'ah meant a journey that did not include his, such as if he decided to cover half of the specified distance on his way to the destination and half on his way back and believed that in this way he must not pray *qaσ≅r*; in this case his prayer is valid.

Fourth: The traveller was unaware that he was on a journey and, for example, was still in his own town, so prayed a *temām* prayer, then remembered that he was on a journey; in this case he must repeat the prayer. However, if his lack of awareness continued until the elapse of the time allocated for that prayer, there is no *qeδ≅≅ā'* to carry out.

Fifth: The traveller knew that the Sharī'ah made *qaσ≅r* obligatory on the traveller, but he was unaware of that ruling when he wanted to pray, i.e. he was aware of his travelling state, but unaware of the ruling; in this case the ruling is like the previous one.

Sixth: The traveller was heading towards a certain town but thinking that the distance was less than the *shar'ī* distance so he prayed *temām*, then he discovers that the distance is equal to the *shar'ī* distance (or more); in this case his ruling is like the fourth case above.

531. If a *temām* prayer was the duty of someone but he prayed *qaσ≅r*, his prayer is not valid and a *temām* prayer must be offered, whether he realised his error within the allocated time of that prayer or after its elapse. There is one exception to this, which is the traveller who resides in a certain town for ten days but prays *qaσ≅r* out of ignorance of the ruling that the residing traveller must pray *temām*; in this case his prayer is valid. The ruling of validity is also probable in the cases in which a person is ignorant of the ruling of *temām*, such as sinful travel, to hunt animals for leisure or the other cases which are excluded from the *qaσ≅r* ruling to the traveller, making it his duty to pray *temām*; although it is better to repeat the prayer.

532. If the time of an obligatory prayer has started and the person is in his town but has not prayed yet, then he starts his journey, which is for an acceptable reason (i.e. not sinful travel etc), and wants to offer the prayer in his travel when its time has not yet elapsed, he must pray it *qaσ≅r*. And if the time of an obligatory prayer has started and the person is on his travel back to his town but does not pray until he reaches his town when the allocated time of the prayer has not elapsed yet, he must offer it *temām*.

533. If the traveller starts praying, intending, out of ignorance or lack of awareness, to pray *temām*, then realises during the prayer that he must pray *qaσ≅r*, his prayer becomes void if his realisation takes place after starting the *rokū'* of the third *rak'ah*; but if he realises this before that, he should complete it as two *rak'ahs* and his prayer will be valid. If this takes place when he is standing in the third *rak'ah*, then he must go down to sit and perform *teslīm*

without *teshehhod*, and his prayer is valid as *qaσ≅r*, then he performs the two *sahw* prostrations for adding a standing, as an obligatory precaution.

534. If the traveller missed a prayer during his travel, he must offer it as *qeδ≅≅ā'* as *qaσ≅r* even if the *qeδ≅≅ā'* took place when he was back in his homeland; and if the traveller wanted, during his travel, to offer as *qeδ≅≅ā'* a *temām* prayer which he missed in the homeland, he must offer it as *temām*; this is because in *qeδ≅≅ā'*, it is the state in which the traveller was in when he missed the prayer, not when he is offering it later as *qeδ≅≅ā'*.

535. The traditional (*meshhūr*) ruling is that the traveller has the choice between *qaσ≅r* and *temām* when praying in the Holy Mosque, Mecca, the Mosque of the Prophet (sawa), Medīna, the Kūfeh Mosque and Imam H≅osain's shrine, but it is an obligatory precaution to pray as *qaσ≅r* in these four places, and to abstain from *temām* when the person does not intend to stay for ten days, or after hesitation for thirty days as explained – so he must pray *temām* if he has the intention to stay for ten, or more, days, and on the thirty first day for the hesitant.

536. It is recommended that the traveller recites, after every *qaσ≅r* prayer, the following *thikr* thirty times: '*Subη≅ān-Allāh, wal-H≅amdo Li-Llāh, wa Lā Ilāha Illa-Llāh, wa-Llāho akbar*.'

Chapter Five

Congregational Prayer

Σ≅alāt al-Jemā'ah

Praying in congregation is one of Islam's most important rituals and one of the greatest recommended acts; its recommended status is emphasised by all Muslims and God's reward for performing it is great. Congregational prayer is better than praying on one's own, and it is best in the daily obligatory prayers, both within the allocated time and outside it, but especially within the time, and more so at the dawn, sunset and evening prayers. But if someone had vowed to pray in congregation and the object of the vow was achieved, in this case congregational prayer becomes obligatory on him as a fulfilment of his vow.
The relation between the leader and the follower in congregational prayers is called *iqtidā'* (lit. following a model, i.e. doing what the leader does).
The details of this kind of prayer are as follows:

(A) Prayers where *iqtidā'* is allowed

537. *Iqtidā'*, i.e. following the prayer *imam*, is allowed in all obligatory prayers – the daily prayers, Friday prayer, *āyāt* (signs) prayer etc, except the *τ≅ewāf* (circumambulation) prayer since there is no strong evidence/proof on *iqtidā'* in this.
As for the recommended prayers, *iqtidā'* is not allowed, even if this takes place as a result of a vow or the like, and there is no distinction in this between the daily recommended prayers or others. The exception is the *istisqā'* (praying for rain at times of drought and shortage in rainfall) and Eid – if it is not obligatory (see the chapter on Eid prayers), in which case *jemā'ah* (congregation) is allowed.

538. In contrast to other obligatory prayers, the Friday and the obligatory Eid prayers are not valid except in congregation.

539. It is recommended for the person who has prayed alone to repeat it in congregation, whether as a leader or follower, provided that the congregation includes at least one follower who has not prayed before.
540. It is not a condition for the correctness of *iqtidā'* that both the leader and the follower are praying the same prayer, but it is sufficient that they are praying the same type of prayer such as the daily prayer; so if one of them is praying the evening prayer and the other the sunset prayer, or one of them is praying within the time and the other *qeδ≅≅ā'*, or one is praying *temām* and the other *qaσ≅r*, following is allowed. However, if the type is different, such as if the leader is praying the *āyāt* prayer and the follower a daily prayer, for example, following is not valid.

541. Things may take place which make it obligatory that the person offers the prayer as a precaution; these fall in four situations:
1- That he doubts the correctness of his prayer that he has offered; in this case he repeats it as a precaution.
2- That the obligation is to repeat the prayer, such as the cases of combining both *temām* and *qaσ≅r* praying.

3- That the doubt is in the obligation itself, such as when a woman combines the acts during *istiη≅ādeh* and what the woman during the menses abstains from.

4- That the prayer is being offered to remedy doubting the number of *rak'ah*s, which is the *iη≅tiyāτ≅* prayer.

In these cases, following an *imam* is not allowed when the follower does not act in a precautionary way (*moη≅tāτ≅*) in his prayer. However, if a follower does act in a precautionary way, then *iqtidā'* is valid in the first three cases, even though the reason for precaution is different, but not in the fourth case even if the doubt assailed both of them, in which case each of them should offer the *iη≅tiyāτ≅* prayer on his own.

(B) Conditions/requirements and method of *iqtidā'*

542. The *iqtidā'* is the relation between the *imam* (leader) and the *me'mūm* (follower) in congregational prayers. This takes place with the follower setting the intention when starting his praying to pray following the leader, so the relation originates from the follower and has nothing to do with the leader, which is why it is not conditional that the leader intends to pray with a congregation when he starts praying. In other words, the congregation takes place by the intention of the follower not the leader.

543. There are certain conditions for the correctness of *iqtidā'*:

1- The follower must specify the person he is going to follow; this being done mentally is sufficient, so if his intention was to pray following the person standing in front believing that he is praying behind A then he discovers that he was B, his congregational status is valid, provided that the conditions of the *imam* in B are fulfilled.

2- The leader must be praying alone, meaning that he himself is not following a leader; so *iqtidā'* is not valid if following a person who is following (*iqtidā'*) a third person.

3- The intention of the congregation must take place from the start of the prayer, so it is not acceptable for someone who has started to pray alone then to set the intention to partake in congregational prayer (after starting); however, the reverse is allowed, i.e. changing his intention from a congregation to praying alone is allowed.

544. It is allowed – from the standpoint of principle – that the follower joins congregational prayer in any *rak'ah* which the leader has reached, if the leader is in the position of standing to recite or performing the the *thikr* of *tesbīh*, or the position of *rokū'*, but if the leader has ended the *rokū'* and the person cannot join him, it is not allowed to join until the leader stands up again.

545. If he finds the leader bowing in *rokū'* and he is at a distance from the congregation and fears that he will not reach the line of the prayers in time, he is allowed to recite *tekbīr* and bow outside the lines, then to walk to them while they are in *rokū'*, provided that he does not fail in any other duties of the prayer and the congregation.

546. It is obligatory on the follower to follow the leader in the acts and that he does not carry out an act before the leader, whether a *rokn* or otherwise, but carries them out either after the leader (but without a long gap) or with him at the same time. Regarding the recitals, however, such following is not obligatory except in the *tekbīreh* of *iη≅rām* in which the follower is not allowed to carry it out before the leader, nor at the same time.

547. If the follower fails to follow the leader properly, there are two situations:

First: If this took place intentionally and with full knowledge of his duty, in this case *iqtidā'* is void and he has had not partaken in congregational prayer; his prayer itself might become void if he did, intentionally, things that would invalidate the prayer (on his own).

Second: If this took place out of lack of awareness, in this case his *iqtidā'* is not void and he has to start to follow the leader as appropriate; this may occur in the following situations:

1- If he raises his head from bowing or prostrating before the leader through lack of awareness. Here there are two possibilities:

a- That he realises this when the leader is still bowing; in this case he has to go back to bowing and continue his prayer, but if he fails to go back his congregational status becomes void.

b- That he realises this after the leader has raised his head; in this case he should continue his prayer without consequences.

2- If he begins bowing or prostrating when the leader is still standing or sitting. Here, if the leader is still standing or sitting, he must go back to his position and follow him, without any problem resulting from the addition of bowing or prostrating as a result of following the leader; but if he realises this when the leader has begun bowing or prostrating, he must stay in his position of bowing or prostrating and follow his prayer with the leader.

3- If the leader bows and prostrates but the follower fails to follow him through lack of awareness or not knowing it until the leader raises his head. In this case he should perform what he omitted and continue his prayer with the leader.

4- If both the leader and the follower rise up from a bowing or prostrating position, but the follower, through lack of awareness, reaches the standing or sitting position before the leader. In this case he should stay as he is until the leader reaches the position then continue his prayer with him.

548. It is not allowed for the follower to follow the leader if the latter, through lack of awareness, added a prostration, for example; his abstention from following him will not invalidate his congregational status.

549. For the *iqtidā'* to take place, the leader and the followers must be in one place from the beginning to the end in a way that they would commonly be regarded as present in one place, not separated; thus a congregation is not valid if a wall or the like is present that prevents seeing, or if there is a big gap between members of the congregation; here, it is essential – as an obligatory precaution – that the gap between the spot on which any one of them stands and the spot on which the one behind him prostrates is not more than a distance that can possibly be crossed by one big step, based on the widest of steps by a normal human being.
The exception to this is the woman who is following a man; in this case she is allowed to follow in prayer with a separation (wall etc) or a gap between her and the leading man or between her and the male followers.

550. The connection with the congregation (described above) will not be invalidated by the belief of a follower that the prayer of those praying in front of him and connecting him to the congregation is void, because the congregation exists as long as the prayer is being carried out; this includes the presence of a follower who is not obliged to pray, such as a child or someone who is insane. Also, it does not matter if someone who is behind starts *tekbīr* before those in front of him, as long as they are all about to perform *tekbīr*, nor if something happens that would invalidate the prayer of one of the followers, or obliges him to pray alone, or to end of his prayer before the leader, such as if he was praying *qaσ≅r*, unless the separating distance becomes wide, in which case he must proceed forward to effect the connection.

551. The follower does not depend on the leader's acts in prayer except in the recital of the Fātiη≅ah and the chapter after it, according to the following:

a- The follower starts the first *rak'ah*; in this case the follower does not recite the recital in the two *rak'ah*s (i.e. he just listens to the leader's recital).

b- The follower starts the second *rak'ah*; in this case he does not recite his first *rak'ah* (i.e. he listens to the recital of the leader's second *rak'ah*), then the follower recites for himself his second *rak'ah* since the leader will be performing *thikr* not recital.

c- The follower starts in the third *rak'ah*, or the fourth; in this case the recital is no longer to be performed if he starts and the leader is bowing in *rokū'*; however, if he starts and the leader is still standing performing *thikr*, in this case he has to recite for himself.
Based on this, entering a congregational prayer is valid according to the following:

1- If the leader is in the first *rak'ah*, the follower may start with him after the *tekbīreh* of *iη≅rām* even before he lifts his head from *rokū'* (the last limit of catching up); in this case he does not recite for the two *rak'ah*s and follows the leader in his prayer.

2- If the leader is in the second *rak'ah*, the follower may start with him as above, and he may perform *qonūt* with the leader, but the omission of the recital is only for his first *rak'ah* and he should follow the congregation according to his own obligation, ensuring that he follows the leader in the acts and observes the last limit of catching up which is the *rokū'*; but here he does not perform *teshshhod* with the leader because he (the follower) is still in his first *rak'ah* while the leader is in the second, but he stays in a position ready to stand up (waiting for the leader to finish the *teshshhod*), then stands up with the leader to perform his second *rak'ah* (the third for the leader), recites for himself the Fātiη≅ah and another chapter when the leader is performing *thikr* in the third *rak'ah*, and when he goes down with the leader for prostrating he must perform *teshshhod* when the leader will be (already standing and) performing *thikr* in the fourth *rak'ah*. Here if the follower is praying a 2-*rak'ah* prayer, he should perform *teslīm* and end his prayer and can follow another prayer after the leader, but if he is praying a prayer consisting of more than two *rak'ah*s, he must stand up for *thikr* and catch up with the leader in his *rokū'*, and when the leader reaches the last *teshshhod*, here if the follower's prayer is 3-*rak'ah* one, he should perform *teshshhod* and *teslīm* with the leader, but if it is a 4-*rak'ah* prayer, he should stand up to offer the last *rak'ah*, either before the leader's *teshshhod* of after he finishes it, without him (the follower) performing it obviously.

3- If the leader is in the third *rak'ah*, the follower may start with him in *rokū'*, in which case he does not recite for this *rak'ah*; or he may choose to start when the leader is performing *thikr*, in which case he must recite (the Fātiη≅ah and chapter); therefore, if he wants to enter the prayer, he must see whether he will be able to recite if the leader is in the *thikr* position; this is not different to the last assumption except that his second *teshshhod* will fall at the same time as the leader's last *teshshhod*; here if the follower's prayer is a 2-*rak'ah* one, he will perform *teslīm* with the leader; if it is a 3-*rak'ah* one, he will stand up to offer one *rak'ah*; and if it is a 4-*rak'ah* one, he will stand up to offer two *rak'ah*s.

4- If the leader is in the fourth *rak'ah*, how to enter is the same as the last assumption; thus the follower would have caught up with one *rak'ah* in congregation, so he does not perform *teshshhod* with the leader, but stands up – before or after the *teshshhod* without carrying it out – to complete the rest of his prayer alone.

552. When the follower has to perform the recital for himself, he must do this whispering, even if the prayer is originally a *jahriyyeh* (to be recited aloud).

553. If the follower is reciting the Fātiη≅ah and a chapter for himself – when he had to do that himself – and he fears failing to perform *rokū'* with the leader if he was to complete the chapter, in this case he can recite the Fātiη≅ah only; but if he fears that if he will not be able tocomplete the Fātiη≅ah, he is not allowed to cut it short, but must complete reciting it in the hope of catching up with the leader – then if he manages to catch up with him, that is fine; otherwise he has to continue with his prayer alone, reciting a chapter after the Fātiη≅ah.

554. The congregation is not invalidated by the addition of *sojūd* or *rokū'* in some cases (which were mentioned earlier) in order to follow the leader, but such additions are not allowed when one is praying along, nor allowed by the leader (in a congregation).

555. If, after finishing the prayer, a follower discovers that his following was not correct, the prayer is still valid, unless he doubts the number of *rak'ah* and had to rely on the leader in this; in this case he has to offer his prayer again because a *rak'ah* might have been added or omitted in his prayer.

(C) The conditions/requirements of the congregation leader

556. There are many requirements for the leader of congregational prayer:

1- Reaching the Islamic legal age (*bolūgh*).

2- Sanity, so it is not acceptable for the insane to lead congregational prayer, unless his condition occurs intermittently, in which case his leadership of prayer is acceptable when he is sane.

3- Purity of birth, so one who was born outside marriage cannot lead a congregation.

4- Belief.

5- He must not be *i'rābi*, who is one living in *bādiyeh* (where the Bedouin live) or the like, in a way that makes it difficult to rely on the correctness of his prayer.

6- Masculinity if the follower(s) is/are male, otherwise a woman can lead other women in prayer, but of course men can lead women in prayer.

7- Justice, which is the practical adherence to the Sharī'ah in doing its obligations and abstaining from its prohibitions through having a personality that is essentially God-fearing, so that justice is a question of straightforward conduct that comes from within the person not merely behaviour on the outside.

8- The leader must recite the Fātiη≅ah and the other chapter correctly, hence if he has a problem in the correctness of his speech or recital, it is not allowed for the follower to follow him; that said, it is not a problem if the follower is better at recital or has clearer speech than the leader.

9- The leader must be able to pray standing if the follower prays standing; the disabled, however, must not be followed except by someone who is like him.

However, being free from other conditions is not a condition, whether in ablution or otherwise, so leadership by someone who is performing *teyemmom* of someone who is performing ablution is allowed, someone who has a splint or bandagecan lead someone without, the woman during *istiη≅ādeh* can lead the pure, and the amputee can lead the full-bodied, and so on.

10- The prayer of the leader must be correct as far as the follower is concerned, so if the follower comes to know that his leader has performed ablution with impure water out of ignorance of its impurity, he is not allowed to follow him. Nor is he allowed to follow him if he comes to know that he does not observe the correct order in his washing from *al-H≅adeth al-Akbar*, relying on his opinion that this is allowed (*ijtihād*) or follows the opinion of a scholar (*teqlīd*), when the follower does not accept the correctness of such washing neither as a *teqlīd* nor *ijtihād*. The same applies to cases in which the ignorant is not excused as far as the follower is concerned. However, if he comes to know something which in the ignorant is to be excused, such as if he sees an impurity on the leader's dress and the latter does not know that, in this case he is allowed to follow him.

11- The leader must not be higher (in his location during prayer) than the follower by more than a handspan, but he is allowed to be lower than the follower; this is if the ground has a clear high and low areas. But if this is not clear, such as on the land that has a slight and gradual inclination, in this case it is allowed for the leader to stand on any spot.

12- The leader must not stand in a position that is level with the follower or behind him; for two men praying as a congregation, it is allowed that they stand side by side on the same level, not to mention the follower standing on the same level behind the leader, although the precaution of standing in a position behind the leader should not be disregarded. It is also better for the single male follower to stand to the right of the leader, a little behind so that the follower's prostrating spot is at the level of the leader's knee spot. However, if the leader is a woman, there is no doubt that her standing on the same level as her female followers is allowed, and is indeed better.

Chapter Six

Offering Prayers as *Qeδ≅≅ā'*

(A) *Qeδ≅≅ā'* for one's self

557. *Qeδ≅≅ā'* is performing the act of worship outside its time (after its allocated time has elapsed); while *adā'* is performing the act within its allocated time. Here, we discuss the *qeδ≅≅ā'* of prayers.

558. It is obligatory to offer prayer as *qeδ≅≅ā'* in the following situations:

First: If the person did not offer the prayer within its allocated time out of forgetfulness, ignorance or disobedience of God; this includes the following types:

a- The Muslim, including one who is *murtedd*, i.e. has abandoned Islam, so there is no *qeδ≅≅ā'* on the unbeliever before embracing Islam.

b- The *baligh*, i.e. the person who has reached the Islamic legal age, so *qeδ≅≅ā'* is not obligatory on what he/she did not pray in his/her childhood.

c- The sane, so there is no *qeδ≅≅ā'* for the prayers which the insane failed to offer at the times of insanity.

d- Purity from the menses or *nifas* for women, so there is no *qeδ≅≅ā'* for the prayers offered during the time of the menses or *nifās*.

Second: If the person did not offer the prayer in its time because of being incapable to do so, such as if he was sleeping, under the effect of anaesthetics, unconscious if this was of his own making, even if he had little control over it; however, if losing his conscious took place outside his control, there is no *qeδ≅≅ā'* for the prayers that fall during that time.

Third: If outside its allocated time, it was discovered that a prayer offered within its allocated time was void.

559. For the ruling that there is no obligation to offer *qeδ≅≅ā'* for the above listed situations, it is a condition that the excuse cover the entire time, so if the child becomes *bāligh* and there is still time to offer the prayer and its pre-requirements, even one *rak'ah* with *teyemmom*, but he does not offer it, he must offer it as *qeδ≅≅ā'*. Also, if the person was able to offer the prayer in the beginning of its allocated time but he did not offer it, then he fell unconscious, for example, it is obligatory on him to offer it as *qeδ≅≅ā'* even if the excuse continued until the end of the time.

560. It is not obligatory on the Muslim who is not following the Ahlol Bayt (as) school of thought (i.e. the Shi'ite Ithna-'asheri school) to offer as *qeδ≅≅ā'* his prayers that he had offered before starting to follow the Ahlol Bayt (as) school of thought, as long as he was conforming to the rulings of his past school of thought, or to the rulings of the Ahlol Bayt (as) school if he believed that following it was valid even if he was unaware of the sectarian issue.

561. It is obligatory that the following prayers are offered as *qeδ≅≅ā'* by the Muslim who has reached the age of *teklīf* (the Islamic legal age):

1- The daily prayers, except the Friday prayer which, if its time elapses, he must offer as *qeδ≅≅ā'* as noon (*dhohr*) prayer not Friday prayer.

2- The *āyāt* prayers, except if he did not know that a partial eclipse had taken place, as mentioned before.

3- Obligatory prayers at a certain time, for example as the result of a vow (*nathr*), covenant (*'ahd*) or oath (*yemīn*), if he could not offer it at its time; the same applies if the prayer intended in the vow was a *nāfileh*, which has a certain time, such as the *newāfil* (additional prayers) of the daily obligatory prayers, as an obligatory precaution, which is better if the *nāfileh* was not time-bound but was set in the vow for a certain time but was offered in that time.

562. It is recommended to offer the *qeδ≅≅ā'* of the daily additional prayers and other time-bound *newāfil*.

563. It is not obligatory to hasten for *qeδ≅≅ā'*, since it is allowed to be offered during the whole of the lifetime, unless this leads to complacency in offering the obligation, in which case the person must hasten to do it. That said, it is recommended that one should hasten to carry out the *qeδ≅≅ā'* in normal circumstances.

564. *Qeδ≅≅ā'* is not bound by a certain time or a certain situation regarding residence or travel, but it is allowed to offer as *qeδ≅≅ā'* any prayer in any time, in residence or in travel, so the *qeδ≅≅ā'* of night prayers may be offered during the day and vice versa; also the *temām* prayers may be offered as *qeδ≅≅ā'* in travel and the *qaσ≅r* in residence.

565. Order in *qeδ≅≅ā'* (offering the prayer which was not offered at a given time before the prayer which was not offered at a later time) is not obligatory, so if someone failed to pray for several days, he may start with any prayer. However, it is not acceptable for someone who failed to offer both the noon and afternoon prayers or both the sunset and evening prayers to start (in his *qeδ≅≅ā'*) with the afternoon prayer before the noon prayer, or the evening prayer before the sunset prayer; but he is allowed to offer *qeδ≅≅ā'* of the noon and afternoon prayers, for example, before the *qeδ≅≅ā'* of the dawn prayer, or the sunset and evening prayers before the noon and afternoon prayers.

566. It is allowed to offer *qeδ≅≅ā'* in a congregation, both as a leader or a follower, rather it is recommended.

567. It is allowed for someone who has to carry out *qeδ≅≅ā'* to pray additional (*newāfil*), however if the two compete, it is better to carry out *qeδ≅≅ā'* before, and indeed it may become obligatory if, for example, delaying it might lead to complacency in it.

568. If someone doubts the existence of prayers that require *qeδ≅≅ā'*, he should disregard his doubt; and if he is certain of their existence but doubts their number, he may decide on the least probable number, although it is better to offer the highest probable number.

(B) Offering *qeδ≅≅ā'* for the dead

A person must offer *qeδ≅≅ā'* prayers for himself, but if he fails to do so, he should do his utmost to see that this *qeδ≅≅ā'* is performed after his death. The dead person will have met his obligations, having recognised the prayers he should have offered, if one of two methods is followed:

1- The eldest male child (son) carries out the *qeδ≅≅ā'* of these prayers on his father's behalf, either by himself or by asking someone else to do it, either for free or at a cost; in this case the matter rests with the eldest son to offer *qeδ≅≅ā'* for his father when the latter did not request it in his will.

2- A will left by the dead person; in this case it rests with the executor (*waσ≅y*) of the will, who can hire someone to perform the *qeδ≅≅ā'*, who is paid from the estate of the dead, or he can see that someone does this voluntarily for free.

The details of this are as follows:

First: The *qeδ≅≅ā'* of the son for his father

569. It is a precaution that the eldest son offers *qeδ≅≅ā'* for the prayers which his father failed to offer for some valid reason, or even intentionally in some exceptional cases; but not for the prayers that he did not offer out of disobedience or if he insisted on abandoning prayer throughout his life. If his father had a valid excuse but could not perform *qeδ≅≅ā'* all his life because of illness or the like, here it is not obligatory on the eldest son to offer *qeδ≅≅ā'* on his behalf. In the mother's case, however, it is not obligatory on the eldest son to offer *qeδ≅≅ā'* on her behalf for what she failed to offer, although this is recommended as good conduct.

570. For the eldest child to be obliged to offer *qeδ≅≅ā'* for his father, there are certain conditions:

a- The person must be male, so if the deceased left girls only, the eldest daughter is not obliged to offer *qeδ≅≅ā'* for what he failed to pray.

b- He must have reached the Islamic legal age (*bāligh*) and be adult (*reshīd/'āqil*); so if he was young, he is not obliged to offer *qeδ≅≅ā'* when he becomes *bāligh*.

c- He must not be excluded from the inheritance, such as if he had killed his father.

571. By the eldest son it is not meant the first born son to the deceased, but the eldest when the father died; so if the first born son died during his father's life, the obligation is transferred to the next eldest son. Also, the existence of daughters of the deceased older than the eldest son does not affect the latter's obligation.

572. The *qeδ≅≅ā'* obligation on the eldest son becomes void in the following cases:

a- If the deceased father had requested in his will to have the *qeδ≅≅ā'* offered from a third of his estate, in the execution of the will.

b- If the eldest son dies before offering *qeδ≅≅ā'* on his father's behalf; here it is not obligatory to allocate an amount of money from the eldest son's estate for the cost of hiring others to perform the *qeδ≅≅ā'*, nor does the obligation get transferred to the next eldest son.

c- If the eldest son hires someone to offer the *qeδ≅≅ā'* on his behalf from his own money not from the deceased's, or if someone donates it.

573. If the eldest son abstains from the *qeδ≅≅ā'*, it is obligatory, as a precaution, and where possible, to take an amount equal the cost of performing *qeδ≅≅ā'* from his portion of the inheritance after the permission from an Islamic authority (scholar) to carry out *qeδ≅≅ā'* has been obtained, when the time becomes short and there is fear that the matter will be ignored.

574. When there is some doubt about the prayers that were not offered by the deceased, it is not obligatory to offer *qeδ≅≅ā'*; and when this is known but there is doubt around the number of prayers, it must be decided on the least probable number. But if the son is fairly certain that there were unoffered prayers but is not sure whether his deceased father prayed them or not, in this case it is obligatory on him to offer them *qeδ≅≅ā'*.

Second: Hiring others to pray

575. It is allowed to hire others to perform prayer and the rest of the acts of worship on behalf of the dead, and the deeds of the hired person would fulfil the deceased's duties.

576. There are certain conditions for the hired person:

1- Adulthood.

2- Belief.

3- Reaching the Islamic legal age, as a precaution.

4- It is probable that he will perform the act correctly, a confidence that derives from the probability of him being knowledgeable of the rulings even if as aprecaution.

5- He must not have a handicap, such as someone who is not able to stand up, the incontinent, someone who has to perform *teyemmom*, except if there are no others; in addition, there is problem in the case when such people volunteer for the job. However, it is quite possible that

someone who has a splint/bandage (*jebīreh*) is allowed to be hired, and he may be accepted if he volunteers, although it is better and precautionary to avoid this.

577. Justice is not a condition in the hired person, although it is better that he is just when he is told what he is asked to do. It seems that satisfaction (*iτ≅mi'nān*) that he did perform the acts on behalf of the dead with the probability that they were done correctly is sufficient. It is also valid to hire someone who himself has to offer *qeδ≅≅ā'* for himself or for his dead father, and he too may be accepted as a volunteer.

578. Similarity in gender between the hired person and the one on whose behalf he is acting is not obligatory, (but when two sexes are involved) the matter of whispering or praying aloud must follow the hired person not the one on whose behalf he is acting.

579. The hired person must perform the prayer with the recommended acts in the way that is commonly accepted as far as the hiring is concerned, unless the person doing the hiring specifies a certain form, in which case the hired person must adhere to this.

580. The hired person may act according to his *ijtihād* or *teqlīd*, unless it was laid down as a condition to offer the prayer according to the *ijtihād* or *teqlīd* of the deceased, in which case this must be observed. Also, the hired person may turn to his *ijtihād* or *teqlīd* regarding the rulings on lack of awareness and doubt, and the prayer is not to be repeated unless this was laid down as a condition.

Section Three

Fasting

Aş-Şawm/ Aş-Şiyām

(A) The start of the month of Ramadan

It is known that the lunar month – which is related to a group of rulings – is linked as far as its start and end are concerned with the movement of the moon, which completes its orbit around the earth in a period named 'month'.

Astronomically, the month starts when the moon leaves *miη≅āq* (lit. complete omission, i.e. disappearance), which is the location in which the light of the moon is completely invisible to the onlookers on earth; when it starts leaving that location, its first appearance is known as '*hilāl*' (crescent). The month ends when the moon enters *miη≅āq* once again.

However, the Shari'ah does not depend on this to ascertain the start of the month, but it made it a condition that the crescent must developed enough to make it visible by onlookers to the horizon, after sunset, and when this takes place it is the beginning of the month.

To ascertain the start of the month according to the Sharī'ah, there are several rulings:

581. The existence of the crescent may be ascertained by one of the following:

First: The person himself sees it.

Second: A large and diverse number of people giving witness in a way that leads to knowledge or satisfaction that the crescent exists, which is called '*shiyā'*' (lit. something or a piece of news becoming common), so if neither knowledge nor satisfaction takes place, it is not allowed to depend on the witness, whatever the number of people.

Third: Witness given by two just men that they have seen the crescent; one witness is not sufficient, nor witness given by women, even if accompanying the men, unless satisfaction takes place from their witness.

Fourth: The elapse of thirty days from the beginning of the month.

Fifth: The ruling of the Islamic ruler/scholar (*al-H≅ākim ash-Shar'ī*), unless one has evidence of the incorrectness of the ruling or of the basis of the ruling.

Sixth: Every scientific method that leads to certainty or satisfaction that the moon has left the *miη≅āq* and that it exists on the horizon in a way that makes seeing it possible.

582. It is sufficient for ascertaining the crescent's existence in a country to have it proven in another country which has a common part of the night with it, as long as sunset in the country where the crescent was declared present takes place before dawn in the country of the person.

583. When the crescent of the month of Ramadan is proven, fasting becomes obligatory, and when the crescent of the month of Shewwāl is proven, breaking the fast becomes obligatory.

584. If the crescent of the month of Ramadan is not proven, it is not obligatory to fast during the day of doubt (i.e. the day which might be the last day of Sha‘bān, the eight lunar month, or the first day of Ramadan, the ninth lunar month), and it is not allowed to fast that day with the intention of asserting that it is a day of Ramadan. That said, it is recommended to fast on that day as a day of Sha‘bān; also, the person may fast on it with the intention of *qeδ≅≅ā'* (for a day he failed to fast in the past), then if it is proven to him that it was Ramadan, his fasting would count as Ramadan without any consequences. And if the crescent of Shewwāl is not proven, the person must complete Ramadan 's thirty days, then if during the day it is proven to him that it was Shewwāl (i.e. the start of it), he must break the fast.

(B) The conditions and validity of the fast

There are many conditions for the fast to be obligatory and for it to be carried out correctly:

1- Islam:

585. It is a condition that the person fasting is a Muslim, so fasting by a non-Muslim is not valid.

2- *Bolūgh*:

586. It is not obligatory for someone who has not reached the Islamic legal age (*bolūgh*) to fast, but if he/she does fast, it is valid and they will be rewarded for it.

3- Sanity:

587. Fasting is not obligatory for the insane, nor is it valid if an insane person does.

4- Purity from the *η≅aiδ≅≅* and *nifās*:

588. It is a condition for a woman's fast to be pure from the menses and *nifās* from dawn to sunset, so fasting by a woman during her period or *nifās* is not obligatory, nor is it valid if she does; this is even if the menses or *nifās* took place at one moment of time within the period between dawn and sunset, making the fasting of that day void.

5- Harmlessness:

589. It is conditional for a valid fast not to harm the fasting person; such harm may take place if the fast causes illness, intensifies an existing illness, delays its cure or intensifies the pain, whether one is certain of this or thinks that it is probable in a way that one fears harm – in all that, fasting is not obligatory, and only the opinion of a competent doctor is sufficient, unless the person is satisfied that the opposite is the case.

590. If a person fasts while he fears harm or believes he might be harmed, then if the harm does take place, his fast becomes void; if no harm takes place and the expected harm was one that anyone must protect oneself from, the fasting is also void, otherwise the fast is valid.

591. If he fasts believing that no harm will take place, then he finds out that the fast is harmful, in this case his fast remains valid.

6- No travelling:

592. It is conditional for a valid fast not to be undertaking the type of journey that makes *qaσ≅r* in prayers (shortened prayer) obligatory, so the fasting of a traveller is not valid except if he has vowed to fast while travelling, in which case the fast is valid as a vow not as part of Ramadan, even if he did make the vow of fasting during it. Also, fasting is valid by a pilgrim, performing *η≅ajj at-Temetto‘* (performing pilgrimage with *‘omreh*; for details of pilgrimage, see another reference), who is unable to slaughter the animal (*hedi*), and by a pilgrim who is unable to offer atonement when leaving (*keffāret-al-Ifāδ≅≅eh*) ‘Arafāt.

593. The ruling that a fast by a traveller is void only applies if he knew the ruling – that a traveller's fast is not acceptable – so if a traveller fasts out of ignorance of the ruling, or some of its details, his fast remains valid; but if he comes to know this during the day, his fast becomes void specifically on the day the knowledge was acquired, but not for the days before

that. That said, fasting is not acceptable for a traveller who has forgotten the ruling or that he was regarded by the Shari'ah as a traveller.

594. If the fasting traveller wants to fast, there are two situations:

First: That he travels after noon (*dhohr*); in this case he is absolutely not allowed to break fast.

Second: That he travels before noon; in this case fasting on that day is not valid. In such cases, it is not allowed for the traveller to take anything which breaks the fast (*mofτ≅irāt*) until he passes the *η≅add at- Terekhkhoσ≅*, which is the place where he will only appear as a ghost without defined features for the onlookers from the town's last house (see Chapter 4: Prayer of the traveller.)

But in the second case, if the traveller enters one of his homelands, or a place in which he intends to reside for ten days or more, in this case there are several situations:

a- That he enters it after *zewāl* (the moment the sun starts to move towards sunset, which is the start of the time of the noon prayer); here he must break the fast, and fasting is not acceptable. It is recommended that he abstains from things which break fasting however.

b- That he enters it after *zewāl*, in which case there are two situations:
1- He has taken, during his journey, things which break the fast; in this case he must break the fast, although it is recommended that he abstains from such things.

2- He has not taken, during his journey, anything which breaks the fast; in this case he must set the intention of fasting and fast the rest of the day, making that an acceptable fasting day.

595. It is allowed to travel in the month of Ramadan, even if without necessity, and even if to escape from fasting; it is *mekrūh* (recommended to abstain from it) however.

7- Unconsciousness:

596. Fasting is not valid from someone who is unconscious if he lost his consciousness before dawn and before the intention, but it is valid – rather it is obligatory – to continue fasting if this took place after the intention, whether it took place before dawn or after it. Included in unconsciousness is what takes place due to general anaesthetics given in surgical operations; however it is different to the former as far as the obligation to perform *qeδ≅≅ā'* is concerned.

8- He must not have an excuse not to fast:

597. The Sharī'ah allows certain people to break their fast:

1- A person who suffers from weakness and lethargy, so if he fasts, fasting will cause difficulties for him and intensify his weakness to the extent that he becomes unable to stand up, walk or carry out his usual daily activities.

2- Men and women who have reached seventy years, which is the age of elderly people that is accompanied by a weakness which makes fasting completely impossible, or very difficult for them.

3- People who practise very hard jobs, so fasting would weaken them or cause intense thirst that is extremely hard to withstand, and provided that they are unable to find another more comfortable job or savings (money) or a loan that can help them abstain from such job temporarily.

4- The excessively thirsty person, who cannot withstand thirst, making fasting very difficult or impossible for him.

5- Pregnant women the fasting of whom would harm them or their baby, even if they are not about to give birth.

6- Breastfeeding women who have little milk and for whom, if they fast while breastfeeding, the fasting will cause harm or reduce their milk, thus harming their babies; in this case they must break the fast. However, if they find substitutes in artificial or animal milk or the breastfeeding of other women, whether offered voluntarily or paid for when they can afford their fees, in these cases it is not allowed to break the fast.

598. As breaking the fast is allowed for these people who are excused, fasting is allowed if they so wish and insist on withstanding the difficulty as long as they do not become harmed;

but if fasting harms them in a way that cannot be ignored and which must be protected from, in this case fasting is not allowed and the ruling for the ill applies; this ruling does exclude the pregnant or breastfeeding woman the fasting of whom would harm her baby because she must protect her baby from harm to the same degree that she protects herself from it.

(C) The fasting obligations

Fasting is achieved and is based on two things: the intention to fast and the abstention from *mofτ≅irāt* (things which break the fast).

First: The intention

599. The intention of fasting is obligatory on the person; this involves setting the intention to abstain from *mofτ≅irāt* (listed below) throughout the time allocated for fasting, which stretches from the rise of true dawn until sunset. True dawn starts the moment when light spreads horizontally in the eastern horizon, then starts to spread gradually; sunset takes place when the disc of the sun disappears from the horizon, although it is better to wait (not to break the fast) until the eastern redness disappears.

600. It is sufficient to set in the intention to decide fasting from the beginning of the month, for it is sufficient to have the firm decision within oneself to fast without bringing this decision to mind every night for fasting every day.

601. The meaning of the intention at dawn does not mean that the person stays awake at that time in order to set the intention, but it means that he spends that night (sleeping or awake) with the firm decision to fast the following day; thus the rise of dawn while he is asleep does not affect this intention as long as it is firm within him.

602. The intention of fasting must continue to exist throughout the day; we can imagine several situations where the intention does not continue:

1- If the person decides to break the fast, such as if he decides to take a *mofτ≅ir* (sl. of *mofτ≅irāt*); in this case his fast is invalidated even if he does not take any *mofτ≅ir*.

2- If he becomes hesitant about continuing or breaking the fast then he decides to keep on fasting before he takes any *mofτ≅ir*; here there are two situations:

a- If this happens out of doubt regarding the validity or fasting, in this case the fast is valid without any consequences.

b- If this does not happen because of this doubt, in this case his fasting is valid, although it is better to perform *qeδ≅≅ā'* of that day.

Second: The *mofτ≅irāt*

The fasting person must abstain from doing a number *mofτ≅irāt* (things or acts which break the fast):

First: Eating and drinking

603. The fasting person must abstain from all food and drink, whether in a small or large quantity – even if it is very small, like the food residues left in the mouth and between the teeth. This includes not only all the things which people have commonly become accustomed to eat and drink, but also what they are not commonly used to as an obligatory precaution.

604. The invalidation of the fast by eating or drinking occurs if swallowing takes place; thus whatever enters (and does not pass beyond) the mouth cavity will not affect the fast, even if taken intentionally such as when tasting the gravy etc, unless some of it reaches the inside.

605. Fasting is not invalidated by swallowing saliva, even if a large amount, as long as it comes from the mouth; also, there is no problem in swallowing the mucus coming down from the head or from the chest, even if it has reached the mouth cavity.

606. It is not a condition for food and drink to be regarded as *mofτ≅irāt* that they are taken through the mouth; so if food or drink was enters via a pipe through the nose or other passage, or via a drip that takes nutrition to the body through a needle in the hand or otherwise; all this

is regarded as *mofτ≅ir*. That said, if what is taken in is for treatment but not for feeding then there is no problem in this.

Second: Sexual intercourse

607. Sexual intercourse that breaks the fast takes place when the length of the penis head – at least – enters into the vagina, also the anus as an obligatory precaution. It breaks the fast for both the man and the woman, adult or otherwise, and for someone who inserts his penis and the other party whether an animal or otherwise as an obligatory precaution, dead or alive, whether the semen comes out or not.

Third: Masturbation

608. Masturbation takes place when semen comes out of the man through acts, imaginations or scenes that lead to ejaculation. There are two conditions for this: (1) It is probable that its coming out is because of that act, imagination or scene; (2) He is not certain of his ability to control himself to prevent the semen coming out.

Based on this, there are three situations that can be imagined for the fast not becoming void by as a result of ejaculation:

1- If it was not probable for him that the semen would come out but it did come out unintentionally.

2- If he was certain that it would not come out but it did against his expectation.

3- If the semen came out without reason, or due to an illness.

Fourth: Staying intentionally in a state of *al-H≅adeth al-Akbar*

609. The fast is rendered broken if the person intentionally stays in a state of *al-H≅adeth al-Akbar*, the details of which are:

First: If the *η≅adeth* is *η≅aiδ≅≅* or *nifās* and purity took place during the night and she did not wash on purpose until dawn, in this case her fasting is not valid. That said, the validity of her fast may be assumed in the following two cases: first, that she did not know that she had become pure before dawn, or she did know but forgot to wash; second, she knew that she had become pure but at a time that was too short to achieve purity, even by *teyemmom*. In both of these cases, she must fast the following day and the fast is acceptable.

Second: If the *η≅adeth* was excessive or medium *istiη≅āδ≅≅eh*, in this case it is not obligatory for the validity of the fast that she had performs the wash for the two evening prayers (i.e. *maghrib* and *'ishā'*), nor the daytime washes; however the recommended precaution to perform the daytime washes is emphasised.

Third: If the *η≅adeth* was touching the dead, then it does not affect the fast if this took place during the day; also, it is allowed to intentionally stay unwashed after it during the night until dawn.

Fourth: If the *η≅adeth* was *jenābeh* during the night, when awake, whether because of intercourse or otherwise, it is an obligatory precaution for the person to wash before dawn, and if he/she delays it intentionally, he must continue with his fast and fast again as *qeδ≅≅ā'* with *kaffāreh* (atonement) as an obligatory precaution. The same applies to the person who has *jenābeh* because of a wet dream (*iη≅tilām*) and wakes up before dawn and finds the *jenābeh*.

610. The ruling regarding someone who has had *jenābeh* during the night concerning sleeping before dawn rests on two situations:

1- If they intended to wake up to wash before dawn, here there are two possibilities:

a- That it was their habit to wake up, or that they set an alarm to wake them up; in this case they are allowed to continue to sleep on for two periods of sleep, and if their sleeping during the first or the second period stretches until dawn, their fasting is valid without consequences; and if they go to sleep a third time and do not wake up, their fasting will also be valid but, as an obligatory precaution, with *qeδ≅≅ā'* without *kaffāreh* if the *jenābeh* occurred while they were awake, such as with intercourse etc; but if the *jenābeh* occurred through a wet dream

and he wakes up then goes to sleep for two periods, in this case *qeδ≅≅ā'* will not be a precaution for the third sleep.

b- That it was not their habit to wake up and they did not set an alarm to wake them up; in this case they are not allowed to sleep before washing, and if they go to sleep intentionally, they will have sinned and have to continue their fast then perform *qeδ≅≅ā'* and *kaffāreh* as an obligatory precaution, whether the *jenābeh* occurred when they were awake or during a dream after which they woke up.

2- If they did not intend to wake up, in this case the ruling is exactly the same as in (b) above.

611. If they have *jenābeh* during the night but forget to wash until dawn, here they should continue their fast without consequences, whether during Ramadan or otherwise.

612. The ruling of intentionally staying in a state of *al-H≅adeth al-Akbar* of a *jenābeh*, *η≅aiδ≅≅* or *nifās* is exclusive to the fast that is obligatory originally, whether specified or not, such as the fasting of Ramadan, its *qeδ≅≅ā'*, the *kaffāreh* fast, fasting instead of the *hadi* (slaughtering an animal in the pilgrimage) etc, hence this (staying in a state of *η≅adeth* until dawn) does not affect a recommended fast even if it becomes obligatory by a vow or the like.

613. If the time was too short for the person with *jenābeh* during the night to wash before dawn, he must perform *teyemmom* instead of washing to make his fasting valid, then he has to wash for the prayer afterwards. However, if he intentionally puts himself in a state of *jenābeh* at a time when he knows that there will not be sufficient time either for washing or *teyemmom*, in this case his ruling is that of the one who intentionally stayed with *jenābeh*.

614. It is more probable that the ruling that waking up with *jenābeh* does not invalidate the fast is for the fasting of Ramadan in particular, although the precaution to regard it as invalidating the fast should not be disregarded.

Fifth: Fluid enema

615. The fasting person will have, as an obligatory precaution, broken his fast if he has an enema using fluids, even if for treatment.

An enema with solids, such as suppositories or ointments, however, will not affect the validity of the fast.

616. The above ruling is specific to the enema being given in the anus; as for other places, it does not break the fast.

Sixth: Intentional vomiting

617. The fast is broken by intentional vomiting, as an obligatory precaution, even if it is necessary; however, if the vomit comes out without control or intention, it is not a *mofτ≅ir*.

Sometimes some food may come up to the mouth cavity; here if the person fasting swallows it, their fast becomes void.

618. The fast is not broken by the following:

First: Concocting lies about (lying or falsifying narrations or the words of) Allah the Most High, His Messenger (sawa) or the Imams (as), although it is better to perform *qeδ≅≅ā'* afterwards.

Second: Immersing the head in water, but it is an obligatory precaution to abstain from this, even if doing so does not invalidate the fast.

Third: Intentionally letting thick or thin dust inside the body, although it is better to avoid thick dust.

Fourth: Smoke coming up from chimneys, cars etc; also vapour, even if thick.

619. The mentioned *mofτ≅irāt* invalidate the fast on two conditions:

First: The fasting person knows that what he is taking is *mofτ≅ir*; the ruling of the ignorant who does not know this is as follows:

a- If his ignorance is due failure to know that what he is doing or taking is one of the *mofτ≅irāt*, and he takes it believing that it does not invalidate the fast, in this case his fast remains valid, unless this concerns prohibited things such as masturbation when he knows that this is prohibited, in which case his fast is broken by his act even though he believes that it is not a *mofτ≅ir*. Also, his fast remains valid if he knows that an enema with a fluid, for example, is a *mofτ≅ir* but he believes that what is inside the enema is solid, so he takes the enema but discovers afterwards that it has fluid.

b- His ignorance is due to failure to learn that the thing or act is a *mofτ≅ir*, regardless of whether it is allowed or prohibited originally.

Second: The fasting person intentionally does or takes a *mofτ≅ir*, meaning that he realises and is aware of it when doing or taking it; this does not apply to the person who is not intending to do it or does or takes it out of lack of awareness or forgetfulness – this applies in all types of fasting. Therefore, the person who intentionally acts or takes a *mofτ≅ir* includes:

a- Whoever breaks the fast on the basis of an excuse such as an illness or *teqiyyeh* (to avoid persecution or harm from others).

b- Whoever breaks the fast in disobedience to Allah the Most High.

c- Whoever is forced to break the fast if he himself takes the *mofτ≅ir* with his own hands; however if the food is inserted into his mouth by someone forcing him to do this and the fasting person swallows it, this would not invalidate the fast.

620. It is recommended to abstain from touching, kissing or courting one's wife if one is certain that semen will not come out due to this act.
Other acts are also *mekrūh* (recommended to abstain from):

- Blood-letting or donating if this causes weakness, but not if this does not weaken the person in question.
- Sniffing any nice-scented herb/plant, but it is not mekrooh to wear perfumes.
- Wetting clothes that are on the body with water.
- For women, sitting in water.
- An enema with solid medicine.
- Tooth extraction or causing blood to flow inside the mouth for any reason except when necessary.
- Using a wet *siwāk* stick (a kind of stick taken from the *arāk* tree in Mecca which, it is narrated, is strongly recommended by the Prophet (sawa) to use to clean the teeth) to clean the teeth.
- Rinsing the mouth unnecessarily, not for ablution.
- Reading poetry that does not conform to the spirituality of the month of Ramadan.

(D) *Al-Kaffāreh* (atonement)

We have explained the rulings in some previous cases in which atonement (*kaffāreh*) is obligatory with *qeδ≅≅ā'* in some cases in which the fasting person breaks the fast. Here, we shall explain the general rule for that, explaining the rulings specific for the *kaffāreh*.

621. It has become evident from the previous entries that whenever the fast is ruled void the person must fast as *qeδ≅≅ā'* (in compensation), except for a very small exception that will be mentioned when discussing *qeδ≅≅ā'*.
However, in addition to the *qeδ≅≅ā'* obligation, and to intensify the punishment of whoever intentionally abstains from fasting, Allah the Most High has made *kaffāreh* (atonement) obligatory on anyone fasting who intentionally takes a *mofτ≅ir* during his fast, when he is aware of the fast obligation on him and that what he is taking or doing is among the *mofτ≅irāt*, or with his knowledge that these are forbidden for Muslims even if he does not know that they are among the *mofτ≅irāt*, and he was free in his act not forced to do it. Thus, the *kaffāreh* is not obligatory on:

First: Someone who is ignorant of the fasting obligations on him, something which occurs in most cases with the young boys or girls who have reached the Islamic legal age.

Second: Someone who does not know that what he is doing or taking is *mofτ≅ir*, despite his knowledge of the fasting obligations on him, such as if he believes that intentional vomiting or staying on *al-H≅adeth al-Akbar* until dawn, or intercourse without ejaculation, does not break the fast.

The exception to this is if the *mofτ≅ir* is forbidden on the fasting and non-fasting person, such as masturbation, and the person knows of its prohibition, but he does not know that it invalidates the fast; in this case if he commits it, his fasting becomes void and the *kaffāreh* is necessary although he believed that it was not *mofτ≅ir*.

Moreover, there is no distinction as far as the ignorance that does not makes *kaffāreh* necessary is concerned between ignorance due to failure to learn or otherwise.

Third: Anyone who is forced to break the fast out of fear from an oppressor, so he takes the *mofτ≅ir* to avoid harm and to protect himself from injustice.

Other than these cases that are covered by the above-mentioned rule, the *kaffāreh* is obligatory, in addition to the *qeδ≅≅ā'* as will be detailed later.

622. If the act that invalidates the fast is repeated more than once during the day, such as if the person eats and has intercourse more than once during the same day, only one *kaffāreh* is obligatory, although it is better to repeat the *kaffāreh* for repeated intercourse or masturbation.

623. If intercourse between a fasting husband and wife takes place on the day of Ramadan out of their free choice and desire, *kaffāreh* will be obligatory on each of them; and if the husband forces his fasting wife to have intercourse in the month of Ramadan, the *kaffāreh* becomes obligatory on him and also another one on his wife, as an obligatory precaution, even if she went along with him after forcing her to submit to his desire. However, if the husband is not fasting for a valid reason and he forces his wife into intercourse, he will have sinned, but there is no *kaffāreh* on his wife, nor does he have to carry it out for her.

624. Whoever breaks the fast in the daytime of Ramadan with something forbidden, such as adultery or drinking alcohol etc, *kaffāreh* must be done by feeding sixty poor individuals or by fasting for two successive months, as it is when breaking the fast on something not forbidden, as will be explained; however, the combined *kaffāreh* of fasting two successive months and feeding sixty poor individuals – as the only possible *kaffāreh* in our times – is better.

625. If he breaks the fast intentionally then travels before *zewāl*, the *kaffāreh* will still be obligatory.

626. It is not obligatory to perform *kaffāreh* immediately; it is allowed to delay it for a period of time but not so long that he is commonly regarded as complacent and negligent.

627. It is allowed to donate a *kaffāreh* on behalf of the dead, both fasting or feeding; also on behalf of the living, but only the feeding not the fasting.

628. If someone knows that he has invalidated his fasting but doubts whether that needs *qeδ≅≅ā'* only or *kaffāreh* as well, in this case only *qeδ≅≅ā'* is obligatory. And if he knows that a *kaffāreh* is obligatory, but he doubts whether he did do it or not, in this case he must do it.

629. If he does not know the number of days which he did not fast intentionally, he must estimate a number of days in which he is certain not to have fasted and carry out *kaffāreh* for them; *kaffāreh* for the additional number that is doubted is not obligatory.

630. If he remembers, for example, that he did break the fast one day after noon, but doubts whether that was part of Ramadan itself or its *qeδ≅≅ā'*, in this case he only needs to feed ten poor individuals. However, if breaking the fast occurred before noon and he doubts it as in the previous situation, *kaffāreh* is not obligatory.

631. The amount of kaffāreh that must be paid differs according to the type of fasting, as follows:

a- For someone who breaks the fast intentionally during Ramadan, the *kaffāreh* during these days is fasting for two successive months, or feeding sixty poor individuals, with the choice resting with him; this is the same *kaffāreh* for breaking the fast the day that must be fasted on account of a covenant (*'ahd*).

b- For someone who breaks the fast intentionally one day in the *qeδ≅≅ā'* of Ramadan after *zewāl*, the *kaffāreh* is feeding ten poor individuals, but if he is unable to do so, he must fast three days; it is an obligatory precaution to fast for this period on successive days.

c- The *kaffāreh* of not fasting one or more days in a specified time is the same as the *kaffāreh* of failing to carry out a vow (*nathr*), which is in these days feeding ten poor individuals or clothing them, but if one is not capable of doing so, one must fast three days. This is the same as the *kaffāreh* for failing to keep to an oath (*yemīn*).

632. The *kaffāreh* must be paid to a *feqīr* or a *miskīn*; the *feqīr* is the poor individual who does not have food for that year, so that he neither has a full quantity of food sufficient for one year nor sustained instalments that he acquires gradually; the *miskīn* is someone who is in even worse circumstances than the *feqīr*.
The details of the rulings regarding how all sorts of *kaffāreh* are paid will be explained in the transactions section.

633. If a person is incapable of the payment for the feeding-type of *kaffāreh* of Ramadan, he has the choice of fasting for eighteen days and giving alms (*sedeqeh*) to the extent that he can, but if he is incapable of doing this as well, he must ask forgiveness from Allah (*istighfār*) instead of the *kaffāreh*, in which case it is not obligatory to pay it if he becomes capable of doing so later, although (doing so) as a precaution is good.

(E) Al-*fidyeh*

Fidyeh is the compensation given by someone who has not fasted for a valid reason; it may become obligatory for another reason; the details are as follows:

634. The *fidyeh* is obligatory in the following cases:

a- The male or female elderly and the excessively thirsty person who did not fast because it is very difficult, not because it is impossible or harmful to them.

b- The breastfeeding or pregnant woman who is at the end of her pregnancy and near to giving birthand the breastfeeding woman who has little milk if fasting may be harmful to the embryo or the baby being breastfed.

c- Whoever has delayed the *qeδ≅≅ā'* of the previous month of Ramadan until the next Ramadan arrives, whether out of complacency or the inability to do so, or if this is due to the continuation of the illness (which prevented him from fasting the previous Ramadan); even if he was able to fast then he fell ill or travelled and this continued until the next Ramadan arrived, as an obligatory precaution.

635. If the illness that prevented fasting and its *qeδ≅≅ā'* lasted for years, the *fidyeh* is obligatory at the end of every year in which the person could not fast for Ramadan or carry out the *qeδ≅≅ā'* for that, even if this continues all his life. However, if he delayed the *qeδ≅≅ā'* of one Ramadan for several years, only one *fidyeh* is obligatory and that is at the end of the first year when he delayed the *qeδ≅≅ā'* until the second.

636. The amount of *fidyeh* for one day is three quarters of a kilogram for feeding one poor individual; however one and a half kilos is better.

637. If the pregnant woman who is at the end of her pregnancy and near to giving or the breastfeeding woman did not fast out of fear of harm to the newborn and delayed the *qeδ≅≅ā'* until the next Ramadan arrived, she must pay two *fidyehs*: one because she did not fast, fearing for her child, and the second for delaying the *qeδ≅≅ā'*.

(F) The *qeδ≅≅ā'* of fasting

638. It is obligatory that one fasts *qeδ≅≅ā'* for the days of the obligatory fast when one failed to fast. This includes the following cases when failing in the fast was:

a- intentional, in disobedience to Allah.

b- during the period when the person in question abandoned Islam (*mortedd*).

c- out of ignorance of the fact that fasting is obligatory.

d- for a valid reason, such as when travelling, illness, pregnancy, breastfeeding, the menses or *nifās*, drunkenness, or sleeping.

e- a result of becoming unconscious by an anaesthetic before dawn and before he sets his (fasting) intention.

639. *Qeδ≅≅ā'* is not obligatory on the following:

a- The non-Muslim who is originally likewise when he reached *buloogh* as a non-Muslim, even if he might not have been born to non-Muslim parents.

b- Anyone who is totally insane, even if he becomes sane later; also anyone whose insanity strikes him intermittently, if his bout of insanity takes place before he sets out his intention to fasting before dawn.

c- The unconscious person if this took place before he set out his intention of fasting at dawn, or if this took place due to brain damage (causing coma) thatoccurs during these days.

d- The male and female elderly and the excessively thirsty who cannot not fast because it is very difficult, even if they could carry out *qeδ≅≅ā'* later.

e- Anyone whose illness continues until the next Ramadan has arrived, even if he could carry out *qeδ≅≅ā'* later; however, if the excuse was for a reason other than illness, such as continuous travel, he must fast as *qeδ≅≅ā'* as an obligatory precaution.

640. Immediate *qeδ≅≅ā'* is not obligatory, but it is better not to delay it until the arrival of the next Ramadan. Also, the order in *qeδ≅≅ā'* is not obligatory, as is specifying the day that he failed to fast. That said, he can specify if he had days from the previous Ramadan and days from the one before, in which case this is useful in deciding about paying the *fidyeh* or not.

641. If someone could not fast in Ramadan out of illness and remained ill until he died, in this case there is no *qeδ≅≅ā'* to be carried out (on his behalf); the same applies to the woman in the menses or *nifās* if she dies before the elapse of sufficient time for *qeδ≅≅ā'*.

642. It is obligatory – as a precaution – on the eldest male child to carry out *qeδ≅≅ā'* for the days which his dead father failed to fast for a valid reason, if such *qeδ≅≅ā'* was obligatory on the father, and if he (the son) is able to do so. For the details of this, please refer to the *qeδ≅≅ā'* of prayers as the same rulings apply.

643. It is allowed to pay someone to fast as *qeδ≅≅ā'* on behalf of a dead person; volunteering (for free) is allowed as well.

644. It is not allowed for someone on whom *qeδ≅≅ā'* of days of fasting – which he himself failed to fast – is obligatory to volunteer to fast for someone else (dead), nor to fast a recommended fast. However, it is allowed if he is paid to fast the *qeδ≅≅ā'*; it is also allowed to fast a recommended fast during travelling. That said, it is allowed for such a person to fast a paid *qeδ≅≅ā'* for someone else or to fast a recommended fast if the obligatory fast he has to carry out is other than the *qeδ≅≅ā'* of Ramadan, such as a vow, *kaffāreh* or other fasts.

Section Four

Az- Zekāt (Alms) Tax

Az-Zekāt (along with the *al-Khoms*), which is a kind of tax, is one of the important pillars in the Islamic Sharī'ah and its obligation is one of the essential beliefs of Islam; Allah the Most High has mentioned it together with prayer in many verses in the Holy Qur'an and warned of severe punishment for anyone who fails to pay it. *Zekāt* is obligatory on the following:

1- Livestock, which is divided into three types: camels, cattle and sheep.

2- Crops, which are: wheat, barley, dates and raisins; it is an obligatory precaution to pay it for all grains.

3- The two money types, which are: gold and silver; also paper money (notes), which was invented later, as an obligatory precaution.

All this is upon the following conditions:

1 & 2 – *Bolūgh* and sanity, throughout the year in the *zekāt* for which the elapse of a full year (*η≅awl*) is conditional, or before the time when it becomes obligatory – as will be explained late – when the elapse of a full year is not conditional. By sanity we mean what is opposite to insanity, so it does not include the temporary loss of mental powers due to losing conscious or drunkenness, nor the more permanent state which is known as 'coma'.

3- The permanent possession of the items in question throughout the year when the elapse of the full year (*η≅awl*) is conditional, and before the time when the *zekāt* becomes obligatory when the *η≅awl* is not conditional.

4- Having control over the possessed money, so *zekāt* is not obligatory on mortgages, trusts or stolen money/property nor on debts owed by others, even if one has the ability to collect them.

5- The threshold (*niσ≅āb*), which means the item in question reaching a given threshold (or minimum taxable amount) as will be explained.
The *zekāt* obligation is an act of worship the validity of which must be accompanied by the intention of *qorbeh* (nearness to God by compliance with His commands).
The rulings of each type of the *zekāt*-payable items, also the description of those who are worthy of *zekāt* payment (to them) and how it is paid is the subject of the following.

(A) The *zekāt* of cattle

Livestock here refers to non-wild animals, which are: camels in all their types, cattle including buffaloes, and sheep (which includes goats), excluding all other non-wild animals.
The conditions of *zekāt* here are:

First: Threshold (*niσ≅āb*), the amount of which is different according to the type of livestock:

1- The camel threshold

645. In camels there are twelve thresholds, as follows: in five camels there is one sheep, in ten camels two sheep, in five camels three sheep, in twenty camels four sheep, in twenty-five camels five sheep, in twenty-six camels one *nāqeh* (female camel, which has the name *bint mekhāδ≅≅*, that is one entering its second year) then in thirty-six one *bint lebūn* (that is one entering its third year), in forty-six one *hoqqeh* (that is one entering its fourth year), in sixty-one one *jeth'ah* (that is one entering its fifth year), in seventy-six two *bint lebūn*, in ninty-one two *hoqqeh*, then in one hundred and twenty-one and more, in every fifty one *hoqqeh* and in every forty one *bint lebūn*.

Thus, *zekāt* is not obligatory on anything less than five, nor on anything that falls between any threshold and the following one, so whoever has more than ninty-one, no more *zekāt* is applicable unlessthe number reaches one hundred and twenty-one – a big difference that may amount to twenty-eight camels – and so on.

646. The *bint mekhāδ≅≅*, *bint lebūn*, *hoqqeh* and *jeth'ah* are names for a female camel, which is the *nāqeh*, according to its age, and they cannot be replaced (in paying *zekāt*) by a male camel. The exception is when the threshold reaches twenty-six; in this case *ibn lebūn* (which is male) may be paid instead of *bint mekhāδ≅≅*.

647. Regarding the maximum threshold which is one hundred and twenty-one and more, this should be examined: if the number is a multiple of forty, so that if a forty is counted, and nothing more or less is left, such as if a man has one hundred and sixty, and if the number is a multiple of fifty also, such as if he has one hundred and fifty, or if it is a multiple of any of these, such as if he has two hundred, in this case he has the choice of counting on the basis of any of them; but if the number he has is a multiple of both of them, he counts on the basis of both, such as if he has two hundred and sixty, in this case he regards it as two fifties and four forties.

2- The cattle threshold

648. There are <u>two thresholds</u> for cattle:

First: Thirty, the *zekāt* of which is one *tebī'*, which is a cow (bull) that has entered its second year; the *tebī'ah* (female of *tebī'*) is not acceptable as a precaution.

Second: Forty, the *zekāt* of which is one *mosinneh*, which is a cow that entered its third year.

If the number is less than thirty, there is no *zekāt* applicable; also when the number is between thirty and forty. When the number is higher than forty, the count is to be done on the basis of the number that no allowance (no payment) is applicable, with the same details as in the camels above, so that anything between one and nine more than the threshold is not to be included in the *zekāt*.

3- The sheep threshold

649. There are <u>five thresholds</u> in sheep:

The first one is forty, the *zekāt* of which is one sheep, then one hundred and twenty-one, the *zekāt* of which is two sheep, then two hundred and one, the *zekāt* of which is three sheep, then three hundred and one, the *zekāt* of which is four sheep, then four hundred, the *zekāt* of which is one sheep for every hundred whatever the number, without anything applicable on what is less than the first threshold or what falls between one threshold and the one that follows.

650. The diversity of type does not call for a specific threshold, thus the same thresholds and *zekāt* for cattle apply on buffaloes and the same for sheep apply for goats.

651. The sheep that is used to pay for the thresholds of sheep or camels does not necessarily have to be part of the same herd, and both male and female is allowed regardless of the sex of the livestock on which *zekāt* is paid; it must have entered the second year if it is a sheep, and the third year if it is a goat.

652. The animal that is paid as *zekāt* must be young, normal and healthy if all or some of the cattle in question is likewise, however, if all of it was old, with defects or ill, the *zekāt* paid may be made from it.

653. *Zekāt* is obligatory on livestock every year as long as it is not less than the threshold, and as long as it is the same without the particular animals being replaced, otherwise the *zekāt* will not be obligatory except in the year in which all conditions were met.

654. It is allowed to pay the value (in money) instead of the animal, but the value must be established at the time when *zekāt* is being paid not when it becomes payable, and in the country where it is paid, although it is better to pay the higher of the two values: the one in the country where the payment is made and the country of the cattle in question.

Second: They should not be fed on *'alaf* (feed)

655. For *zekāt* of livestock to become obligatory, the animals must be grazing on plants on the ground that find all year round, without any distinction between the grazing areas being public or privately owned, and regardless if the feeding is done every day, two days or three days.

Third: They should not be working (see precaution below)

656. The traditional ruling of the scholars is that it is conditional that the livestock should not be involved in work such as ploughing or weight bearing, but it is an obligatory precaution to pay *zekāt* on working cattle if other conditions apply.

Fourth: The elapse of a *η≅awl* (one year)

657. For the *zekāt* to become payable, one full year must have elapsed with the possession with the owner, with all the general and specific conditions, so if some of these conditions become invalidated in part of the year, *zekāt* will not longer be payable.

658. It is sufficient for a *η≅awl* to have elapsed at the beginning of the twelfth month, therefore; if some of the conditions become invalidated after that, the *zekāt* will still by payable; however, the beginning of the new *η≅awl* is not counted until after the end of the last day of the twelfth month and the beginning of the first day of the following month.

659. If the cattle increased during the *η≅awl* by their reproduction, buying new cattle or otherwise, there are four possible scenarios:

1- The increase equals the allowance that falls between two thresholds, such as if the owner had five camels and four more were added; in this case nothing payable on it.

2- The increase equals the amount of a separate threshold, such as if he had five camels and increased by five; in this case a new *η≅awl* is to be set for the increase starting from the moment it started, i.e. he starts counting a new *η≅awl* for the new five camels.

3- The increase equals the amount of a separate threshold on the one hand and completing the previous/lower threshold on the other; in this case a specific threshold is to be set for the increase, such as if one had twenty camels and six more were added, here twenty-six is a complete threshold, and it is also completing the threshold after twenty which is twenty-five; therefore he pays after their complete *η≅awl* five sheep and *bint mekhāδ≅≅* from the camel type.

4- The increase completes the threshold, such as if he had thirty cows and this became forty-one, or he had eighty sheep and increased another forty-two; in this case he should complete the *η≅awl* for the original amount and pay its *zekāt*, then start a new *η≅awl* for the whole (new) amount.

(B) The *zekāt* of crops

660. *Zekāt* is obligatory on the four crops: wheat, barley, dates and raisins, and indeed in other grains such as lentils, rice and Indian pea/gram (*māsh*) as an obligatory precaution, on the following two conditions:

First: Threshold **(***niσ≅āb***)**, which is achieving a certain amount of harvest in the given season, which is, in all grains: eight hundred and forty-seven kilograms approximately or more, so if it is less than this even if by a very small amount, no *zekāt* will be applicable.

The criterion in specifying the threshold is the dry state. So in raisins, for example, the amount to be checked for its weight is the raisins, not the grapes, the weight of which might be equal to the threshold (or more) but then it is reduced when they become raisins due to desiccation (losing water).

Second: The ripening of the fruit**, si**nce *zekāt* is not applicable before then. The criterion for a fruit that has ripened is that it is commonly regarded as (mature) wheat, dates or grapes: in wheat and barley the strength of the grain, becoming completely formed, even if it is still a green; in palm trees and grapes, for this condition to be satisfied, it is not when the date is still hard and yellow or the grape unripe and sour, but they must be regarded as dates and grapes.

661. The amount of *zekāt* to be paid varies according to the irrigation method used, which may take two forms:

1- If it is naturally irrigated by rainfall, from dug trenches, from water that remains in the earth or other means that do not cost anything, in this case the *zekāt* payable is one tenth (1/10).

2- If it is irrigated using the effort of the workers such as by buckets, watermills or modern machines, in this case the *zekāt* payable is half of the tenth (one twentieth, 1/20).

662. If the land is irrigated using both methods, then if one method is more dominant than the other, it is the one which counts; but if the two methods were used to equal effect, in this case the harvest is to be divided into two and one tenth is to be paid on one half and one twentieth on the other half, i.e. three quarters of the tenth (one fifteenth, 1/15) is to be paid.

663. If the quality of the harvest varies, here are several assumptions:

1- The range is from good quality upwards; in this case it is allowed to pay the *zekāt* on the better quality harvest from the less-good quality part.

2- The range is all of poor quality; in this case it is allowed to pay the *zekāt* on the better part of the worst of the harvest.

3- The harvest contains both good and bad quality; in this case it is not allowed to pay the *zekāt* of the good quality from the bad quality harvest, but it is obligatory to pay the *zekāt* from the good harvest only.

664. What the farmer spends on his farm falls into two parts:

1- What he spends before the *zekāt* becomes applicable – this part is not excluded from the *zekāt* calculations.

2- What he spends after *zekāt* becomes applicable, such as the costs of harvesting, fruit gathering, storage and packaging – these are to be counted then excluded from the *zekāt* according to their ratio to the harvest, with the permission of the Islamic authority (*al-H≅ākim ash-Shar'ī*).

665. It is allowed to pay the *zekāt* of crops as money or as crops of other kinds, although it is better not to do this and to stick to paying it from the same taxed crop.

666. The *zekāt* of crops is payable once even if the (number of livestock equal to or more than the) threshold stayed available several years.

(C) The *zekāt* of money

667. *Zekāt* is obligatory in every form of money in which gold or silver was used in its coinage to a dominant ratio; therefore it is a problem to make a ruling of obligation of *zekāt* on coins made from metals other than gold or silver when the mixture of gold and silver in them is so small that the coin cannot be regarded as being gold or silver, which is the case if the ratio of gold or silver to the total reaches a certain threshold that will be mentioned below, in addition to other conditions.

668. For the *zekāt* of the two (gold and silver) coins to become payable, three things are necessary:

First: The gold and silver pieces must be made into coins to be used as money in transactions, so that the metal is no longer an alloy or some unmade ingots, whether the coins are made with the Islamic stamp (*sikket al-Islam*) or a non-Muslim stamp (*sikket al-Kofr*), and whether the coin is engraved or not.

The coins, in addition to their coinage, must be used as money in commercial and other transactions, so *zekāt* is not obligatory on old dinars and dirhems which have become antiques. That said, *zekāt* will be obligatory on old coins that have not been abandoned completely, if they continue to be used among some people in their transactions, such as in the golden lire in all its sought-after types in the money exchange market and the like; this is provided that the other conditions are present.

Second: Reaching the threshold (*niσ≅āb*), i.e. the minimum taxable amount, which is different in gold and silver as follows:

1- The threshold of gold is: the weight of 20 dinars of gold, one dinar of which equals in our time one half golden Ottoman, Reshādi lire, the *zekāt* of which is approximately half a dinar, i.e. quarter of the tenth (one fortieth, 1/40). So, it is not obligatory on anything less than twenty, nor on anything that is more until it reaches four, where a quarter or the tenth is payable on the additional four; and so on in every four after the twenty.

2- The threshold of silver is: the weight of 200 dirhem of silver, and since the weight of one dirhem is two and a half grams (2.5g), this threshold will weigh 500g, the *zekāt* of which is: a quarter or the tenth as well, i.e. 5 dirhems; if it is less than that, no *zekāt* is payable; the same applies, i.e no *zekāt* payable, on anything more until the addition reaches forty dirhem then one dirhem of *zekāt* is payable, then one dirhem is to be paid on every additional forty, and so on.

Third: The elapse of a *η≅awl* **(one year)**, which means the same money staying with their owner for a full year; the *η≅awl* ends on the beginning of the twelfth month when *zekāt* becomes obligatory; however the new *η≅awl* does not start until the end of the twelfth month and the beginning of the following month, as was mentioned in the *η≅awl* of cattle.

669. The criterion in the threshold is the dinar and dirhem according to their weight, not the amount of pure gold or silver present in them.

670. Gold coins are regarded as separate type so their threshold is checked on its own; likewise the silver coins. But if the gold is made up of different coins, such as Ottoman lire and South African Krugerrand, then they must be added in one threshold even if the weights differ; the same goes for silver dirhems.

671. *Zekāt* on the two money types (i.e. gold and silver) is obligatory in every year as long as the money equals (or exceeds) the threshold, and that they were not replaced (i.e. they are the same individual coins), so if the coins were replaced with others or if the amount became less than the threshold, *zekāt* would no longer be payable.

Note regarding paying the *khoms* (20% levy) on *zekāt*-applicable possessions:

672. The *zekāt* rulings which we explained for the above-mentioned possessions do not mean that the *zekāt* paid will cancel the *khoms* obligation on them if its conditions apply; the *khoms* rulings, which we are going to explain later, apply on everything including the *zekāt*-applicable property. Here are some examples on this:

1- Someone owns the *zekāt* threshold of wheat and has paid its *zekāt*, then if he sells what is left or if he keeps it to maintain himself for the year, he must check after the elapse of one year, or after arriving at his *khoms* new year, to pay the *khoms* on the wheat that is left or its value; this is because the rulings of *fāδ≅≅il al-Me'ūneh* (the sustenance surplus), which will be explained, apply to it.

2- If someone has capital consisting of gold coins or bank notes to trade with, he has to pay its *zekāt* according to the previous conditions, then he has to pay its *khoms* after one year from the start of using it as a commercial capital; therefore, the time to pay *zekāt* might fall within the same time as the time to pay *khoms*, in which case both of them become obligatory together, but one of them might become due before the other depending on the *khoms* conditions being met in each of them.

3- Someone who has reached the sheep *zekāt* threshold and traded with the sheep themselves, here, in addition to the obligatory *zekāt*, he has to pay *khoms* on anything that exceeds the sheep's price, even if he did not sell them.

And so on in other situations.

(D) Rulings regarding paying *zekāt*

It is not allowed to delay paying *zekāt* without a compelling excuse; it is also not acceptable to pay it before it becomes applicable. That said, it is allowed for the owner – before it becomes applicable – to pay a poor individual money as a loan, then after *zekāt* becomes applicable he counts this loan as *zekāt*.

673. It is not obligatory to pay *zekāt* to all the eight types that will be mentioned, rather it is allowed to pay it to one type of them; it is also allowed to be paid to one person of that type.

674. It is not obligatory to pay *zekāt* to the *merji'* (grand Islamic scholar/jurist) during the period of occultation, although this is better. That said, if he requests it from his position as the Islamic authority (*al-H≅ākimiyyeh*), then it becomes obligatory on his followers as well as others to pay it to him.

675. It is allowed for the owner to transfer the *zekāt* from the country where it is applicable to another country, even with the existence of entitled individual(s) in the country where it is applicable.

(E) Types of entitled individuals

676. *Zekāt* may be paid to eight types of people as follows:

First and second: The *foqerā'* (sl. *feqīr*) and *mesākīn* (sl. *miskīn*)**; the** *feqīr* is one who does not possess enough to maintain himself and his family for one year, whether his income is provided in full or in instalments (such as weekly or monthly wages); the *miskīn* (someone who is destitute) is one whose circumstances are worse than those of the *feqīr*. What is meant by /maintenance is the means to cover needs such as expenses for marriage, a house to live in, a transport vehicle, cost of medical treatment and so on. In this regard, the following points must be observed:

(a) The one who is capable of earning his living but he does not do so is not allowed to be given *zekāt*, unless the profession/job that is open for him to earn his living is one that is not appropriate to his social status, in which case it is allowed.

(b) Students of religious studies who are capable of earning a living that is appropriate for their needs and which will not harm their studies should not benefit from this share (*sehm*) but from the share of *sebīli-Llāh* (those working on the way of God) if they are undertaking effective activity in religious propagation and preaching; also others whose effort supports and strengthens the religion.

(c) It must be ascertained that the person is indeed poor; in this case the witness of a trustworthy person is sufficient; also one who claims poverty and is trustworthy should be believed.

Third: The *zekāt* collectors (*al-'Āmilūn 'alayhā*)**, who are** the employees who collect, categorise, count, save etc the *zekāt*.

Fourth: The persons who need to be attracted to or strengthened in their Islam (*al-Mo'allefeh qolūbohom*)**; t**hese are Muslims whose belief in Islam has become weakened and it is feared that they may go astray and become deviant, so they are given *zekāt* to strengthen their Islam and to help them hold on to it.

It also includes non-Muslims who it is hoped will become Muslims and help Muslims in the nation's general interests.

Fifth: The slaves (*al-Riqāb*)**, which m**eans the spending of *zekāt* by the state to set free the slaves who have promised their masters money to free them, but they have failed to do so due to their financial inability, or to free the slaves who are oppressed by their masters, or rather to free all slaves that aspire for freedom. In our times, however, this share is due to be transferred to the other types.

Sixth: Those in debt (*al-Ghārimūn*)**, who** have become over-burdened by their debts and are unable to pay them back, on the condition that the loan is not spent in disobedience to God (i.e. on forbidden acts).

Seventh: In the way of God (*fi sebīli-Llāh*)**, which** is anything that has good public benefit, such as building mosques, schools, hospitals, defence, reform and fighting corruption.

Eighth: The stranded traveller (*ibn as-Sebīl*)**, who is the traveller** that cannot return to his homeland and has no money; it is allowed to give *zekāt* to him for returning and for his personal expenses, on the condition that his travel was not sinful, and he is not able to borrow money, nor able to sell a property in his country as an obligatory precaution.

(F) Description of the entitled individuals

677. The following conditions must be met in those to whom *zekāt* may be paid:

First: Islam**,** which is a condition exclusive to the *feqīr* and *miskīn* not the rest of the types, so *zekāt* cannot be given to the unbelieving poor; it is also more proper for the person to abstain from paying to a non-follower of Ahlol Bayt (as).

Second: Abstention from (major) sins**,** which is exclusive to the *feqīr* and *miskīn* only, not to the rest of types; the important thing here is knowledge that the paid person shall not spend the money in sinful acts – it is an obligatory precaution that the paid person should not be one who drinks alcohol, nor publicises his corrupt deeds or the fact that he does not pray

Third: Not one of his dependants**,** such as his father, grandfathers, sons or permanent wife; this is in their personal needs that the person paying the *feqīr* and *miskīn* only, not the rest of types, has to meet (for them); regarding anything extra, however, such as if his father has a servant who is in debt, there is no objection that the son pays the *feqīr* and *miskīn* only not the rest of types for this purpose.

Fourth: Not a Hāshimīte if the *zekāt* is from a non-Hāshimīte**; a Hāsh**imīte is one who is a descendent of Hāshim, the great grandfather of the Prophet (sawa). This ruling is exclusive to the *zekāt* and *fiτ≅reh zekāt* (see (G) below), so it is not forbidden for the Hashemite to be paid from other obligatory and recommended alms such as *keffāreh* or money/property ascribed to the poor in wills. It is sufficient in paying a non- Hāshimīte not knowing that the poor is a Hāshimīte, so it is not obligatory to search until reaching a certainty that the payee is not a Hāshimīte.

(G) The fiτ≅reh *zekāt*

This is an amount of money paid on every person on the morning of the *Eid al-Fiτ≅r* (the first day of Shewwāl, the tenth lunar month).

678. For the *fiτ≅reh zekāt* to become obligatory, the following are conditions:

1 and 2 – *Bolūgh* and sanity**, so it is not obl**igatory on the young, nor the insane, except one whose insanity strikes himonly sporadically, if the time when it becomes obligatory coincides with one of his periods of sanity.

3- Non-poverty**, so i**t is not obligatory on the poor person who does not possess enough to maintain himself for the year, even if in instalments (such as weekly or monthly wages).

679. These above conditions must exist before sunset of the night of the first of Shewwāl (i.e. sunset of the last day of Ramadan), although it is an obligatory precaution to pay it if they are met at sunset or after it up to the time before noon of the day of Eid. The exception to this is the non-Muslim who embraces Islam, a baby being born or a woman becoming a wife and one of his dependants, after sunset; in these cases it is not obligatory on them nor on the person who provides for them to pay the *fiτ≅reh* unless the wife was not a dependant of anyone before her marriage, in which case she must pay on herself if she is capable of doing so.

680. If the conditions of obligation are met, the person must pay it on himself and his dependants, who are:

1- Individuals whose expenses he must cover, for whom he is actually providing, such as his parents, wife and children.

2- Relatives who live in his house and under his care for whom he has undertaken to provide, such as brothers and sisters.

For these two types, providing for them is not sufficient, but they must be part of his dependants, in which case it is not conditional that they are permanently present, nor on the night of Eid in particular, so their *fitreh* is obligatory even if they are not living with him or if they are away from his house for travel or the like.

3- Servants who live in his house, so this does not include servants who live separately, unless they spend the night of the Eid in his house, in which case they turn into the guest type that follows.

4- Guests who are spending the night in his house in a way that they are commonly regarded as his guests; the important thing in this is spending the night, even if they did not eat there, so it does not include someone who spent the evening or ate there but did not stay to spend the night. The guest must have come before the night of the Eid, although it is an obligatory precaution to include those who came after sunset on the night of Eid.

681. If the person who provides for the family is poor and some of his dependants are not poor, it becomes obligatory on the financially able to pay the *fitreh* on himself, provided that all conditions exist.

682. The *fitreh* must be something that is regarded as food, such as wheat and its derivatives, barley, dates, milk and its derivatives, rice, corn and the like. It is allowed to pay the value of this, and such value is to be that at the time of paying, in the country where it is paid, not the payer's own country.

The amount of *fitreh* is: three kilograms (3kg) on every person, provided that it is from one type and one for each given person.

683. It is allowed to pay the *fitreh* during the month of Ramadan, or on the night of the Eid, but it is better to pay it to the poor as a loan, then regard it as a *fitreh zekāt* on the morning of the Eid. And if it was not paid before the day of the Eid, the time to make it ready is: from dawn on the day of the Eid to the time before the Eid prayer as an obligatory precaution for those who have prayed the Eid prayer, but if not this time stretches to before noon.

684. It is allowed for the payer to specify the *fitreh zekāt* from a certain money source and put it aside during the time it must be made ready, then he can delay paying it, even if for days, until he can give it, or send it, to an entitled person(s), as long as the delay is reasonable, such as to reach a scholar or to execute some personal duties. But if the payer did not specify this until noon of the day of the Eid, it is then precautionary to pay it with the intention of *qorbeh motlaqeh* (same as intention of *qorbeh*, i.e. to seek nearness to God by complying with His commands, but without designating whether it is *adā'* in the time or *qeδāā'* afterwards), without regard to its obligation on him.

In addition, for specifying (the *fitreh* out of his money) it must involve true specifying and putting aside, so the intention to do so is not sufficient, such as if he says, for example this sack of wheat contains the *fitreh zekāt*.

685. When entitled persons exist in the country of the payer, as an obligatory precaution it is not allowed to send the *fitreh zekāt* to another country, but since paying it to the just scholar is more precautionary, it is allowed to send it to the country of the scholar, even given the existence of entitled people in the payer's country.

Section Five

Al-Khoms Tax

The One-Fifth Tax Levy

The *khoms* is a financial duty that is carried out with the intention of *qorbeh* to God; in comparison to *zekāt*, it is obligatory on all possessions except the woman's dowry and any expected inheritance. The name *khoms* is derived from the ratio one in five (i.e. 20%). In this introduction, we shall explain the conditions that make the *khoms* obligatory and some of its general rulings.

686. For the *khoms* to become applicable, the following conditions must exist:

First and second: *Bolūgh* and sanity**, so** *khoms* is not obligatory on the possessions of young children until they reach *bolūgh* (the Islamic legal age), nor on the possessions of the insane person until he becomes sane if his insanity is constant; however if his insanity strikes him only sporadically, *khoms* becomes obligatory on him; the last ruling also applies to the person who repeatedly falls unconscious. That said, an exception to this is the young child's possession of money mixed with forbidden/unlawful money, in which case the guardian has to pay its *khoms* even if before he reaches *bolūgh*.

Third: Islam**, so** ***k****homs* is not obligatory on the non-Muslim during the period when he is a non-Muslim, except if a *thimmī* person (a non-Muslim in a Muslim country) buys land from a Muslim, he has to pay *khoms* on it.

Fourth: **Threshold** in some possessions, such as treasures and minerals, not others, as will be explained.

Fifth: **Ownership to a person**, so *khoms* is not obligatory on possessions owned by a party such as the state, institutions, the mosque etc.

Khoms is obligatory on possessions owned by a person even if it is owned by many persons.

687. It is not conditional for the *khoms* to be applicable that the possession is present with the owner – the only thing here is that the owner of a possession that he expects to have returned to him has the choice between paying the *khoms* when the possession is still not with him and waiting until he gets it back; however, *khoms* is not obligatory on possessions that are unlikely to return to its owner unless they do return to him, in which case the *khoms* becomes obligatory.

688. There is no difference in the *khoms* obligation between men and women, nor between the person who is earning and producing independently and others, if the conditions of obligation are met.

(A) Possessions on which *khoms* is payable

There are many things, as follows:

First: War booty

689. It is obligatory on the fighter to pay the *khoms* on war booty that he obtains in a legal (*shar'ī*) war against the infidels, which is the war that is fought with the permission of the infallible (as) when he is present or the permission of the legal (*shar'ī*) authority in the occultation time; anything obtained from them (the infidels) as a booty without war – it is an obligatory precaution not to take it without it (war). This ruling applies in times when it was the fighters themselves who take on their fighting expenses, today, however, when the state is doing that, the more likely ruling is that the booty is the state's, and the soldiers have in fact become like wage workers.

Second: Minerals

690. We mean by minerals all that comes out of the earth which was created in it and is not part of its living nature, and having a price and value. So *khoms* is applicable on gold, silver, copper, lead, rubies, sapphires, aquamarines, turquoise, sulphur, petrol, salt and anything that comes under such a description, regardless of whether it lies on the surface or under the ground.

691. It seems that minerals are part of *anfāl* (spoils, booty), so it is not allowed to be extracted or owned without the permission of the Islamic authority, regardless to that (the booty) being present in lands conquered by force or otherwise.

692. The threshold (*niσ≅āb*) is conditional in making the *khoms* on the minerals applicable, which is what has the value of twenty dinars or more, which is approximately ten golden Ottoman lire – that is after the exclusion of the extraction and purifying costs.

693. If the mineral is extracted in one go and it reaches the threshold, there is no problem, but if it is extracted in stages, then if this is (nonetheless) commonly regarded as one extraction process, so the work is almost continuous without separating between the stages of work by more than the usual gaps within one process, in this case it is sufficient that the whole extracted amount over all the stages reaches the threshold. However, if the extraction stages are regarded as separate extraction processes so that long time periods separate each two stages, for external or legal reasons, in this case *khoms* is not payable on anything that is less than the threshold in each separate stage.

Third: Treasures

694. By treasures we mean valuables concealed in a land, cave, wall, tree etc; it is often money, jewels and precious stones, including nowadays ancient antiquities of high value, such as ancient stones and ceramics.

695. Whoever finds the treasure becomes its owner if it is not known that it has a Muslim owner or is the honoured-property of a non-Muslim, otherwise if the finder knows an owner that owned it up to a recent time, he must return it to him or to his heirs if he can find them; but if he cannot find them after searching for them, the treasure will become an unknown-owner property (*mejhūl al-Mālik*), in which case he must turn it over to *al-H≅ākim ash-Shar'ī*. However, if the owner was ancient, and heirs are not known, the ruling becomes that of a treasure.

696. It is obligatory to pay the *khoms* if the treasure reaches – in its minimum value – the first *zekāt* threshold of gold and silver, which is twenty golden dinars or two hundred silver dirhams, or whatever its value equals that if the treasure is something else other than gold and silver – this is after subtracting the cost of digging etc that was spent to uncover the treasure and dig it out. As far as the threshold is concerned, the same criterion as explained for the stages for extracting minerals should be applied.

Fourth: Diving finds

697. *Khoms* is obligatory on what is found in the sea or great rivers when its value reaches one golden dinar, when this is done by human divers or specialized tools; this includes finds such as jewels, pearls, coral and other minerals and plants that have value; it does not include fish or animals, nor what is picked up from the surface of water. The legal dinar these days equals the value of half an Ottoman golden lire.

Fifth: Property mixed with forbidden/unlawful property

698. We mean by the property that is mixed with forbidden/unlawful property the particular pieces of money or goods that have become mixed with other lawful money or goods and have become impossible to distinguish from them, and that both their value and owner are unknown. The owner of this money or property is not allowed to use it before paying its *khoms* so as to relieve himself from the responsibility of the misappropriated money in his possession.

Sixth: The maintenance surplus

699. *Khoms* is obligatory on everything that exceeds the maintenance needs of the person that he spends on himself and his dependants across the various fields, from the profits that he made from allowed/lawful means, be it trade, rental, agriculture, ownership, gifts etc, except what he gets from an expected inheritance or the woman's dowry or the compensation in a *khol'* divorce. Because of the details of this, we have allocated a separate part for it.

(B) The maintenance surplus

What is meant by the maintenance surplus is what exceeds the maintenance needs of the person for his livelihood and that of his dependants from the profits that come into his possession throughout the year. Maintenance is what he spends for his living expenses and needs, including what he spends for profiting and production, to pay his debts, in acts of worship such as pilgrimage and *khoms*, or in any other expenditure that is acceptable in the Sharī'ah.

First: Profits

700. *Khoms* is obligatory on profits, which are the surplus that is left after maintenance: that is, everything that has become the person's property from any allowable/lawful means, which includes what he has obtained through commercial, industrial or agricultural effort, or through possessing allowed goods, and it also includes what he has obtained without effort, such as gifts, bequeathed items, unexpected inheritance, income from religious trusts (*awqāf shari'iyyeh*), what the poor have got from the share of the descendants of the Prophet (sawa) (*sehm as-Sādeh*) and all other religion-based money revenues, also what has been obtained from the share of the Imam (as) if it was given for reasons other than poverty, as well as other means of profit. Exceptions to all this – so *khoms* is not payable on them – are the following:

a- Inherited money/property that is transferred to the person after death, provided it is an inheritance, not a gift during the deceased's life, as happens a lot; for this, i.e. the gift during the deceased's life, is *khoms* applicable.

b- The woman's marriage dowry and the man's *khol'* divorce compensation.

c- Whatever must have its *khoms* paid immediately, such as minerals and treasures, so there is no *khoms* payable after a maintenance surplus.

d- Whatever the poor obtain, under their 'poverty' status, from the religion-based money revenues from the *khoms* from the share of the Imam (as).

There is no *khoms* payable on possession of any surplus left to them after spending all they need for maintenance.

701. In the same way that the original assets of the owned property are regarded as profits, its growth and production are also regarded as profits subject to *khoms* rulings. The growth which *khoms* is applicable to is regardless of whether the increase and growth are separate, such as an animal born, milk and wool in the case of livestock, fruits in the case of trees and the like, or that the increase is part of it, such as the small tree growing bigger, the weak sheep becoming fat and the like. Growth is subject to *khoms* in all possessions, whether the *khoms* was paid or not, or whether the possessions themselves had applicable *khoms* or not, such as inherited possessions whether coming for ownership only or trade, this is because growth is a new profit that took place independent of its origin, so it must have its *khoms* paid like any other profits when all conditions exist.

However, if the growth was a kind of increase in the market value that took place due to economic activities, not because of an additional thing, attached or separate, to the original asset, in this case the ruling differs as follows:

1- The original asset whose value has increased was prepared for trading. Here there are two possibilities: the first is when the original asset is one where it is intended to trade with its growth, keeping its origin year after year, such as milk-cows, egg-laying chickens, transport care and the like, in which case there is no *khoms* on the increase in the market value as long as the origins are there; but if the owner sells them, then the increase in its value is regarded as part of the profits of the year they were sold, in which case if they were spent during that

year, no *khoms* would be applicable; but if something was left at the end of the *khoms* year, the *khoms* is to be paid; the same applies to what is part of production pre-requirements, such as projection halls, factories, production tools etc. The second is when the original asset itself is the subject of trade, such as if someone buys a property, an animal or a car to sell and buy another, making profit in this transaction; in this case every increase in the market value is regarded as profit on which *khoms* is applicable even if he did not sell it.

2- The original asset is for personal possession and use; in this case no *khoms* applies to the increase in value in what he owned by buying, for example, if its market value increased when it is still in his possession, unless he sells it; so if someone bought a house to live in for twenty thousand then sold it for fifty thousand, *khoms* will be payable on the thirty thousand increase when the *khoms* new year arrives and it is (still) considered a surplus to his maintenance.

3- The asset is of the type on which no *khoms* is applicable on the outset, such as inherited property; in this case if its value increases and he sells it and uses it for trade, no *khoms* is applicable to the increase in the value which it had when it was in his possession.

The same ruling applies to the asset that comes into ownership as a gift or transfer of ownership, i.e. in ways other than buying and paying for it in kind, and that *khoms* was not applicable to it originally, such as if it was part of its belongings which he used immediately after possessing it, or if *khoms* was applicable and he paid the *khoms* from the asset itself, then in these two cases *khoms* is not applicable on the increase in value, even if he used it for trade.

702. There is no distinction between money or other types of assets in the case of increase in the market value, so whoever has dinars or lire then changes it to another currency and its value has increased during the year to become double its original value, this increase is regarded as profit on which the previous and the following rulings apply regarding its use for trading or possession, and regarding paying off losses or not and other rulings.

Second: Excluded maintenance

Having explained the profits on which *khoms* is applicable, we should explain the maintenance that is excluded from the *khoms* in the profit year.

703. We mean by maintenance/ that which falls into the following two categories:

First: All money which is spent in the pursuit of gaining a profit, such as maintenance, fuel etc that the work machinery needs; also the costs of transport, accountancy, security spent in the workplace; also shop rental, taxes etc.

Second: All money spent for his year's maintenance that relates to the living expenses of the individual, his family, guests, his acts of worship and other things suitable to his status, whether in the expenditure is obligatory, recommended, recommended to abstain from or freely allowed.

704. The exclusion from the year's maintenance is conditional that the money was actually spent and part of the profits were used for it, so there is no exclusion for any amount that he estimates to be donated to him or for what he saved by economising on his expenses so that it becomes excluded from the *khoms* at the end of the year.

It must be noted that actual expenditure has not taken place if he issues a cheque to be cashed before the *khoms* new year and cashing it is delayed until his new year arrived, because in this case he must pay the *khoms* on the amount that remains with him, since issuing the cheque does not take the money out of his possession.

705. What is spent on forbidden things, including what can be regarded as wasteful spending (*isrāf*, *tebthīr*), is not regarded as part of the maintenance, therefore he has to estimate what he spent (in this way) and pay *khoms* on it.

706. It is not sufficient for the *khoms* of money or assets which are in his possession not to be applicable on the basis of the mere need for them, but, in addition to the need, he must be practising this need by usage during the year – so if he bought clothing that he needed but he

did not use, he must pay *khoms* on it since by not using it it had become part of the maintenance surplus. That said, two things are excluded from this:

a- The person is not able to achieve the need except gradually, such as in building a house, bride's preparations, buying a house in monthly instalments that take years to complete; here the parts of that particular need which he is actually paying during the year are regarded as part of the excluded maintenance even though he could not use that need in that year.

b- What is an actual need but the usage of which is subject to emergencies, such as furniture prepared for guests when it is possible that not a single guest would come to use it during the year, or books that the student usually needs but it happens that he did not need them during that year, or winter clothes that he bought after the season and his new year arrived without him using them. The rule in this exception is: **As long as the nature of the need may stretch longer than one year or is bigger than the ability of the person to achieve from the profits of one year, usage is not a condition to regard it as excluded maintenance for that year.**

707. A person may borrow to cover the expenses that he needs for his maintenance, such as for medical treatment, buying a car etc, here there are two situations:

a- That he pays back his debt during the same year, in which case the debt is regarded as part of his maintenance, thus is excluded from the *khoms*, regardless to whether the debt is from the *khoms* year or from previous years.

b- That he does not pay the debt back during the same year, leaving himself owing it until the end of the year but with his firm decision to pay it back from his profits in that year; here there are two cases:

1- That the debt was for maintenance during the profit year; in this case it is excluded and an amount equals the debt is to be excluded from the *khoms* even if that amount was not spent to pay back the debt.

2- That the debt is from previous years; in this case what equals it is not excluded if he did not pay it to the person whom he owed before the arrival of the (*khoms*) new year.

708. *Khoms* may become payable on the profits of the year, but he does not pay, so this *khoms* becomes a debt; in this case, if he wanted to pay the *khoms* from the profits of the following year, or after that, there are two possibilities:

First: The asset on which the *khoms* became payable still exists, such as the house, car, land etc, in which case he has – in addition to the *khoms* – to pay the *khoms* of this *khoms* which he is going to pay, making the total of what he must pay approximately a quarter.

Second: The asset on which the *khoms* became payable had perished after the elapse of the profit year, in which case he must pay the *khoms* only.

709. Things which stay with (despite) usage, such as clothes and jewellery, are excluded from the *khoms* as long as they are needed through the years; and if a person does not need them any more, such as a house that he moves out of completely to go to another one, *khoms* becomes payable on them as long as the *khoms* on them was not paid before.

710. What is meant by 'new year' is the elapse of one year from the beginning of achieving a profit by the person's production and earning, whether he is going to make this as a new year for maintenance or trading/business. Specifying the new year is not subject to the intention of the person because it is an external matter that relates to the beginning of profits; however the person can interfere and specify another day instead, but, he, then, has to pay *khoms* of his profits that were achieved between the beginning of the natural new year (when the profits started) and the day which he specified; then he can follow the day which he specified in the following years; and so on every time he wants to change his new year.
The person is free to follow either the Hijri or the Roman calendar.

711. The benefit of specifying a new year lies in that the person, to pay the *khoms*, waits for the arrival of the second new year to see the amount he spent on his maintenance and pays

khoms on the surplus from the maintenance, rendering this taxed money as a capital, the surplus of which is to be taxed in the following year, and so on.

712. The person must specify one new year, so it is not allowed that an employee who is paid monthly salaries to specify one new year for every salary, i.e. to wait the elapse of one year on every salary payment, but he must observe one new year for all as we have explained above.

713. If the person pays money as *khoms*, then he needs it in the following year for some of his expenses, it is allowed for him to compensate what he spent from the profits of the current year when its new year arrives.

(C) The *khoms* of business capital

What is meant by business capital is everything that is related to the trading process, including the means used to make the profit such as tools or shops, even the money paid as *khiliw/serqofliyyeh* (i.e. an amount of money paid once at the beginning of the rental of a shop etc that is additional to the rent, as if to allow the premises to become vacant), also the assets used for business, whether money or goods. The details of this are as follows:

714. *Khoms* is applicable on business capital whatever its type, except the following:

1- Money taken from money that was taxed (*khoms* paid) before.

2- Money taken from money that is not *khoms*-applicable, such as inheritance and *khol'* divorce compensation.

3- Money that is equal to, or less than, a person's annual expenditure so that he has no other money, nor is he capable of producing what meets part of his annual expenditure through an employment or the like.

715. It is not obligatory to hasten to pay *khoms* on business capital at the start of using it in business, but it is allowed to wait the elapse of one year after that, then tax it as the *khoms* at the new year, unless *khoms* is applicable on it for other reasons.

716. It is not obligatory to tax the *khoms* on business profit as soon as it is achieved, but a person can wait until his new year to pay *khoms* on the surplus from what he spent on his maintenance and business needs, such as workers' wages, fuel, taxes etc. For example: someone produced twenty thousand, spent eight thousand for his needs and four thousand in the production process is obliged to pay *khoms* on the remaining eight.
That said, if he made some of his profit a capital for another business, such as if he bought shares in a company, in this case the previously explained business capital that must be taxed as *khoms* would apply, and would not be excluded from the profit.

717. The exclusion of production costs is not exclusive to businesses which see their profits in the year of the expenditure, so if a person spent in this year a profit that would not be achieved until the following year or the year that follows, in this case it is acceptable to exclude it until the profit is achieved after one, two years or more.

718. Every loss that takes place in the capital can be compensated from the profits achieved at the end of the year, regardless of whether the loss was due to tools or machinery damage, raw materials or workers and the loss due to tool or machinery depreciation because of use or spending some of the capital to meet a person's needs, and whether the loss was before he made any profit in this year or after he made the profit. For example: if someone buys goods for fifty thousand and some are stolen to the value of ten thousand, but he makes twenty thousand profit, in this case he, at the end of the year, can compensate the loss from the profit by returning his capital to fifty thousand and pay *khoms* on the excess to his compensated capital, ten thousands in this example.

719. The ruling in crops and livestock is the same as the ruling in other assets, whether regarding the maintenance or business, which we explain as follows:

a- If the trading is with the same livestock and farm, for example, in this case it must be taxed for *khoms* as a business capital, and its profits must be taxed *khoms* as well, including the increase in market value if some of it remained unsold at the end of the year.

b- If the trading is with the produce of the livestock and the fruit and produce of the farm, in this case he must pay *khoms* on the business capital, which is the livestock and farm, for example, which is given the term '*osūl*', i.e. original assets, as we mentioned before, in addition to paying *khoms* on the profits without exclusion of the production costs, but *khoms* is not applicable on the increase in the value of the original assets as long as his intention is trading with the growth not the original assets.

720. If he has business capital – wholly or partly – as a loan with a merchant, it is regarded as if it is non-existent as long as it is not paid back; so if someone has a fifty thousand capital and half of it is owned by him and half a loan to someone else, in this case his capital, in fact, is the owned half only, which is the one applicable to the *khoms*, not the other half which is still not paid back to him; then when each part of it is paid back to him during the following year, he must pay *khoms* on it according to the previous rulings.

721. If he bought something to trade with – such as work tools, depot etc – and the cost was a loan to be paid in instalments, there is no *khoms* payable on the increase in its market value, if any.

722. It is obligatory on a businessman to pay *khoms* on loan which others owe him if it is possible to get them paid back when the person demands it, otherwise he is allowed to delay paying the *khoms* until they are paid back to him.

(D) Estimating the *khoms*

723. If the conditions for *khoms* exist, it becomes obligatory on the person to pay the *khoms* at its specified time without delay, but since the external elements in the *khoms* differ according to whether the asset is money or goods, and according to their purpose being for business or possession, and according to whether a person owns them as money or a loan, the estimation and calculation of the *khoms* differs for the three different cases:

First: If the asset to be taxed for the *khoms* is money or assets (other than money) and the person wants to pay the *khoms* from the money or the asset itself, not from something different, and here the parts of the asset are of equal value, a person may pay its *khoms* without any problem; but if their parts are different, it is not sufficient to pay the lower-valued part only, so he must check the difference in value and pay the amount equal to the *khoms* (20%) of the total from the same asset or a different one.

Second: If the person wants to pay the *khoms* from another asset, here he must estimate these assets at their current value and pay its *khoms*, even if their current value is less than the purchase cost, although it is better to pay *khoms* according to the purchase value. The same ruling applies to business assets.

That said, if he borrowed money and bought a car, for example, for possession, regardless to whether it was for the maintenance of his business, then he started paying it back from the profits of the following years, in this case after he had paid all the loan, and if the *khoms* was applicable to it, he is not obliged to pay the *khoms* of the increase over the purchase price paid by the money he borrowed before. However, if selling it were to make profit and its market value increased, the *khoms* on the increase will be obligatory.

Third: If the assets he has were bought with money from the profits of the previous year that were *khoms*-applicable but he did not pay the *khoms*, in this case he must pay *khoms* on the money only. So, if he bought a house using saved money which was *khoms* applicable, in this case, regardless to its current or past value, he must pay the *khoms* on the same price he paid when he bought the house, unless the house was bought to make a profit, in which case he must pay *khoms* on the price and pay *khoms* on the increase in the value, treating it as a business capital as previously explained.

724. If the person doubts whether the asset, which has been in his possession for one year, was bought using saved money so that he estimates its *khoms* according to the purchase price, or if it was bought it using profits of the purchase year so that he estimates its *khoms* according to its current value, in this case he must estimate the *khoms* according to its current value.

(E) Paying the *khoms*

725. The *khoms* is to be divided into six shares, as follows:
a- The state's portion, which is three shares, that the scholars call '*sehm al-Imam*', i.e. the Imam's share, which in turn consists of three shares:

1- God's share.

2- The Messenger of God's share.

3- The Messenger relatives' share (*thol-Qorbā*), who is the infallible Imam (as) in particular. In the time of occultation, these three shares are controlled by the 'general deputy' of the infallible Imam (as) who is the just scholar known as *al-H≅ākim ash-Shar'ī* (the Islamic authority).

This part of the *khoms* is not paid to the Messenger (sawa) or the Imam (as) in his personal capacity, but in his position and responsible capacity with expenses to meet in the way that the infallible sees appropriate. Thus, the Islamic authority/scholar notes in the expenditure of this part the priorities which the Imam (as) would be concerned with had he been present, which are different and diverse according to the circumstances and according to the scholar's degree and spread of authority. These priorities may be listed, according to their importance, within two areas:

First: Spending it (these shares of the *khoms*) in propagating and strengthening Islamic teachings, such as sponsoring propagation centres and preparing scholars, and in supporting the strength and independence of the Islamic entity.

Second: Spending it on projects vital for Muslims such as schools, hospitals, science institutes and supporting the weak and poor and the institutions that care for them.

b- The individuals' portion, which consists of three shares, known by the scholars as '*sehm as-Sādeh*', i.e. the Prophet descendants' share, which in turn consists of three shares:

1- The poor, especially the *mesākīn* (i.e. who lead a harder life than the poor).

2- The orphans.

3- The stranded travellers (*ibn as-Sebīl*).

These shares are exclusive to the poor, orphans and stranded travellers from the Hāshimīte tree (i.e. descendants of Hāshim, the great-grandfather of the Prophet (sawa)) as an obligatory precaution.
The descriptions of the poor, orphan and the stranded traveller are the same as those mentioned in the chapter on *zekāt*; in addition, to qualify for the descendants' share (*sehm as-Sādeh*), the following must be met:

First: Righteousness is not a condition, although it is an obligatory precaution not to give to someone who is not praying, who vaunts his sins and who drinks alcohol. It is also more appropriate that the person does not pay someone who does not follow Ahlol Bayt (as).

Second: It is not sufficient in the case of orphans to possess the mere state of being an orphan, but they must be poor and lacking possession of their own maintenance for the year; so if the orphan inherits money that is sufficient for at least one year, he is not entitled to *khoms*.
What is meant by an orphan is one who has lost his father and has not reached the Islamic legal age (*bolūgh*) yet.

726. If the wife is a Hāshimīte and the husband not, then if her expenses are met by her husband, even if he borrows, in this case she is not entitled to the descendants' share, But if her husband was not capable of meeting her expenses, even with borrowing, or what she needs is something that not her husband is not obliged to pay for, such as to pay a loan, in this

case it is allowed to pay her from the descendants' share and if she is given it it becomes her own so she can spend it on her children, husband or others.

727. The Hāshimīte can take his share of the *khoms* whether the *khoms* payer was a Hāshimīte or not.

728. It is allowed that one descendant/ Hāshimīte gets given what is sufficient for one year's maintenance and not more, and it is allowed to spread the amount being paid over the three types in whichever way a person likes; the same applies to the expenditure of the Imam's share.

729. A person who has to pay *khoms* is not free to pay to entitled individuals from the descendants' share and not free to spend it on the expenditure of the Imam's share without obtaining the permission of the Islamic authority, who is the just *mojtehid* scholar or his authorised representative (*wekīl*), as an obligatory precaution for the two portions; the scholar, in addition to righteousness and *ijtihād*, must be knowledgeable on the expenditure of the public and private religion-based money revenues in a way that conforms with the aims of the Sharī'ah and the needs of society.

730. It is not obligatory to pay in the country of the payer, although it is more appropriate to do so when entitled individuals exist there. That said, if the transfer to another country, if done, is regarded as a type of complacency in meeting the obligation, such as if this (the transfer) leads to delaying the payment for a long time, in this case it is not allowed to be transferred. Also, if the *khoms* is present in a country other than that of the owner, he must not be complacent about paying it and must try to pay it at the earliest possible occasion.

731. If a person owes the *khoms* payer money and the payer wishes to pay him the *khoms*, he is allowed to regard the debt as *khoms* and he has met his *khoms* obligation if this takes place, with the permission of the Islamic authority as an obligatory precaution.

Section Six

Enjoining what is Right and Forbidding what is Wrong (evil)

Al-Amr bil-Ma‘rūf wal-Nahi ‘Anil-Monker

Ma‘rūf (right) is every deed which the Sharī‘ah made obligatory or recommended, so if the command is one of obligation, enjoining others to do it becomes obligatory (*wājib*), and if the command is one of recommendation, enjoining others to do it becomes recommended (*mosteη≅abb*). *Monker* (wrong, evil) is every deed which the Sharī‘ah did not accept, so it made it forbidden, or encouraged abstention from doing it, so if the deed is forbidden, forbidding it becomes obligatory and if it is recommended to abstain from it, forbidding it becomes recommended. But it must be noted that the recommendation of enjoining recommended deeds (*mosteη≅abb*) and forbidding the deeds that are recommended to abstain from (*mekrūh*) is conditional by this being safe from harm or humiliation, otherwise the enjoining or forbidding become forbidden.
Enjoining obligatory deeds and forbidding forbidden deeds are a *kifā’ī* obligations that the person is relieved of when others attend to them. However, the act of enjoining or forbidding is not cancelled by carrying them out; rather the obligation stays as long as committing the forbidden deed or abandoning the obligatory deed continues.

(A) Requirements enabling enjoining and forbidding

732. In addition to the general requirements/conditions of reaching the Islamic legal age and sanity, the following are also conditional to enable enjoining (what is right) and forbidding (what is wrong, evil):

First: Knowledge of right (*ma‘rūf*) and wrong (*monker*); therefore one must learn the rulings regarding areas to which a person may be subject to in his conduct and relations, so that he can carry out the duty of enjoining and forbidding.
Second: The enjoiner and forbidder must be safe from harm to himself and his honour; this condition includes also no harm to other Muslims or their possession or honour.
It is also conditional that the act of enjoining or forbidding does not require getting into intense difficulty that the person cannot withstand, such that if this leads to him not being able to stay in his house, or to leaving a profitable job for a very demanding job. This also applies to enjoining and forbidding that leads to getting others into intense difficulty.
It is sufficient for the obligation to be cancelled if there is the possibility of harm, even if it is commonly regarded as only probable. As far as intense difficulty is concerned, this is not sufficient reason, but it has to be ascertained since it is a realistic matter.
That said, in some cases it may become obligatory to withstand harm, such as in big confrontation to fight injustice and establish justice. But since this is difficult for the person to tell, he must consult the Islamic authority (*al-H≅ākim ash-Shar‘ī*) to study it and see the degree of harm that must be accepted.

(B) Who is to enjoin and forbid

733. Certain things must be present in the person who is abstaining from the *ma‘rūf* or doing the *monker* so that he may be enjoined or forbidden:

First: His knowledge that what he is neglecting is *ma‘rūf*, or what he does is *monker*, so if he is ignorant about the rulings on the matter, the obligation of enjoining or forbidding will no longer exist, unless if what he is about to do is something important which Allah the Most High does not accept absolutely, such as the murder of a sacred soul, grand corruption etc.

Second: He must not be excused of doing the *monker* or neglecting the *ma'rūf*, as in compelling cases, or according to *ijtihād* and *teqlīd*, but if this concerns an important matter as above, forbidding them becomes obligatory if possible, even if the person is excused and not to be blamed for them.

Third: The enjoining or forbidding should be regarded as a reasonable endeavour, even if the person is not actually doing the deed or insisting on continuing doing it, for it is sufficient that his intent is to abstain/neglect a *ma'rūf* or commit a *monker* or for knowledge of his intent to continue.

Fourth: It is probable that the enjoining or forbidding will have effect; what is meant here is not the immediate effect, but applies to any situation other than being completely convinced that the person does not care about the enjoining or forbidding and will not be affected by them; so if the person is convinced that that sinner would not be affected, in this case trying to stop him will not be obligatory.

734. In any situation where we said that the obligation of enjoining or forbidding is cancelled, it is allowed for the person to (nonetheless) go ahead with them, enjoining and forbidding as a matter of reminding the sinner about Allah the Most High, unless this leads to humiliation and belittlement in which case this becomes forbidden.

735. One must continue enjoining and forbidding time and again as long as the sinner is still committing the deeds; it is sufficient for the obligation to stay if it is probable that he might stop, until one discovers otherwise.

(C) Levels of enjoining and forbidding

736. Enjoining others to do what is right and forbidding what is wrong can be carried out in three ways:

First: Through the heart, which is done through showing one's distaste and annoyance, such as by turning away from offenders and not speaking with them and the like.

Second: Through speech, which is using words in a suitable and effective manner; therefore, one must decide upon using gentleness, or harshness etc.

Third: Through the hand, which means hurting them by beating them in the manner that the hand is usually used for; here are some points:

a- Beating is not to be resorted to unless all other ways fail.

b- The furthest extent of beating must stay below fractures or wounds, but if stopping them can only be achieved through fractures and wounds, it becomes obligatory with the permission of the Islamic authority.

c- One must proceed in order of the levels of beating from the lightest to the harshest; therefore the case must be studied in all its aspects. However, studying some important levels of enjoining and forbidding may be so sensitive and important that it must be the responsibility of the state – if such exists – or the believers who have experience when such a state does not exist, so that carrying out the enjoining and forbidding does not harm Islam or the public order in a way that might lead to disturbance, chaos or other dangers.

737. It is not obligatory to proceed in order between using the heart and using speech, but the enjoiner and forbidder is to decide which one will be effective.

(D) Rulings of enjoining and forbidding

738. The obligation of enjoining others to do what is right and forbidding what is wrong/evil is not exclusive to people outside the family and relatives, but they include unmarriageable individuals, relatives, husband and wife and others; in fact this might be more appropriate, while noting that kinship and family relationships or marital links may need more precision and study of how to carry out the enjoining and forbidding, and may provide a person with additional leverage in the methods of enjoining and forbidding.

739. If, to make the enjoining and forbidding effective, more than one person is needed, whether within an organised framework such as societies, clubs or (political) parties, or without an organisation, it becomes obligatory on them if it is possible, and the obligation will not be regarded as satisfied without it.

740. It is not allowed for Muslims to put their children in non-Muslim schools if deviation is possible even if in the future; otherwise it is allowed, although it is better not to do so when Islamic schools are available.
And assuming there are no (Islamic) schools and it is feared that the children will fall into deviation, it becomes obligatory on Muslims, as a *kifā'ī* duty (obligation under the conditions of sufficiency), to strive to found such schools in the number that meets the demand.

741. If stopping evil deed cannot be done but by committing a forbidden act, such as entering a place without permission, touching women or the like, it becomes allowed if the wrong to be forbidden is more important than the forbidden act needed. This includes if to stop the wrong seeking help from an unjust ruler is needed; this is allowed unless this leads to something worse (more evil) than the wrong one is seeking to stop.

Epilogue

Since committing *monker* and ignoring *ma'rūf* have become a dominant phenomenon committed by states, organisations, societies and establishments, in addition to individuals, both ordinary and important, the strong and effective confrontation with this phenomenon requires a detailed study and comprehensive plan that takes into consideration social, political, economic and security matters. As for those in the religious propagation field, they must – according to their position and capabilities – strive with all their effort to preach, advise, teach and confront any form of corruption and misdeed with wisdom, depth, patience and comprehensiveness, and must strive, with the activists, to make the plan a reality in this or that position; this is because this is an era of emergency for which they should mobilise all their power in this great Message-bound duty.

Section Seven

The Parameters and Obligations of Defence

Ad-Difā‘

Defending one's self and what is related to it is an instinctive matter firmly established in man. The Sharī‘ah accepted this and commanded and encouraged people to do it, promising reward for doing it and punishment for ignoring it; this is because of its utmost importance to man's happiness, the nations' advancement and societies' stability.
Defending the self against personal dangers may sometimes become a specific obligation (*wājib ‘aynī*) and allowed in others, and if the person was incapable of stopping the danger to himself, it becomes obligatory on others to do so as an obligation under the conditions of sufficiency (*wājib kifā'ī*). As for defending the homeland and similar public matters, its obligation is originally a *wājib kifā'ī*, but it may become *wājib ‘aynī* on some occasions.

(A) Defending one's self and what relates to it

First: Defending one's self

742. It is obligatory on every person, man or woman, to fend off harm directed against him by others, whether the source is man, animal or other things, natural and earthly or from outside the earth; it is forbidden that the person inflicts harm on himself and he is obliged to abstain from that and to protect himself from harm.
The level of harm which must be stopped, and what the self must be protected from, is what most sane (reasonable) people strive to defend themselves against. Death is the greatest of these, then follow the significant forms of harm that are similar to death, such as permanent coma, paralysis, insanity, blindness or other things that stop the major organs or bodily functions from operating; then follow intense wounds, burns or fractures and severe and debilitating illnesses and pains, and similar matters of harm that exceed the minimum level of harm and pain. If it is things like bruises, blows, contusions, simple pain or discomfort resulting from things like stomach acidity, coughing, skin rash or the like, then these are not things that sane people strive excessively to evade and therefore it is not obligatory to protect oneself from them, although it is allowed to stop others who try to inflict them on others.

743. One of the forms of harm that must be stopped is sexual attack, such as intercourse or less, on both men and women, from both men and women. Attached to this is aggression on the dignity and the moral sanctity of the individual, such as with words or acts that lead to mocking and ridicule, discomfort or restrictions to one's freedom and the like.
Included in aggression on sanctities is the case where someone intentionally climbs the fence of a house, makes a hole in the wall of a house, uses binoculars or instals tapping or camera systems, in order to watch them and uncover their secrets, or for sexual pleasure by watching women or the sexual activities of others; in these cases it is allowed, rather it may become obligatory, to deter the offender or stop him from doing this, and if this requires attacking him

or destroying his possessions, there is no compensation to pay (if that results from the act of defence).

744. Types of harm that people have become accustomed to inflicting on themselves, such as smoking tobacco, are not excluded from this, nor harm that some people inflict on themselves for religious reasons, such as hitting the head with swords, wounding the body or burning it in (showing) sorrow for Imam H≅osain (as), for it is forbidden to inflict such harm on the self even if such a thing has become common or invested with a religious tradition that the Sharī‘ah did not command, nor recommended.

745. Committing a lesser harm may become obligatory if stopping a bigger harm depends on it, such as in the cases of medical treatment with (chemical) drugs, surgical operations or the like; in fact, it may become obligatory, or allowed, to destroy oneself, such as in the martyrdom missions, if something more important, such as achieving victory, depends on it.

746. Stopping danger has two levels:

First: Protection and fortifying against it and using plans to fend off aggression and danger, which is the fundamental way to stop natural dangers to the self, such as the harms posed by heat, cold, epidemics, wild animals etc. If the aggressor is a man and it is possible to evade his aggression by fortifying oneself from him in a house, or by alerting him with things such as coughing or speech to indicate that you are awake and ready for him, or by running away from him and hiding from him, this is allowed if no humiliation, harm to one's honour or other things that lead to forbidden things resulting from them; in fact, it may become obligatory if this results in preventing harm to both the aggressor and the defender, such as if the attacker is one of his relations or is insane or similar. It must be noted that the situations and cases of this level are many and diverse, some of which are complicated and confusing; therefore, the person must be precise and cautious in situations of defence and its means, even when using force and violence so as to avoid the excessive use of force and overstepping the allowed boundaries of the Sharī‘ah.

Second: Taking the initiative by attacking the attacker to stop the danger – even if his aim was less than murder – using the available means. In this case, it is allowed to use any available means so as to fend off danger and stop the enemy, even if it leads to inflicting grave harm on the aggressor or killing him. That said, the defender must, where possible, go about defending by starting with the lighter approach before moving on to the more intense – and when we say ‘where possible’ we mean if the defender is capable of directing the confrontation as far as the physical power, tools, time and place are concerned in this gradual way; this is in contrast to the situation where it is not possible, i.e. when the defender is confused, afraid, lacking the suitable tools or other things that make gradual defending impossible.

747. For every case of defence there is a particular way of gradual defending, something which can be generally specified as follows:

First: Resorting to any means less than beating, such as: separating oneself from the aggressor with things like shields or doors, yelling or shooting in the air, waving the hand or a weapon or the like.

Second: Hitting the aggressor with the hand or a stick on less painful parts of the body, moving gradually to more painful places; also, one has to be gradual in the intensity of the hitting starting with blows that do not leave any mark, moving on to blows that cause reddening to blueish then black marks, and so on up to using sharp tools to inflict light wounds then gradually to inflicting deeper wounds, taking care of the levels between deep wounds and fractures, going from the lesser to the more severe.

That said, if the defender believes – at the start – that the aggressor will not be stopped except by using the more intense level, he is allowed to use it immediately. The same applies if there is no time or possibility to specify the lighter level with regard to the nature of the situation and the complexities of defence. (In any case,) judging what is lighter and what is more intense is a matter of norms and customs.

748. The defender is not responsible for paying compensation for the harm of wounds or fractures inflicted on the aggressor, or his possessions, such as his clothes, car etc, if the defender abided by the acceptable method of defending, i.e. without aggression or exaggeration; otherwise the aggressor would be liable for compensation to the extent of his aggression and exaggeration.

749. If a person believes, wrongly, that another person wants to harm him and he fends him off causing him harm, then he discovers his error, he is liable to pay compensation of the harm he has caused to his body and possessions, (but) he has not sinned.

750. There are conditions that must exist in the defender in order that he is allowed or obliged to carry out an act of defence:

First: Ascertaining that the other party wants to harm him; so if he thought or thought probable that this was what the other person intended and he was certain of his ability to stop him at any time, in this case he is not allowed to defend himself until after becoming certain of the attack on him. But if he fears a surprise attack at a time when he will not be able to defend himself, and his fear is commonly regarded as valid, in this case he is allowed to carry out a pre-emptive defence.

Second: It is probable that he is going to defeat the enemy at the minimum level; so if he believes that he is not capable of defeating the enemy, defence becomes not obligatory then, unless if failing to defend leads to a worse situation, in which case he is obliged to confront the aggressor even if he is defeated.

Third: He must be certain of being safe from being killed; so if he is certain that he is going to be killed, defence becomes not obligatory in all situations. That said, it is not forbidden for him to defend in any situation in which the attacker proceeds in a way that must be stopped, such as with murder, wounding, aggression on his honour etc; otherwise it is forbidden, such as if the attacker wants to hit him or the like.

751. For the defence to be allowed or obligatory, there is no distinction between the situation in which the attacker is a stranger or someone of his kinship or the like, such as the father, son, husband and so on; so if the father attacks his son, the son his father or the husband his wife, the person on the receiving end is allowed to defend himself or herself, even if this leads to killing the attacker or wounding him when defence depends on this.

752. After the attacker stops and the defender becomes certain of this, the defender is not allowed to continue defending; the same applies if the attacker turns his back or backs away from the incident; so in both of these cases, if defender now causes him harm, he has sinned and is liable for paying compensation.

753. If stopping the attacker depends on seeking the help of the oppressor or infidel, this becomes allowed or obligatory according to the situation, even if this leads to exaggeration in fending off the aggression on the self or one's honour. That said, if one is able to forbid the oppressor from such exaggeration, this becomes obligatory. In any case, the person who seeks help is not liable to pay compensation for the harm inflicted (on the aggressor) by the oppressor, but it is the oppressor who becomes liable for this.

754. If two individuals fought and each one transgressed on the other, in this case each one would become liable to compensate the other for what he has inflicted on him; and if one of them stopped fighting but the other continued and renewed his attack so that the other, who stopped defending, was forced to resume defending himself, in this case the latter would not be liable to pay compensation to the former.

Second: Defending others

755. It is obligatory to defend others against whatever one defends one’s self against if the other party is unable to defend himself, wholly or partly; in fact, defending him is obligatory if he is capable to defend himself but if he is unaware of the danger and when warning him to defend himself is not possible, whether the danger may lead to his death or to lesser dangers that one must protect oneself from. However, if he is capable of defending himself but

abstains intentionally to do so, in this case defending him – as an individual – is not obligatory, even in cases of grave danger that lead to death or effects similar to death, such as blindness, paralysis, insanity, but it is allowed.

756. In general, the rulings regarding defending one's self apply to defending others, but the following must be noted:

First: All that was mentioned in defending the self apply to defending the family, i.e. those who are regarded as one's unmarriageable kinship, who are: fathers and mothers and their ancestors to whichever degree, children and their descendants to whichever degree, the husband and wife, brothers and sisters and their children, uncles and aunts on both the father's side and mother's side, since these have the same level of the self to the person.
There is no distinction (as far as defending is concerned) whether the aggression is aimed at the body with wounds or killing or at the honour of the family with rape or lesser acts.

Second: People other than the family whom we did not mention include his more distant relatives and all Muslims, especially whoever is related to his servant; it is obligatory to defend them unless he knows that the harm that will be inflicted on him is worse than what he hopes to save them from by defending them, so if, in this case, his defence of the others leads to a greater harm on him that is less than killing and the like, defending is allowed but not obligatory; but if his defence leads to his death or similar, it becomes not allowed, not to mention not being obligatory.

Third: Defending possessions

757. It is allowed to defend possessions if they are the target of burglary or destruction, even if this leads to killing the aggressor, or the death of the defender. It is also allowed to abstain from defending, whatever the amount or value of the possessions.
The same rulings apply as when defending the self regarding no liability to compensate the harm inflicted on the aggressor as a result of defending against him, as well as the rulings regarding the gradual escalation of defence and other rulings.
Just as the person may defend his possessions, he is allowed to defend his family's possessions. Regarding the possessions of others, however, he is allowed to defend these unless he is certain of harm to himself, such as wounds, fractures or lesser injuries or anything which he must protect himself from.

(B) Defending the homeland

Under current common international customs, each Muslim country is regarded as a homeland to its citizens, as is each country in which Muslims reside in great numbers so that any aggression against it by occupation or the like is regarded as an aggression against them. So if the homeland is subjected to invasion by an outside non-Muslim enemy, it becomes obligatory on its citizens – in the first degree – as an obligation under the conditions of sufficiency (*wājib kifā'ī*) to rise up to liberate the land and fend off the enemy, and if they are incapable, it becomes obligatory on the nearest people to them then the next nearest, as a *wājib kifā'ī* as well, to defend them when possible and capable.

758. The obligation of defence is not – originally – exclusive to men and the youth, but it includes everyone who is able to defend at any level; so this includes men and women, the young and the elderly, the sick and the healthy. However, if some of them meet the obligation and the defence is achieved, the rest are relieved from the obligation.

759. The obligation may fall on everyone (*wājib 'aynī*) who has certain expertise without whom defending is not possible, in which case they must hasten to play their role and they are not allowed to be complacent or run away; rather, it is obligatory on those of them who are outside the homeland to hasten to come and do their duty.

760. When it is possible to follow the orders of the righteous jurist (*feqīh 'ādil*), then defence is a person's duty, and in this case it is not allowed for him to defend unless under the jurist's command and authority. But when it is not possible to abide by the orders of the righteous

jurist and when it is essential to start defending immediately, in this case the authority of justice is not conditional on the Muslim who is leading the defending process provided that his experience and loyalty are affirmed; in fact, it may become obligatory to abide by a non-Muslim whose experience and loyalty have been ascertained if leadership is not possible by any other than him.

761. It is obligatory on all Muslims who are the citizens of the occupied land to provide support and protection to the fighters who are carrying out the defence duty, and this is through all the types and levels needed in defending, whether financial or in terms of security and showing support for them and sponsoring the orphans and families of their martyrs and the like.

762. It is not conditional for the son who wants to carry out the defence duty as a *wājib kifā'ī* to seek his parents' permission, but he is allowed to do so even when they try to prevent him and forbid him.

763. The Zionist entity occupying the land of Palestine and others is a usurping and transgressing entity, so fighting it is obligatory until the liberation of all the occupied lands is achieved; it is not allowed to enter into truce with it, make peace with it or concede to its occupation of the land of Muslims; it is also not allowed to deal with it in any way. This applies to any occupier of Muslim lands.

764. If the nature of confrontation with the enemy requires freedom fighters to carry out martyrdom (*istishhādiyyeh*) missions, this is allowed; in fact, this becomes obligatory if victory depends on it.

765. A country – in our times – may not be subject to aggression on the land, but to political conspiracy such as by imposing an unjust and treacherous government, or to economic aggression, such as through harmful agreements, or the like; in this case confrontation – as *wājib kifā'ī* – is obligatory to such conspiracies with whatever means are suitable and under – as should be – the authority and advice of the righteous jurist and his leadership.

Epilogue
Reaction using similar acts (*ar-Redd bil-Mithl*)

We mean by '*ar-Redd bil-Mithl*' what the party who was subjected to aggression is after the aggression, regardless as to whether the aggressor was defended against before then or not. The situation which we can assume is that an act of aggression has taken place, either because of lack of awareness on the part of the transgressed party, defeat at the hands of the aggressor, the victory of the aggressor, or the like. What should the reaction of the transgressed party be when he is able to confront the aggressor again? This is the question, which is, in fact, more a matter of punishment (*qiσ≅āσ≅*) than defence, hence its full details will be found in that section. Here, however, we shall explain some matters that are related to this section.

766. When reacting to the aggression after it took place, the reaction must be of the same intensity if this is something that can be measured, such as returning verbal abuse with the same, a blow with a blow, or a wound or fracture with the same etc.
But if the aggression was not possible to measure, such as major bruises, contusions or the like, in this case one is not allowed to return it with similar, but compensation (*diyeh* or *arsh*) should be taken. In all cases, pardon is nearer to God-fearing and more generous.

767. Verbal abuse that others commit comes in two forms: the first includes slander that calls for punishment (*η≅add*), such as saying: 'O you adulterer, you pimp' or calling his family likewise, such as saying: 'O you son of an adulterer' for example. Such verbal abuse is not allowed to be returned because slander is forbidden absolutely even as a reaction, and because it involves abusing the family, so it is not allowed to react by abusing the slanderer's family, who have nothing to do with the aggression. The second is language that does not include slander, such as saying: 'O you cheat, you shameless idiot' and the like; this is allowed to be returned with similar words or with other words, taking care not to fall into lying byascribing to the other party thingsthat are not true.
There is no doubt that elevating oneself above this is more important than seeking recognition of one's integrity or supporting one's dignity by returning the abuse with similar words; it is nearer to God-fearing and exalted manners.

768. The enemy may resort in its war and aggression to internationally forbidden weapons, or bombardment of civilian targets and similar aggressions; in this case it is allowed to return the aggression with similar acts. It is allowed for freedom fighters to use such means initially if stopping the enemy depends on it and if this does not lead to greater harm. Specifying when such acts are to be taken, or its means, are precise and grand matters that must be given to the Islamic authority (*al-H≅ākim ash-Shar'ī*) and his assistants, who have expertise in these matters.

Part Two

TRANSACTIONS

Prelude

Means of Ownership

Milkiyyeh (ownership) is a concept derived from *milk* (ownership), which is in the Sharī'ah: 'The Sharī'ah-accepted control over a possession or right that is suitable for exchange and which enables its owner to have fruitful use of it, unless there is an obstacle.' It has many forms, as follows:

First: According to the owner, ownership may be divided into private ownership ascribed to one individual, or to more as a company/sharing, and public ownership, and may be the nation's ownership, which means that the thing is freely allowed to all Muslims, but by varying degrees according to the nature of the owned thing, such as water, lands (not owned by individuals), trusts and the like, or the state's ownership, which is – originally – the legitimate authority that has the right of control over society and of establishing a just system within it; this ruling also applies to infidel and unjust states.

Second: According to the owned thing, ownership may be divided into what the owned thing is, whether it is the whole of the asset and benefit (from it), such as ownership of houses, properties, books or clothes, or whether the owned thing is the benefit in particular not the asset, such as rental assets, or whether the owned thing is a right that is related to another thing, such as ownership of copyrights, child custody and the like, which will be discussed later.

(A) Qualification for control/disposal/usage of ownership

769. The Islamic Sharī'ah confirmed the right of man to ownership, without differentiating between young or old, male or female, Muslims and non-Muslims, or sane and insane; but – despite this – it did not allow owners to have exclusive control over their ownership unless they have certain merits that qualify them for this and unless their disposal actions do not harm others.

As for the factors that are regarded as obstacles to the owners' control of their ownership, they are:

1- The young-age obstacle, which means not having reached the Islamic legal age (*bolūgh*); but once the boy or girl has reached it, the obstacle is lifted and their control of the asset is valid, provided that the condition of *roshd* (reasonable, acceptable conduct) accompanies *bolūgh*, as will be explained.

2- The insanity obstacle; what is meant by insanity – according to common understanding – is the state of being separated from reality, when one's conduct is outside the individual and social norms that stem from Sharī'ah and custom, which may reach the extent of lacking instinctive judgement and a complete dislocation from material reality. What is meant by the insanity obstacle is when this happens all the time, so if a person's insanity occurs in bouts, so that he becomes insane only sometimes but is sane on others, his disposal (of his ownership) when sane is valid when other qualification conditions exist.

3- The *sefeh* obstacle; *sefeh* is opposite to *roshd*, and in the world of finance, *roshd* is: a level of experience in transactions that on one hand enables the person to benefit from his assets and invest them in suitable ways without making him slide – a lot – into unfairness, and on the other this experience enables him to spend his assets/money reasonably for his needs.

770. The *sefeh* obstacle is exclusive to the control of assets – selling, buying, giving away as gifts etc, so it does not stop the person from his activities that are not financial in themselves even if they include spending money, such as marriage, divorce, vows and the like.

771. *Roshd* is not related to a certain age; a person may reach old age but stays *sefīh* (incapable of reasonable conduct) and so is prevented from control (of his assets); also, he may become *rashīd* before reaching the Islamic legal age, but the latter must be reached to lift guardianship from him.

772. *Roshd* is ascertained through tests, such as giving him an amount of money and observing his conduct. In Sharī‘ah, it can be proven by the witness of a man or woman, and only one righteous or trustworthy witness is sufficient; there is merit in accepting the witness of one woman on the *roshd* of a woman, and there is no problem in that provided that satisfaction is achieved.

(B) Guardianship (*wilāyeh*) of those who lack the qualification of independence

The Sharī‘ah has taken care to provide people who take control of individuals who do not qualify for independence, so that they manage them according to their (the formers') interests, and this is at the following levels:

First level: Guardianship by the father and the grandfather on the father's side

773. Guardianship by the father and the grandfather on the father's side is confirmed on the young until he reaches the Islamic legal age (*bolūgh*), and on the insane and *sefīh* – if they have reached *bolūgh* – until the insane becomes sane and the *sefīh* becomes *rashīd* (reasonable); so if the insanity or *sefeh* takes place after reaching *bolūgh*, in this case the Islamic authority will become the guardian, although it is better to include the father or the grandfather on the father's side with him in the guardianship over them. The guardianship of the father and the grandfather on the father's side stems originally from their blood ties to the person under their guardianship, so it does not need the appointment of the Islamic authority, nor his supervision and permission.

774. The guardianship of the father and the grandfather – if they are alive – is at one level, so if they both take up one matter and the action of one of them occurred before the other, in this case his action becomes valid not the other, otherwise both of their actions become invalid, which is something that seldom happens, especially because often it is the father who takes control without the objection of the grandfather.

Second level: Guardianship of the guardian (*waσ≅ī*)

775. Guardianship of the guardian (*waσ≅ī*) stems from the guardianship of the one who appointed him, who is the father or the grandfather on the father's side, so he becomes like the original guardian after his (the father's or grandfather's) death, and this is better than (handing over control to) the Islamic authority. The conditions for its validity from each of the father or the grandfather is the absence or death of the other, and its (authority over the assets) widens or narrows according to the restraints that the author of the will has put in his will.

776. The conditions of the guardian are reaching the Islamic age, sanity and reasonable conduct (*roshd*); being male is not a condition, nor righteousness, but it is sufficient that he is trustworthy and abides by the restraints and guidelines which the author of the will had specified. Also, Islam is not conditional unless if an evil may take place by entrusting a person to a non-Muslim.

777. It is not obligatory on the guardian to attend himself to guardianship matters unless if this was a condition in the will.

Third level: Guardianship by an Islamic authority (*al-H≅ākim ash-Sharī‘*)

778. We mean by Islamic authority (*al-H≅ākim ash-Sharī‘*) the righteous scholar of Islamic law (*al-Feqīh al-Mojtehid al-‘Ādil*); he becomes the guardian of someone who does not qualify for independence only when the original guardian dies without the existence of a guardian appointed by them (the two original guardians). Based on this, if the person lacking the qualification of independence becomes guardian-less and it is possible to turn to the Islamic authority, it becomes not allowed for any Muslim, even if one of the person’s relatives, to have any control over any of the person’s financial matters in things like selling

or buying, nor over any of their exceptional personal matters that need the opinion of the guardian, unless after consulting the Islamic authority.

Fourth level: Guardianship by the just believer

779. Guardianship should be exercised by the just believer, who is a sane, reasonable, experienced and Sharī‘ah-abiding, drawn from amongst all the believers, whether a relative of the person under guardianship or not. The guardianship by several believers is on one level, so if one of them takes control, his actions are executed and valid, and if two of them take action, the action by the one who started before is executed.

780. It seems that the guardian has the role of the owner in how to dispose of his chargee's assets; therefore, the guardian has the right to seek to bring benefits and make profits for the person under his guardianship, and is not restricted simply to stopping actions or things that may lead to loss or the like, such that if he has to decide between using the assets to try to make profit or to save them without losing anything; it is better for the guardian to trade with the assets of that person under their guardianship to make profit which is in his interest. However, if the action lacks interest for the person under guardianship, such as if there is no profit in that business or any other interest, he is not allowed to do it, even if it lacks any evil or harm.

781. Since the interest of the person under guardianship is a condition in the guardian’s actions, therefore the guardian has no right to give as gifts, nor give as alms (*σ≅edeqeh*), any of the assets of the person under their guardianship, even if there is interest for the latter in them somehow. That said, this does not include paying the *khoms*, *zekāt*, compensation or other matters which, it was narrated, are obligatory or recommended to be paid from the assets of the person under their guardianship when such conditions exist. However, regarding things such as giving loans to others or lending it upon the satisfaction that the loan shall be paid back and the lent property returned, then if this has an interest for the person under guardianship it is allowed; but if it lacks any interest it is not allowed, even if the person who is borrowing is one of his relatives.

(C) The condition that no harm is done to others

782. If the disposal by the owner of items in his ownership is accompanied by harm to his neighbour, and if this harm is something that common to a number neighbours, such as erecting a building that deprives them of sun or air, unless it seems there is no problem in it, otherwise it is not allowed. Thus, he must remove what is commonly viewed as unacceptable harm.

783. Regarding the prohibition of disposal that leads to harm to neighbours, no distinction is made between disposal of items in his ownership leading to real harm to the neighbours' property, such as if his actions lead to a fault in his neighbours walls, and the harm that results as a consequence, such as if he sets up a tannery in a residential area in a way that would make the possibility of living in the neighbouring houses impossible.

784. If one of the two neighbouring owners wants to build a fence around his land, or a wall for his house, he is not obliged to leave a margin/boundary between him and his neighbour’s property, his fence or house. That said, he must abide by the civil planning laws regarding the necessary building specifications since this is important to man’s life and health and the beauty of his town.

(D) Conditions in the case of illness

785. It seems that disposal actions by someone who is sick and subsequently dies are valid and absolutely executable, especially if they conform to his actions during his healthy days and if his actions are not to harm the inheritors, on the condition that they do not harm a loan owed to others in a way that would make the rest of his assets inadequate to pay it back, in which case his actions are to be executed except those that would harm the debt only, which are invalidated.

786. Illness that terminates in death is exclusive to illnesses in which the sick person is usually subject to the danger of death, so ailments like a light temperature that coincide with death would not stop the execution of his actions, even if for the intention of harming the inheritors or people to whom he owed money. In addition, this ruling should apply to only the last stage near to death of an illness that lasted a long time; also to the illness that was the cause of death, so if he dies for causes other than that illness, this would not prevent the execution of his actions which he began during his illness before the cause of his death.

(E) The virtues and manners of earning

First: The virtues of earning

Working hard to earn the living is one of the great praised deeds, since it is a natural necessity required for man to meet his needs and for society to face its duties in building the land and spreading dignity and justice on it. It is also a personal human necessity, because of its effective role in mobilising the person's intellectual, psychological and physical capabilities, bestowing upon him exceptional happiness and good health.

And if Islam is the religion of the instinct that balances the needs of the spirit and the body and this life and the hereafter, it becomes unsurprising that it encourages man to work and strive to earn his living, regarding it like a holy struggle in the path of Allah, the Most High, in merits and reward. It was narrated that Imam al-Kādhim (as) said: '**Whoever went after this bounty from its allowable means to spend it on himself and his dependants, he is like the fighter in the way of Allah…**' Also, it is the best kind of worship as it was narrated that the Prophet (sawa) said: '**Worship is seventy parts, the best of which is seeking the allowable.**' And in addition to its worldly consequences, it has magnificent consequences in the hereafter, as it was narrated that the Prophet (sawa) said: '**Whoever spent his night working hard to earn the allowable (living), he has spent his night forgiven.**'

In contrast to this, Islam strongly condemned those who are lazy in earning their living, whether as a kind of belittling of life or wrongly thinking that the bounty comes to them without work depending on the generosity of Allah; it was narrated that **Imam as-Σ≅ādiq (as) enquired about a man and they said: 'He is sitting in his house worshipping Allah and some of his brothers meet his expenses,' so he (as) said: 'By God, whoever is meeting his expenses is a better worshipper than he.**' It is also narrated that he (as) said: '**I hate the man opening his mouth to his Lord, saying: "Give me", and leave working to earn it.**' In some other narrations the person who does not work and strive to earn his living will not see his prayers answered; in some others, it was narrated that it is forbidden to fail to earn your living, even in the time of war.

The matter does not stop here, for it – in addition to being a recommended deed – has a great merit and reward and may become obligatory; in fact it is originally one of the obligations under the conditions of sufficiency (*wājib kifā'ī*) that people must strive to do; so if this duty was attended to and the necessary professions and important means of living have been established, work becomes recommended; but when part of that weakens and the need intensifies and becomes necessary, it becomes obligatory under the conditions of sufficiency, such as in the professions of medicine, carpentry etc that vary according to societies and circumstances.

Moreover, the matter does not stop at fulfilling the need, but some narrations encourage seeking richness and abundant income and suggest that this helps in God-fearing.

Finally, it is clear – by definition of the nature of things – that all types of work are important and necessary – relatively – for all societies, something which one can also find in the sacred texts.

Second: The general manners of earning

It was narrated in the exalted *η≅adīth* some manners of earning that are not related to a specific craft; it is suitable to mention some of them:

1- Where the aim is obedience to God and His satisfaction and winning in the hereafter. It was narrated that **a man came to Imam as-Σ≅ādiq (as) and said: 'By God, we seek life and**

love to get it!' The Imam (as) said to him: 'What do you want to do with it?' The man replied: 'I want to spend it on myself and my dependants, give to my relatives, give alms and go to pilgrimage and '*omreh*.' The Imam (as) said: 'This is not seeking life, this is seeking the hereafter.'

2- Where the person seeks his income with patience by the allowable means, as in the *η≅adīth* in which it was narrated that **the Prophet (sawa) said in the farewell pilgrimage: 'The Holy Spirit has put in my mind that no soul will die until it has got all its bounties, so be God-fearing and do not exaggerate in seeking (it); and do not let any delay in a bounty make you seek it by disobedience to Allah (i.e. sinning), for Allah, the Most High, has divided the bounties between his servants in the allowable, not the forbidden, so whoever fears God and is patient, God will give him his earnings from the allowable, and whoever violates the veil of knowledge and rushes to take it by means other than what is allowed, his allowed bounty will be cut and he will be brought to account regarding it on the Day of Judgement.'**

3- That one should by reasonable in seeking the earnings, depending on God and feeling no regret and sorrow for potential earnings that he missed out on. It was narrated that **Imam 'Ali (as) said: 'How many people are trying too hard, (nonetheless) their income is scarce, and how many people are not doing much to earn and fate has helped them.'** Therefore, one must spend a reasonable amount of effort that is common for such a job and circumstances, without exaggeration.

4- Not to mix or deal with people besides those who were brought up well and have ended up with good virtues and clean heart and offer congenial company. It was narrated that **Imam as-Σ≅ādiq (as) said: 'Do not mingle or deal with anyone besides those who have been brought up in goodness.'**

5- Going away from the homeland to seek the bounty. It was narrated that **Imam as-Σ≅ādiq (as) said: 'Allah, the Most High, surely loves going away from the homeland to seek the bounty.**' It is as if the *η≅adīth* means that expatriation is good when earning a living in one's homeland becomes difficult and the opportunities are few, so that one leaves in the hope that in the new place one is going to be more fortunate.

6- Praying for the bounty when seeking it. It was narrated that **the Prophet (sawa) said: 'Bounties come down from heaven to earth like the number of rain drops to every soul that are ascribed to it, but (nonetheless) Allah gives more, so ask Allah for His grace.'**
Imam as-Σ≅ādiq (as) said: 'Allah, the Most High, has provided the bounties of the believers in places they do not expect, because if the servant does not know from where his bounty will come, his prayer becomes more intense.'

SUB-PART ONE

Unit One

Ownership of Originally Free/Ownerless Things

Temallok al-Arδ≅≅ al-Mewāt and al-Iη≅yā'

Section One

Ownership of Wasteland (*Mewāt*) by Restoration, Cultivation etc (*Iη≅≅yā'*)

787. What is meant by *mewāt* land is the neglected land that has no plants, buildings, walls, nor clearing from wild plants or stones, nor farming; it has many types:

1- Land that has never had life or building on it throughout its history, or on which we know of no life throughout its known history, such as most wilderness land, mountains and deserts in the different Muslim countries; these are called 'originally barren land/wasteland'.

2- Land that was neither a wasteland nor inhabited when the Muslims conquered that country; this includes areas of forest once full of trees, but then these trees disappeared due to various factors, turning the land into wasteland.

3- Land that was the inhabited homeland of past nations, then their people perished, or migrated from it, and then they became, with the elapse of a long time, a property without owner, such as ruins of villages and towns, covered tunnels etc.

788. The three mentioned types are regarded amongst the '*anfāl*' (spoils) and they are in the ownership of the infallible Imam (as), i.e. the righteous state, and it is a type of ownership that does not contradict the fact that it is free for any person who has definitely carried out what is known as '*iη≅yā*'', i.e. by putting the effort into that land to make it introduce to it housing, agriculture, water or the like; so if someone restores, cultivates etc such a land, he becomes its owner without the need for the permission of the Islamic authority acting in the capacity of the Imam (as) during his occultation.

789. It is allowed for the state to stop certain individuals from *iη≅yā'* any land, or a certain land, also to prevent all people from *iη≅yā'* a certain area; in fact the Sharī'ah prohibited the *iη≅yā'* of certain areas such as river and village boundaries.

790. No *iη≅yā'* has taken place, nor any of its consequences, by the mere starting of the building work on the land, but the work must reach a degree where it can be said that it is a house, a farm or any other building type. However, the mere starting is regarded as justification for exclusion (*taη≅jīr*), which gives the person priority over others, so they cannot compete with him.

791. Priority in this exclusion exists if the person is capable of carrying out its building and *iη≅yā'*, so if he is not capable at the outset, or becomes so later, he loses the right and it becomes allowable for others to carry out *iη≅yā'*. The same applies if the person has made exclusive to him a land that is bigger than his capabilities; in this case the claim for the excess amount is not valid.

792. The period between the start of exclusion and *iη≅yā'* has to be reasonable so that any delay in it is not regarded as negligence and inactivity. So if the person neglects the *iη≅yā'* and the period stretches out for a long time and someone else wishes to carry out *iη≅yā'*, this other person cannot do so until he has turned to the Islamic authority or his authorised representative; then it is for the authority to encourage the person to carry out the *iη≅yā'* or to leave the land; if the latter now presented an excuse, he may be granted extension until the excuse loses its validity or he starts with the building, but then if the excuse no longer holds and he has not done any work, the land will be taken from him, and he will forfeit his right, and it becomes free for others to carry out *iη≅yā'*. But if the Islamic authority or his authorised representative is not available, or if they are available but cannot practise their authority, it seems that the person would lose his right to

claim if he has neglected it to an extent that is commonly regarded as inactivity; it is better to allow him three years.

793. If a piece of land becomes a wasteland after it was inhabited or built on, its ruling differs according to its type, as follows:

First: If the land was a wasteland that went into ownership by *iη≅yā'* then became a wasteland again after being inhabited or built on, or if it was inhabited or built on then became a wasteland and later was restored etc (by *iη≅yā'*) then became a wasteland again, and in both cases there was a known owner, here are several situations:

a- It became a wasteland was because its owner abandoned it and lost interest it, in this case *iη≅yā'* is allowable to anyone interested.

b- It became a wasteland intentionally so as to benefit from it as grazing land for animals or from its wild plants, such as cane etc, in this case the owner stays in control and no one can compete with him.

c- It became a wasteland due to a lack of financial means or suitable circumstances to carry out *iη≅yā'* appropriately, in this case it stays with the owner without challenge.

d- It became a wasteland due to the owner's negligence and insistence on not carrying out *iη≅yā'*; here if it had gone into his ownership by possession and *iη≅yā'*, his right would be forfeited and his ownership is invalidated and it becomes allowed for others to carry out *iη≅yā'*; however, it is an obligatory precaution to return it to its original owner if he is interested in it and requested it. But if it had gone into his ownership by buying or inheritance, then it is an obligatory precaution to keep it with its owner and not to allow its *iη≅yā'* by others or to allow disposal of it without his permission; so if another person carried out *iη≅yā'* and planted it, he must pay rent to the owner as an obligatory precaution.

Second: The same case above, but the difference is that the land has unkown ownership, in this case the ruling is that if it is known that the owner had lost interest in it and abandoned it, it returns to its free status, making it open to others to carry out *iη≅yā'*. Otherwise a search must take place for its owner as an obligatory precaution and if after losing hope of finding him, one must turn to the Islamic authority to determine how to dispose of this asset of unkown ownership; in this case it is up to the Islamic authority to sell it to whoever is interested in buying it and to spend the proceeds on the poor, or to rent it and give away its rental income as alms, or to dispose of it in other ways that he sees suitable.

Third: If the land was owned in common by all Muslims, either because it was inhabited when conquered by force or because it was conceded to Muslims without fight, whether the one who had the right of disposal is known or unknown, in this case if it becomes a wasteland, it returns to its free, allowable status, and is not regarded as owned by all Muslims any longer, so it can be owned then by whoever carries out *iη≅yā'* without the need to seek the permission of the Muslims' guardian or authority.

Section Two
Ownership
Of Natural Resources

Chapter One

Possessing Animals and Making Them Allowed
(by Slaughter of Hunting) (*Tethkiyeh*)

(A) The means of ownership of an animal

794. A person becomes an owner of an animal by taking hold of it (*Wad' al-Yed*, lit. laying the hand), which is the same as for the rest of free/allowed things on the surface of, or inside or above the earth; taking hold of it has two levels:

First: Using the hand directly, either by laying the hand itself on it and taking the animal and getting hold of it, whether it is a wild animal tricked into submission or a domestic animal wandering on the land if he has taken hold of it, or using a hand-held tool to take hold of it if it is wild and distant, such as the rope that is thrown onto it and used to pull it with and the like.

Second: Laying the hand on it indirectly, which occurs if the wild animal falls prey to one of the hunting methods, whether prepared for it to fall in by itself, such as pits, nets, traps etc, or prepared to be launched at the animal from a distance to disable it and bring it under control, such as arrows, spears, rifles etc, in which case the mere falling of the animal in the net of by the bullet places it in the ownership of the hunter who installed the net or shot the bullet, even if he did not catch it with his hands.

795. If he was not intending to won the animal when he caught, it such as if it fell into a net that he had spread out to repair, of if he shot when not hunting and he hit it, or if the animal entered his house and became caught there of the like, in this case he does not become the owner of the animal, but he will have priority over others for owing it.

769. To secure ownership of a wild animal by hunting, the means of hunting must be complete and effective, so if an animal falls into a net but escaped due the net's weakness, or if the hunter shoots an animal but the latter manages to withstand the shot and stays outside his reach, here he does not own it and if another person catches if afterwards he (the latter) will have priority of ownership.

797. If taking hold of the animal is secured in the described manner above, the person who takes the animal becomes its owner and all the consequences of ownership come into force – its growth is for his benefit, no one is allowed to dispose of it unless with his permission and its ownership remains with him unless he loses interest and abandons it. If (later) the animal slips away after it falls into his net, for example, it continues to be his; the same applies if the hunter frees the caught animal then it returns to the wild again; it continues to be owned by whoever caught it unless it becomes known that he has lost interest in it and abandoned it. So if he frees it, then abandons his interests in it, so the bird returns to flying free or the wild

animal returns to wandering free, his right is forfeited in it and the animal goes back to its original free status.

798. The animal goes into ownership by hunting and the like only if it is not known to be owned by others; such ownership is shown to be present by the existence of sign of a confirmed past ownership, such as a collar around the neck or a rope attached to the leg or the like, in which case it is obligatory on whoever catches it to return it to its owner when possible, unless he knows that he has lost interest in and abandoned it.

799. If two hunters shoot at an animal and hit their target, and it they are equally effective in disabling and stopping it, both of them become owner of it as a partnership, but if the shot of one of them was the one which disabled a partnership, but if the shot of one of them was the one which disabled and stopped it, in this case he becomes the sole owner; but since determining such cases is usually difficult, it becomes essential in the case of dispute to try to reach mutual agreement or to consult the Islamic authority.

(B) Animals allowed to be eaten

Although the honourable Shari'ah allowed using any animal for various needs, it limited what can be eaten to the following types:

First: Land animals

800. The forbidden amongst land animals are:

1- Pigs of all kinds.

2- All insects, crawling or flying, except locusts.

3- Every animal which has a canine tooth, whether small such a mice and other rodents or big such as lions and tigers, and whether carnivores such as lions or herbivores such as elephants (which have tusks), and whether domestic such as cats or wild such as wolves.

4- All reptiles (and mammals) that have no legs as snakes, or that have small legs such as lizards, geckos, etc.

5- Rabbits as an obligatory precaution.

Apart from this, all animals are allowed, including all *an'ām* which are all types of cows, sheep and camels, domestic or wild, also horses, mules and donkeys, although it is recommended to abstain from their meat; also allowed are a lot of wild animals which do not have canines such as gazelles, zebras, deer etc.

801. Allowed animals become forbidden in the following cases:

First: If the allowed animal feed on man's excrement over a period of time allowing its flesh to grow and it bones to strengthen – this is called *jellāl*. In this case it becomes forbidden to eat or drink its milk until it is healed. Its healing here means feeding on clean feed for a period of time that it is commonly regarded as sufficient to rid it from being described as *jellāl*; although it is better to abide by the specified periods even if becoming a non-*jellāl* takes place before, which is: 40 days for camels, 30 days for cows, 10 days for sheep, 5 days for ducks and 3 days for chickens.

Second: If the young goat (*jedi*) is fed a pig mild until its flesh grows and its bones strengthen, it becomes forbidden to eat, the details of which is not explained here since it is not an area of common test (*mahal ibtilā*).

Third: If a person has had intercourse with an animal, female or male, then its meat and milk becomes forbidden, but no – as more probable –the meat and mild of its offspring. For the forbidden ruling to be valid, the animal must be allowable to eat, walk on four legs and be alive when the event took place, while there are no conditions in the person involved, making it forbidden even if he has not reached the Islamic legal age as an obligatory precaution.

As for the consequences of slaughtering such an animal (that has had intercourse with a man), if it is one that people seek its meat, it is obligatory to burn it after its death. But if it is used for riding, such as donkeys or horses, the obligation is to expel it to another country and to end the ownership of the owner and the person who committed the act by selling it to a third

party, in addition to the person who committed the deed paying compensation for its value to the owner.

If the animal might have been part of a herd, a lottery must be resorted to.

Fourth: If the animal has drunk alcohol, it becomes obligatory to avoid the contents of its interior – the heart, liver, rumen etc, as an obligatory precaution.

Second: Sea animals

802. Allowed are all sea animals and all fish, even those who do not that have '*fils*' on their exterior surface, which are small circles made of hard scales that are removed when preparing it for cooking; included in the fish with *fils* are 'sea locusts', which are also known as prawns. Sea animals of all kinds are allowed, such as whales, lobsters, crabs, octopuses, and the like. However, it is preferrable to eat only the sea animals that have *fils* (scales). As for the amphibians such as frogs, alligators, turtles, seahorses… etc, they are all not allowed. Moreover, eggs of sea fish and animals follow the same rulings as the fish or animals themselves.

803. Not allowed are the fish and sea animals that cause a significant harm to man, unless this harm could be removed through cooking.

804. It is better not to eat fish until establishing that it has *fils*, something which is ascertained through the witness of people who have experience in it, such as sellers, or by reading what is written on the fish cans or other ways that may secure satisfaction.

Third: Birds

805. It is allowed to eat all birds that have feathers except the following three types:

1- Birds of prey, which are any birds that have claws and hunt birds and other animals; they include eagles, hawks, falcons, peregrines, sparrow hawks etc.

2- Birds for which the gliding and stillness of their wings in flight exceed the flapping movement of them, such as swans, swallows etc.

3- Birds that have equal movements in gliding and flapping; if this criterion is unknown, in this case it is ruled as forbidden if its interior does not have a gizzard or a crop, nor a spur on the feet.

Hence, to know the ruling regarding a bird, one must adhere to the following steps:

a- If it is one of birds of prey, in this case it is forbidden without the need to check the rest of characteristics.

b- If it is not one of the birds of prey, in this case one must check its gliding and flapping, ruling as forbidden if the gliding exceeds the flapping.

c- If the movement of its wings are equal, or if this is unknown, in this case one must check if it has one of these three: a gizzard, a crop or a spur. (The gizzard is where small stones that the bird eats gather; the crop is where food gathers in the back or the moth; the spur is a fourth toe situated behind the bird's foot).

806. A bird that has become a *jelāll* (fed a long time on man's excrement) is forbidden; it is healed and becomes allowed as described before (see no.801).

807. Bats are forbidden, regardless of the criteria described above.

808. Bird eggs follow the same ruling regarding the bird itself; if it is not known from which bird category it is, it is obligatory to avoid eggs that have similar ends, but it is allowed to eat eggs whose two ends differ and its bottom is distinguished from its top, as is the case with chicken eggs.

Addition: Forbidden animals parts

809. The following parts in allowed animals are forbidden:

1- Blood, even if in small quantities, and even the blood that is left in the slaughtered animal if it is collected and drunk separately from the meat.

2- Excrement left in the slaughtered animal.

3- Sexual organs, including the bladder.

4- The placenta, which is where the embryo is.

5- The two nerves running from the neck on the two sides of the spine, between it and the skin, ending up in the tail.

6- The pituitary gland, which is pea-like bead, of dark brown colour, at the bottom of the brain.

7- The spinal cord, that runs inside the spine from the neck to the pelvis.

8- Glands, which are masses of grey meat.

9- The spleen.

10- The gall bladder.

11- The eye's iris and pupil.

All parts apart from these are allowed, although it is recommended to abstain from the kidneys and heart's two atria. It is also better to abstain from eating what is not commonly eaten such as skin and bones; being commonly eaten or not depends on which animal is in question.

810. There is no difference in the prohibition regarding these parts of the listed animals, whether (they are from) land, sea animals of birds.

(C) Making animals allowed (by slaughter or hunting) (*tethkiyeh*)

It is not allowed to eat any part or land animals or birds when alive; it is also not allowed to eat them if they died due to anything other than hunting or slaughter (according to the conditions that will be mentioned); also it is not allowed to eat any fish except after fishing and taking it out of water, but it is allowed to each them alive, while they do not become allowed by slaughter because it is not suitable for them. All forbidden animals other than dogs and pigs are open to *tethkiyeh* in the described manner, not for eating but to secure the purity of their parts for their various human uses.

First: Making the animal allowed by slaughter (thebh or nahr)

811. We mean by slaughter (*thebh*): cutting the four jugular veins in a special manner – to come later - in animals suitable for that – land animals, birds etc, except camels and the like that are slaughtered by *nahr*, which is striking the camel below its neck because it is not suitable for *thebh* slaughter.

812. Any animal that man catches alive must be made allowed by *tethkiyeh*, whatever the means through which he obtained it, whether it was domestic, naturally tamed by man, or if it was wild and he caught it alive, using any means.

813. The conditions of *tehkiyeh* with slaughter are:

First: Islam (i.e. the slaughtering person is a Muslim), so animals slaughtered by atheists who do not believe in God absolutely, or slaughtered by non-Muslims who believe in God but are not among the People of the Book (Jews and Christians), are forbidden; as for the People of the Book, their slaughtered animals are allowed but with (carrying out) *tesmiyeh* (see below), although avoiding them is better.

Second: Intention, so an animal slaughtered without the intention of the person doing so is not allowed, such as if a knife fell from his hands and cut the animal's vessels.

Third: The animal is facing the *qibleh*, so it becomes forbidden if slaughtered when not facing it with knowledge and intention, but not due to ignorance, forgetfulness, a mistake, not knowing the direction of the *qibleh*, because he was forced to slaughter not in the *qibleh's* direction or a difference in the school of thought.

Fourth: *Tesmiyeh* by the slaughtering person when commencing the slaughter or in any part that is commonly accepted as part of the process; the slaughtered animal becomes forbidden if he fails to recite it with the knowledge and intention, but not if he fails to do so out of ignorance or forgetfulness.

The *Tesmiyeh* is secured by reciting the name of Allah of the Most High with any form of praise, such as *'Allāho Abbar*', '*Bismi-Llāh*' or the like. In fact, the name of God '*Allāh*' is sufficient without any other word, although it is better to avoid that.

Fifth: Using sharp metal tools, whether made of iron or other materials. It is also allowed to slaughter using non-metals that could cut the vessels when metals are not available, such as cane, wood or sharp stones; slaughtering using the teeth, however, does not make the slaughtered animal allowed even if for compelling reasons.

Sixth: Cutting the four vessels, which are: the two main blood vessels that lie on the sides of the neck, the wind pipe and the oesophagus (food pipe); it is not sufficient to cut just some of them. Also, the cutting must take place when the animal is still alive, so that if the slaughterer cuts two vessels and the animal dies then he cuts the other two, the slaughter does not become allowed. It is better to cut them from the front not from the back; and they must be cut from below the knot of the throat so the latter remains, after the slaughter, with the head not the body.

814. Cutting the four vessels is a condition in animals suitable for slaughter, which are, with the exception of the came. The domestic and wild animals and birds. As for the camel, it is slaughtered by *nahr*, which is done by inserting a sharp tool in the place called '*lobbeh*' which is the hollow space at the top of the chest attached to the neck, regardless of it being standing, kneeling down of lying on its side, although it is better to slaughter it standing.

This method, *nahr*, is not sufficient in animals other than the camel or the like.

815. It is recommended to abstain from continuing the slaughter until the head is severed completely, but the slaughtered animal does not become forbidden because of this; the same applies to the spinal cord, which is achieved by slitting open the cord running from the head and the neck and down through the spine.

816. It is not conditional that the blood flows out in normal amounts, nor that a part of the animal is moving, as long as the slaughterer is certain that the animal is alive before slaughtering. However, when its life is in doubt, it does not become allowed unless signs of life appear in it, such as if the eye moves or the leg kicks or blood flows out in normal amounts.

Second: Making the animal allowed by hunting

We mean inflicting death on the animal by hunting it using certain means and certain methods, so that the hunter cannot get it alive and it becomes *mothekkā* (purified), allowed to eat and pure.

First: Hunting land animals and birds

817. Securing fundamental things are conditional in animals caught by hunting.

1- The animal must be wild, so hunting domestic animals is not valid, nor the young of a wild animal before it becomes able to run freely.

2- A hunting tool must be used, whether wounding tools such as arrows, rifles or the like, or hunting animals such as dogs, hunting leopards, falcons, hawks or the like.

3- The hunter must arrive at the hunted animal when it is dead, so if he arrives at it when it is still alive, or uses a tool like a tarp or net and arrives at it alive, this is not, then, regarded as hunted animal as far as our discussion here is concerned, and it must be made allowed by slaughtering.

818. Conditions of the hunter are:

1- He must generally be a Muslim as was described in *tethkiyeh* above.

2- He intended to hunt, so if he shot a bullet at a target for (leisure, sport) shooting, for example, and he shot a gazelle and reached it when it was dead, it does not become allowed.

3- The hunter should carry out *tesmiyeh* while using the weapon, or when sending the hunting animal, or after using/shooting but before hitting the target.

819. Conditions of the hunting tool are:

1- The hunting animal must be taught and trained to hunt.

2- The wounding tool must be sharp as swords or well pointed such as spears, or circular so that it penetrates with pressure; such tools must be regarded as weapons, or anything that can cause wounds. Thus, animals hunted by rifles using bullets that contain small metal balls, even if they have no sharp heads and the like, are allowed.

820. Conditions of the hunted animal are:

1- Its death was due to the tool or the wound inflicted by the hunting animal, according to the hunting method used.

2- The wound must have been inflicted by the hunting method, so it is not sufficient if the animal dies because of it without wounds.

821. We have mentioned previously that if the hunter at it alive, the animal will not be allowed by hunting if he does not slaughter it, so *tethkiyeh* (making it allowable) with hunting – with other conditions met – is exclusive to what the hunter arrives at dead, nor alive; the ruling of a dead animal applies to animals where there was not enough time to make it allowed by slaughter, or if it died while the hunter was busy with his preparations for the slaughter, such as preparing the knife and the like.

Second: Fishing

822. Fish becomes allowed by taking it out of water alive using one of two methods:

a- Direct methods, such as catching with the hand, or with something that the hand holds like harpoons, fish hooks etc.

b- Indirect methods, such as making it fall into nets or fish-traps or making it jump onto a floating plank or other fishing means; it also becomes allowed if it jumps by itself from the water and the fisher catches it.

823. It is not conditional to render the fish allowed that it dies outside the water, also its death outside the outer is not sufficient if it was not fished, according to the following rule: **'The fish that falls alive using a fishing tool or the hand is *mothekkā* (allowable) even if it dies inside the water and the fish that is not taken likewise is not *motheekkā* even if it dies outside the water.'**

824. If the fish returns to water alive then dies there, it is not allowed.

825. If a paralyzing agent is poured into the water and the fish floats to the surface, this is not regarded as fishing if it is not caught, and if it dies in that situation before taking it, it is not allowed.

826. Islam is not conditional in fishers, nor *tesmiyeh*; but knowledge of or satisfaction with the *tethkiyeh* is conditional if the fisher was not a Muslim.

827. The death of the fish is not conditional for allowing its eating – it may be eaten alive, in addition to allowing doing anything that causes its death when preparing it for cooking, such as chopping off its head, placing it alive on the grill fire and the like.

Third: Locust hunting

Only locusts that fly are allowable for eating and it is not allowed but by hunting and taken them alive, either by hand or by a suitable hunting tool. Its rulings regarding Islam and *tesmiyeh* are the same as that of fish.

828. Jurists (may God's satisfaction be upon them) have mentioned that when a sheep is slaughtered, it is recommended that its two front legs and one of the rear legs are tied (by a rope), leaving the other leg free, and that is wool is kept intact until its body cools down; when slaughtering a cow, that its four legs are tied and its tail is left free; when slaughtering a camel, that is front legs are tied between the hooves and the knees or the armpits and its rear legs left free – this is if slaughtered kneeling, but if slaughtered standing, its left front leg should be tied; when slaughtering a bird, that it is set free to flap its wings after slaughtering. They also mentioned that it is recommended that water be given to animals before slaughtering.

It is recommended that the animal, before slaughtering, is treated in a way that saves it from harm and torture, which is by sharpening the blade, moving the knife on the slaughtering spot with strength and to be quick in this. It was narrated that the Prophet (sawa) said: '**Allah, the Most High, has ascribed to you the favor in every thing, so when you kill, make it a good kill, and when you slaughter, make it a good slaughter, and let (the) one of you (who is slaughtering) sharpen his blade and comfort his slaughtered animal.**' In another narration, He (sawa) ordered that be blades are sharpened and to not let the animals see them.

829. According to a number of narrations, it is recommended, when slaughtering animals, to abstain from certain things; skinning the slaughtered animal before its spirit leaves; it carry out the slaughter during the night of on Friday before *zewāl*; to carry out the slaughter in front of the eyes of another animal of the same type; to slaughter animals that the slaughterer himself has reared.

Epilogue

How to ascertain that *tethkiyeh has taken place*

830. *Animal* tethkiyeh (making it allowable) is ascertained by the knowledge acquired by sensing, examination or other means, also by the witness of two just persons, one just person or one trustworthy person. If an animal suitable for *tethkiyeh* is found dead, or if some of its flesh or skin is found, and it is not known if it was made allowed by *tethkiyeh* or not, in this case it should be regarded that *tethkiyeh* had not been carried out; therefore it is not allowed to eat its meat nor use its skin *tethkiyeh* is conditional for its usage; however, it is not ruled as impure even if it has a 'fluid' soul unless it is known that it was caught dead. The exception to this ruling is if one of signs of *tethkiyeh* is present, which are:

First: The Muslim's 'hand' (i.e. whatever is handled by a Muslim), so whatever he has in terms of meat, fats and skins, if it is not known that they are not *mothekkā*, are ruled as apparently *mothekkā* (allowed), provided that his is coupled with his disposing of them in a way suitable for *tethkieyh*, such as putting the meat and fat on display for eating, preparing the skin for putting the meat and fat on display for eating, preparing the skin for wearing and bedding; but if it was not coupled with things related to *tethkiyeh*, such as if we see meat in his hand but do not know if he wants to eat it or to leave it for birds of prey to eat, for example, in this case it is not *mothekkā* (not allowed); the same applies to his making the skin into bags for refuse or rubbish, for example.

Second: In Muslim market, all meats and fats are ruled as apparently *mothekkā (allowed)*, whether they were handle by Muslims or persons not known to be Muslims, but not if they were handled by (people who are definitely) non-Muslims.

Third: Manufacture in Muslim countries, so what is manufactured from meant, such as canned meat, or from skin, such as belts, shoes etc, is ruled as apparently *mothekkā* (allowed) without the need to check it.

831. There is no difference, in the ruling of the *tethkiyeh* of that mentioned just above, between the case where it is known that the goods were first handled by a non-Muslim or at a non-Muslim market etc if it was probable that the Muslim 'hand' was involved or the goods were sold in the Muslim market or those manufacturing it in a Muslim country had ascertained its *tethkiyeh* as Islamically appropriate.

832. Regarding what is found in Muslim lands, if the *tethkiyeh* is doubtful, although ruled as pure, the *tethkiyeh* and allowing its eating are something which the jurist cannot give a decisive ruling (*mahalishkāl*) on, unless it is similar to what is discussed in the previous tow entries.

833. Regarding the Muslim whose hand is a sign of *tethkiyeh*, there is not difference between followers of Ahlol Bayt (as) the others, and between those who considers the *tethkieyh* conditions – such as facing the *quibleh*, *tesmiyeh*, cutting the four vessels etc – and others who do not abide by that, if it is probable that the *tethkiyeh* did take place according to our

conditions; and it seems that not facing the *qibleh*- out of belief that it is not obligatory – does not render the slaughtered animal not *mothekkā*.

834. The criterion of a country regarded as Muslim is the prevalence of Muslims in the populace so that it is commonly related of Islam even if they are under the rule of non-Muslims. The same criterion applies to non-Muslim countries: when Muslims are not prevalent in number, the country is regarded as non-Muslim.

835. The meat, fat and skin found in the 'hand' of the non-Muslim, if it was probable that they were taken form a *mothekkā* animal, are ruled as pure and prayer is allowed with it, but it is not ruled as *mothekkā* itself and its eating as allowed unless its *tethkiyeh* is ascertained though one of the previously described methods/signs. Ruling it as *mothekkā* cannot be given through the information provided by the person with non-Muslim 'hand' that is *mothekkā*; the same goes (i.e. it is not ruled as *mothekkā*) if it is found in Muslim countries.

Chapter Two

Possessing Water and Minerals

836. It is allowed for people to benefit from all kinds of water, the running kind such as seas and rivers, and non-running such as underground water and the like which cannot be described as running on the surface of the earth. It is not necessary to seek the permission of an Islamic authority or others in this and the water that the person takes is for him.

837. The person who digs a well to bring water out of it, or to collect water in, and who digs a hole and opens a water spring, or who digs a canal to run water through, will own, with his work, the well, the spring or the canal and the water in it, and others have no right to dispose of it without his permission, without any distinction between doing this on owned land or in wasteland. That said, digging a well in wasteland does not do more than justifying exclusion (*ta*η≅*jīr*) of it, as the digger will own it only after the completion of the *i*η≅*yā'* (restoring, cultivating etc) operation.

838. Minerals, which are everything that is extracted from earth that was created in it but was not part of it, and has a value and price, are regarded as part of *anfāl* (spoils of war), the ownership and the disposal of these is for the state exclusively, regardless of whether they are found on the surface of the earth or beneath it, nor whether they are precious (such as gold and diamonds) or not (such as salt and kohl), nor whether they are scarce or abundant.

839. Despite the state's ownership of minerals, it is possible for individuals to own them according to the following rules:

1- Minerals that are exposed on the surface of the earth or at a small depth beneath the surface are known as 'exposed minerals'; these minerals are owned, actually and completely, by their owner as a result of his ownership of the land, although the state has the right to interfere in exceptional cases to take control of that particular mineral for considerations related to the public interest of society. However, if the land is a wasteland, then the minerals (in it) are freely allowed to all people.

2- Minerals that are found deep inside the earth, beneath land that is owned, are not the property of the landowner, and he cannot extract it unless he has the permission of the Islamic authority; also, the extractor – after that permission – has to secure the permission of the landowner to enter and dig in it, so that if he did this without his permission, he would not own what he extracted unless he reached a mutual agreement with the landowner, as a precaution, otherwise, they have to turn to the Islamic authority. However, if the land is a wasteland, in this case no one has the right to extract anything from it unless they have the permission of the Islamic authority, and permission to take whatever it comes out of it to the amount specified by the permission.

840. The surface of the sea, also the great rivers, are considered publicly free and it is allowed for people to benefit from them in various ways whether swimming, fishing, transport, living on a boat, a wooden building or any other construction that is suitable as a house, or in other ways. Also, it is acceptable to own parts of them by carrying out *i*η≅*yā'*, or the minerals and precious stones or other things such as salt or ambergris or the fish and animals that are caught there etc.

All what we mentioned is a primary ruling (*al-H*≅*okm al-Awwelī*) that is usually the case in the normal circumstances of the actions of individuals and groups; however if the matter attains a degree of importance – as in our times – then there are international laws which

apply to some of these matters and the Islamic authorities have to consider how to act according to the interests involved and in line with the acceptable international regulations.

Epilogue
Roads and public amenities

841. Since benefiting from the public roads is a right for all people, it is not allowed for an individual or a group to use any part of them for their private benefit, such as building a wall, installing a sitting bench, selling goods or the like. However, it is allowed for individuals or private or governmental organisations to improve the road by introducing whatever can make it better or increasing the pedestrian's benefit from it, such as by planting trees, building pavements, installing lighting poles or traffic signs and the like, provided that they do not harm pedestrians.

842. Using public premises must be limited to its specified function. Two cases may apply: first, if the premises were made exclusively for certain function, such as mosques for prayers and other acts which are commonly practised in mosques, it is not allowed to benefit from it for things that contradict or negatively affect the original purpose, or if land has been assigned exclusively to leisure, it is not allowed to use it as a car park or cemetery; the second, if using it for purposes other than its original specified function would disturb the public order, such as if people have agreed to regard a place as a sports ground, it is not allowed for anyone to make it into a rubbish dump; hence, it is obligatory to respect the agreement and abide by it when it is a question of an important public amenity used by the people for that specified function, whether the specifying party was private or governmental, and whether the government was just or unjust.
However, if the action does not affect the original specified function and does not disturb public order, such as if someone goes walking for leisure in a car park, tries to sell goods in a public park, teaches lessons in a mosque or the like, there is no objection to that.

843. If someone wishing to benefit from a public amenity was the first to go to a place, it is not allowed for another person to compete with him in that place, whether the former got the place first by his actual presence or by any way which is commonly regarded as such, such as if there is a sign of his presence like his clothes, his praying mat etc. That said, if the amenity has a major usage, such as prayer in a mosque, or a minor one, such as teaching lessons in it, in this case if someone comes first to teach in a place then someone else wants to pray in that place, it is a precaution that the teacher has to leave the place to the person who wants to pray, even if there is enough space for praying in another place; it is also more appropriate for a person who wants to pray on his own to go back and leave the place for others who want to pray in congregation, if there is another place for him in the mosque.

Section Three

Rent and Payment of Reward

Al-Ijāreh and Al-Jo‘āleh

Introduction on allowed and forbidden work

Human effort spreads over a lot of jobs in which a person seeks to earn a living and make profit from them and the Sharī‘ah has dealt with them, making allowed most of them and prohibited a small number of them. As for the allowed, we do not want to discuss these; as for the forbidden, however, as they are not allowed to be done by man for himself and his personal benefit, and it is also not allowed to do them for the interest and benefit of others whether paid or free of charge.

And since it is difficult to arrange the allowed forms of work in a specified number because they spread over a very wide area (of human effort), we shall limit our discussion here to some prohibited jobs that are generally an area of common test, according to the following categories:

First: Religious acts and work

844. Religious acts may be divided into two parts:

1- Obligatory and recommended acts which the Sharī‘ah wanted the person to perform free of charge, such as the daily prayers and obligatory fasting, the *newāfil* (additional recommended prayers) and the call to prayer, and the like; in all this it is forbidden to ask a fee for them.

2- Obligatory and recommended acts that are not known in the Sharī‘ah to be done free of charge, such as washing and burying the dead, teaching Islamic jurisprudence and other religious knowledge, performing prayers and fasting as *qeδ≅≅ā'* for the dead, cleaning the mosque and building in it, reciting the Qur’an or commemuration (such as H≅osaini) functions or the like, here a charge may be taken for doing these.

Second: Aiding the oppressors/unjust and working for them

845. Oppression/injustice is transgressing on the rights of others, inflicting aggression and harm on them, their possessions, honour, religion, homeland or any other things that are related to them, regardless of the party from which such oppression is initiated. Just as injustice is forbidden to be done by the person, it is forbidden to aid oppressors, whether against Muslims or non-Muslims, free of charge or paid, even if by merely remaining by their side, which strengthens them to do injustice.

846. Muslims are not allowed to join any job – inside the state or outside it –which involves un-Islamic rulings in the judicial system, or to execute the judicial rulings of detention, imprisonment or punishment, or to be, through it, a spy for the oppressor, or to legislate laws that are contradictory to Islamic jurisprudence; also any money taken from such jobs is forbidden.

Third: Sculpture and painting

847. It is forbidden, as an obligatory precaution, to make a three-dimensional sculpture of humans and animals that have souls, if it is complete; being complete depends on the state of

the work, so if one makes a sculpture of a person putting his hand in his pocket or sitting, this is considered complete although some of its parts are concealed.

848. It is not forbidden to make a sculpture of plants or inanimate/non-living things that have no soul. It is also not forbidden absolutely to make paintings, of things that have soul or others, complete or otherwise.

Fourth: Singing and music

849. The criterion for allowable and forbidden singing is the meaning of the words being sung, so if the meaning is true in the general understanding, even if it is about food or natural scenes, and elevating in value so that it is singing about the Divine/God, in this case singing is allowed. But if its meaning is false, which is what relates to the sexual instinct in humans, even if on the level of the normal description of the beauty of the lover, or if it is praising oppressors or blaspheming the sacred or the like, in these cases singing is prohibited and it (the prohibition) is stronger in the last two cases because it contains two sins: the sin of praising or blasphemy and the sin of singing. When singing is forbidden, fees for it are also forbidden.

850. The music that is forbidden is one in which the tune/melody negatively affects the spiritual immunity of the person through an intensity of pace that helps in instigating lusts and forbidden acts, or if the music destroys nerves etc.

851. There is no musical instrument that is forbidden in itself as long as it is suitable for allowed tunes/melodies; therefore, it is allowed to make, sell, buy and use them. That said, if it is assumed that a given instrument is used most of the time for forbidden kinds of music, in this case it is not allowed to make it, nor buy or sell it, although it is allowed to use it for allowable tunes/melodies.

852. It is allowed for a woman to sing love songs in the procession of carrying the bride home, on the condition that men are not present. However, it is not allowed that the husband and wife indulge in singing love songs or the like for each other even when alone.

Fifth: The food industry and restaurant jobs

1- Alcohol

853. It is forbidden to work in fields that are related to the direct manufacture of alcoholic drinks, which includes all stages of preparation of extraction and pressing, fermentation and bottle-filling, storage and transport to customers, or even working in the laboratories of the alcohol factories that supervise analysis and quality and the like, both in Muslim countries and outside them.

854. It is forbidden to serve alcohol in restaurants and the like, or to be involved in its transfer and storage in shops that sell it, or for cooks to put it in their recipes. The exception is the work of the cashier who takes payment for the alcohol if he is not the one actually doing the selling; excluded also are those who wash the glasses used for alcohol.

2- Dead animals and pork

855. It is allowed for Muslims to work in fields that are related to allowed uses of dead animals and pork, dead or alive, such as industries making fertilisers, candles etc.
Also, Muslim workers in restaurants of non-Muslims are allowed to serve and sell (the meat of) dead animals and pork to non-Muslims whose religion allows them these, although it is better to elevate oneself from this and avoid dealing with them as far as possible.

3- Pure jobs

856. It is allowed to work in the food industry related to pure insects, animals and things, even if it is not allowable to eat them, such as rabbits, frogs, and the like; it is also allowed to work in rearing, slaughtering, canning, storing, cooking and serving them to whoever eats them, unless it is regarded as encouraging them to eat them, in which case it becomes forbidden.

Sixth: Tools of gambling, leisure and lottery

857. It is allowed to play with any equipment used for leisure without gambling, whether this tool was manufactured for gambling or not. That said, it is appropriate to avoid playing with or using things that were manufactured for gambling, which applies also to backgammon and chess. As for playing with gambling tools with gambling, it is one of the forbidden acts and grand sins. Also, it is not allowed to play with leisure equipment with gambling as an obligatory precaution.

858. The lottery invented in our time is not regarded as gambling and buying lottery tickets is not forbidden, regardless of the organisation operating it and the goal it was initiated for; the money which the person wins from it is allowed like any other allowed money.

859. One must abstain from indulging in playing with leisure games if it reaches the extent of failing to do one's obligations; in fact one must avoid even what amounts to less than this if it leads to the disruption of familial and social relationships and abandoning good matters.

Seventh: The medical profession

860. The doctor’s work is within the framework of prevention of harm and stopping harm in the ill; this is why it is – in general – allowed to do anything that is needed to treat a patient and stop harm to him, within the levels of harm that reasonable people strive to stop from befalling them before it reaches levels that lead to destruction and death; so it is allowed for the doctor to carry out all that the treatment requires even if the act is forbidden outside medical treatment, such as wounding, amputation and the like, and touching and looking at the body of the opposite sex.

861. It is allowed for students of medicine to choose any speciality in the fields of medicine, although some of them are less problematic than others; so it is allowed to specialise in gynaecology (women's diseases), dermatology (skin diseases) or the like which require touching or seeing the *‘awreh* (the genitals and anus), as long as all medical fields are important and the learning of these is essential to stop harm.

862. It is not allowed for the doctor to carry out abortion for a woman and kill her embryo whether it was begotten by a Muslim or non-Muslim, except in two cases:

1- If keeping the embryo causes the mother’s death or intense harm that is similar to death, or for fear of honour killing; here it is allowed to do the abortion regardless of its age.

2- If keeping it is so intensely difficult that it cannot be undertaken, but here only in the stage before the spirit moves into the embryo.

Chapter One

Hiring People (*Ijāreh*) for Their Services

What we mean by hiring a person is when he makes his services available to be used in return for payment, regardless of the numerous and diverse fields of use, except in fields of earning that Islam has prohibited, which were mentioned previously. The renting takes place through a contract that includes the *Ījāb* and *qobūl* (proposing and acceptance) of two contracting parties and has the necessary characteristic according to the Sharī'ah; when the contract is done, each of the two contracting parties has to abide by what they have committed themselves to do for the other party, according to the contract.

(A) The contract and the contracting parties

First: The job contract

863. In a contract for hiring a person for his services, it is a must – as in all other contracts – that the two parties demonstrate acceptance of the relationship which they wish to make in a certain form and under certain conditions that lead to the designated aim/purpose and prevent dispute. The contract can be done in two ways:

a- Verbal contract, which is any wording that means that the worker is committed to do a job for another party in return of a certain amount of money and under certain conditions, and that the other party accepts it, without specifying a definitive wording for that contract. Related to this is the written contract as is commonly followed in our time. The dumb needs only to show his intentions using signs, or using writing when he can.

b- *Mo'ātāt*, which is handling or pursuing a job upon a request, such as when the employer hands over his land to the farmer to cultivate it, or his clothes to the tailor to make it, and the wageworker/employee/hired person (*ajīr*) is handed over the land or the clothes with the intention of carrying out the work.

It is known that most work agreements are done by verbal contracting through dialogue between the two parties, and that hiring is seldom done through pure *mo'ātāt*.

864. If a person asks another to do work for him saying: 'Sew these clothes for me' for example, and the person so asked carries out the work, this is not a hiring contract, but would the person doing the asking have the responsibility to pay the worker a reasonable wage for the work? The answer is as follows:

a- If the worker's intention in this work was voluntary and free of charge, in this case no payment is due to him for the work.

b- That the worker's intention of this work was payment, but the wish or intention of the person asking was for voluntary work, depending on the indication that was understood from the nature of the required work, the nature of the person asking or the social relationship between them – such as if he asked him to show him how to reach someone's house, or that the person asked is from social high ranks that do not take payment, or that the husband asks his wife to copy an article which he wrote – in such cases it is not obligatory on the person asking to pay a fee if the worker claims it.

c- If the worker's intention is to be paid but the person asking expects voluntary work without any indication of this, in this case the fee due to the worker is one that is common for such work, which is called '*ojrat al-Mithl*' (the fee for similar work).

865. It is conditional for the validity of the person's contract that the contracting parties are qualified regarding reaching the Islamic legal age (*bolūgh*), sanity, reasonable conduct (*roshd*) and free will, in addition to the permission of the husband if the contract involves renting the wife's services for herself in contradiction to the husband's sexual rights, but if it is not in contradiction with his right, she is not obliged to seek his permission, even if the work commits her to go outside his house; that said, the couple should agree between them on this on the basis of love and mercy.

866. An interdicted person (one who is pronounced legally incompetent) because of bankruptcy is allowed to lease his own services; he is also allowed to act as a proxy for renting others; but he is not allowed to rent others to work for him because he is prevented from disposing of his money.

867. It is obligatory on the guardian (*walī*) of a child who has not reached the Islamic legal age, if that child works, to observe the following:

a- That hiring him does not contradict a more important matter, such as his education that is essential for children like him, except if the child is poor and has no one taking care of his affairs and meeting his needs unless he works himself and produces for himself.

b- That the work he will do does not lead to physical or moral harm, such as if the work is exhausting or includes humiliation and oppressive control.

c- That there is an interest for him in the kind of work he will be doing, so it is not sufficient that there is no evil is in it.

Second: Work conditions

868. There are conditions in the work that is contracted between the wageworker/employee/hired person and the employer:

1- Specifying the type and specifications of the work, in quantity and quality, in a way that avoids any costly misunderstanding. The time/duration (of the work) is according to the employer's wish; it is up to him if he does not want to specify it, unless time is important and the aims differ according to it in a way that not specifying it leads to misunderstanding, in which case the time must be specified. That said, some kinds of work have common specifications that are known when contracting for them, so it is acceptable to keep to these and, if it is clear and known to both parties, it would be as if they actually did mention it.

2- The work must be allowed in itself, even if the aim is forbidden, so pressing grapes for someone who wants to make them into alcohol is allowed, but not at a stage in the processes that take place inside the alcohol (ie drinks) factory, but as an independent external work, otherwise it becomes forbidden. Also forbidden is any allowed work that depends on forbidden work, such as hiring a woman in her menses to clean the mosque, for example.

3- The contracted person must be capable of doing the work, so it is not valid to hire someone for services that he cannot do, either in itself, or because of a shortage of time to accomplish it according to its conditions, or because of the lack of necessary tools, or because he does not know the work he is hired to do when it is conditional to start before he knows this.

Third: Wages/payment conditions

869. The payment/wages must have value and it may be an asset (such as money or goods or work offered by the employer to the employee/hired person, so that if A cultivates the land of B, B may sew the clothes of A), or a right (such as if the employer hands over the right of authority/jurisdiction or the right of interdiction).

870. If the payment/wages is an asset, it must be known by seeing or by describing what distinguishes it from others, it must be owned by the employer, have a value that is commonly regarded as worthwhile, and be possible to hand over when necessary. If the payment/wages is work, the work must be allowable, must not depend on a forbidden work or thing, such as if it depends on using a stolen tool, or entering the mosque and remaining in it while having *jenaāeh*, or the like.

If it is a right, such as right of custody or *khiliw* (payment to make a place vacant before renting it) or the like, it must be known and specified in a way that removes misunderstanding and it must be owned by the person handing it over. It must be noted that guardianship on minors is not one of the rights, because it is a ruling conferred upon the person himself and it is not possible to transfer it to others, whether for something else or for free.

(B) Commitment to the contract and causes of its invalidation (*feskh*)

If the contract becomes complete with all conditions, it becomes binding on both parties, so the employee/hired person must carry out what he has committed himself to and the employer/hirer must pay the payment/wages/rent to the employee/hired person that he has committed himself to, and if one of them wishes to revoke the contract or withdraw from some of the contract's content or to cancel it altogether, or to change it by adding or omitting some of its clauses, he has no right to do so unless the other party accepts out of his free will, unless he has an invalidation option (see below), or something happens that grants him an invalidation option, such as death or others, or if the invalidation takes place without an option because the the employment was invalidated for unexpected reasons, as will be explained later.

Based on this, the most important thing that grants the right of invalidation or revocation of the contract for one or both of the contracting parties is the option to do so.

The terminology of this option names the reason that enables one of the parties to invalidate the hiring/employment contract – or other contracts – when it takes place, according to the following:

1- The defect/fault (*'ayb*) option

871. If the employer finds a fault or defect in the worker whom he hired and the fault or defect existed before the contract, if the employer knew it and nonetheless hired him, he has no right over him, but if he was unaware of it or did not know it completely, then if it is minor that does not affect the work in hand, there is no option for him, but if the defect is major, and if it leads to shortcomings in his work and a reduction in some of its benefit, or if it is not like that but is something for which people are normally rejected for employment because of it, such as if he is disfigured and he is hired as a waiter, in these cases the invalidation option is available to the employer either to accept the status quo as it is if the defect does not lead to loss of some of the employment's potential benefit, or he is allowed to reduce the agreed on wages/payment by the value of the amount lost in the benefit. The same ruling applies if the defect/fault takes place after the contract is agreed.

872. If the employee/hired person finds a defect or fault in the asset involved, or its benefit, or deficiency in the payment which the employer has agreed to pay him in advance before he starts the work, there are two situations:

1- If the asset paid was personal and specified when the contract was being made, and the employee/hired person then finds it defective, he has the choice of revoking the contract or accepting it but with taking a compensation of the loss.

2- If the asset paid is not specified by a certain person, it is called *'ayn kolliyyeh*, and in this case the employee has no right to invalidate the agreement, but he has the right to claim a non-defective replacement, and if this is not possible, then he has the choice of invalidation or accepting the defective asset but with the right of compensation.

This is if the payment is made in advance. However, if it is paid after completing the work, he has the right – only – to claim what is lost of the value due to the defect after the option of invalidation became impossible, the work having been completed.

873. What is commonly accepted as an immediate response is to be observed if the defect option is exercised, so it is not acceptable to delay using it and to delay the invalidation – if he so wants – for longer than is commonly acceptable according to the case.

2- The unfairness (*ghobn*) option

874. The unfairness option is for the employer if he pays the employee/hired person more than the usual amount, and is for the employee/hired person if he is paid less than the usual amount, to a degree that is not commonly tolerated in its amount and in circumstances in which people regard that the person on whom the loss has been inflicted has been treated unfairly (*meghbūn*). But to apply this option, the person treated unfairly must be unaware of the situation, and must know of and want the usual payment, otherwise this option will not be applicable.

875. If the person treated unfairly comes to know the unfairness, the rights that are normal for such transactions are applicable to him; so if it is common that he can claim the difference and if he is not paid that then he has a right to the unfairness option; in this case he cannot – according to this commonly accepted norm – invalidate the contract unless the other party refuses to pay the difference; if such a norm does not exist, the person treated unfairly only has the right to revoke the contract or to accept the status quo without claiming the difference.

876. The commonly accepted concept of immediate response is to be observed in the unfairness option, i.e. not to delay the revocation of the contract for longer than is normally acceptable in similar situations, after knowledge of the unfairtreatmentand that he has the option is established. That said, there is no problem if a delay takes place because of an acceptable excuse, such as waiting for the other party or difficulty in reaching him or someone whom he wants to consult or the like.

3- The invalidation condition (*ash-Shar*τ≅) option

877. The condition option is confirmed when both parties in the contract, or one of them, makes conditional for the other, himself or a third party, the right of invalidation of the hiring/employment contract during a certain period, either attached to the contract or separate from it; it is sufficient in specifying the period to do so in general terms, such as 'as long as one is alive', in contrast to no specification or vagueness.

4- The condition-failure (*tekhellof ash-Shar*τ≅) option

878. This is confirmed when one or both of the contracting parties make conditional one condition that is reasonable in the Sharī'ah as part of the contract; and when the person upon whom the condition is made fails to meet the condition's obligation, the other party (who stipulated the condition) is allowed to invalidate the contract and cancel the deal, or to accept it as it is without compensation for what he has lost as a result of not meeting the condition's obligation. However, he is allowed before that – if he so wishes – to turn to the Islamic authority (*al-H≅ākim ash-Shar'ī*) to force the other party to meet the obligation of the condition.

879. There is no distinction in the conditions, over which the option is exercised due to the failure to meet their obligations, between those mentioned and clear in the contract and those that are implicit conditions that are part of the commonly carried out transactions and which are seen as implied in them, and so are not mentioned because of their common nature and the presence in the minds of the contracting parties who know them.

5- The split deal (*teba''o*δ≅≅ *a*σ≅-Σ≅*afqeh*) option

880. In contracts, each party must hand over to the other party the whole of what is agreed on, so if the asset owner, for example, hands over only half of a rented house, or the farmer cultivates only half of the land in the time when the whole asset or work must be handed over completely, in this case the employer has two choices: either to invalidate the contract or accept the status quo, and when he chooses one of the two options, he has to pay the employee/hired person half the agreed on wage/payment, as in the given example.

6- The failure to hand over (*te'aththor at-Teslīm*) option

881. Failure to hand over means that the employee/hired person or the employer does not hand over what each of them has committed himself to hand over to the other party,

intentionally or for unexpected uncontrollable reasons that prevented this, in which case the harmed party has the option to revoke the contract.

7- Th partnership (*shirkeh*) option

882. This option becomes available if it is discovered after the contract is agreed that the rented or given-as-payment asset is to be owned in partnership between the new beneficiary and another party; this is because the partnership is regarded as an obstacle to independent disposal of the asset unless after obtaining the partner's permission; in this case the option to revoke the contract will be open for the harmed party or the option to accept the status quo while claiming the difference between the value of the asset in partnership and its value if owned by one person only.

8- The cheating (*tedlīs*) option

883. *Tedlīs* is a type of cheating, which occurs when one of the contracting parties conceals some shortcomings or faults in what the two parties have agreed upon while presenting it as complete and faultless. The harmed party has the right to invalidate the contract or to accept it with a claim for compensation – the compensation equals the difference in value between that which has the desired characteristic and that which lacks it.

9- The bankruptcy (*teflīs*) option

884. *Teflīs*/*ifās* in hiring/employment contracts takes place when the party hiring a person's services fails to pay the fee/payment due; in this case the hired party has the choice of revoking the contract and claiming the asset or to continue with the contract and joining other creditors to claim his money. The same applies for employment/hiring of people, where the worker/employee/hired person has the choice of revoking the contract for the period that remains after the employer fails to pay the wages in time and the worker/employee/hired person joins the other debt parties; however, if he has already completed the work, in this case he has no choice but to join forces with the rest of creditors.

(C) Rulings regarding carrying out and handing over the work

885. It is obligatory on the worker to abide by the clauses and implications (implicitly included clauses) of the contract that state how the work should be done, its time period and complexities; if he violates them so that the contract becomes void of some of its fundamental points, the leasing/renting/employing/hiring contract becomes invalidated/revoked immediately, but if he violates them without the contract losing some of its fundamental points, in this case the employer has the right to invalidate the contract according to the condition failure option that was mentioned previously. This is a general rule that applies to all work in which the condition is a fundamental basis on which the agreement was made and from which the work proceeded.

886. If a volunteer completed the work of the employee/hired person, whether by the request of the latter or not, the payment will be due to the employee/hired person even though someone else carried out the work if that other person intended the work as voluntary for the employee/hired person and to relieve him from his obligation; nothing will be due to the latter, since his voluntary act effectively brought the employment/hiring agreement to a close.

887. If the employee/worker/hired person leaves the service of the employer and starts working for someone else during the period of needing him, here there several situations may arise:

1- If he starts to work for himself, in this case the employer has the choice of acceptance and allowing him to keep working for himself, while claiming compensation for the loss of benefit in ratio to the agreed payment, or to invalidate the contract and cancel the deal, and to claim back the whole of the agreed payment and pay the worker a fee based on similar work (*ojrat al-Mithl*) for what he did do, unless if he had included a condition that no payment is to be paid until the whole work has been completed, in which case nothing is due to the worker.

2- If he goes to work for another person for free, the ruling in this case is the same as in (1) above.

3- If he goes to work for another person for a fee/payment, in this case the employer has the choice of two resolutions:

a- To accept the status quo, with a payment agreed on in the second contract payable to the first employer.

b- To reject the second contract, in which case he has the choice of either invalidating the first contract and taking (back) the payment agreed with the worker and paying him a fee based on similar work, or to continue employing/hiring him but with the worker's commitment to compensate the loss of benefit during the period of the second contract which equals the difference with the agreed payment.

888. If a person is hired for a complete recital (*khetmeh*) of the Holy Qur'an, he must carry out this according to the norm, which is the correct recital in all its words and short vowels, observing the order of the chapters according to what is found in the Qur'an.

889. If he is hired to pray on behalf of the dead, he must offer the prayer according to the contract; so if requested in it is the prayer that is correct in the Sharī'ah, the employer is allowed to ignore its recommended part, with no harm done in failing –out of lack of awareness – in some of its obligatory parts, without which the prayer does not become void; however, if what is requested is prayer with all its parts, obligatory and recommended, and the person praying ignored some of them, in this case the prayer will continue to be valid, but nothing will be due to him except the payment equal to what he has performed, unless it was agreed that its completeness was a fundamental condition to deserve the payment, in which case (because he ignored some of it) no payment will be due to him.

(D) Rulings regarding damage (*telef*) and rendering defective (*ifsād*)

By damage (*telef*) we mean the asset becomes impossible to benefit from as a result of things like burning, drowning, burglary etc; making defective (*ifsād*) means something happens to the asset of the employer when at the disposal of the employee/hired person that leads to a defect, shortcoming or harm, such as a tailor wants to sew a dress but he commits a mistake in his planning making the dress short (er than required) and the like.

890. If damage takes place to the employer's asset when it is at the disposal of the employee/hired person who is working on it for the former but for a reason other than the worker's actions, without negligence on his part or improper conduct, in this case no compensation is due from the worker; for example, if a sick person dies during treatment for reasons unrelated to the treatment, or a car gets burned when outside the mechanic's garage and not through his failure to protect it.

891. The worker pays compensation – if he is negligent or has little experience in his work – on every asset belonging to the employer that is damaged, or becomes defective or degraded when at his disposal for that work. However, if he is alert, experienced, doing his utmost not to make an error and works according to the common norms and foundations of his profession, in this case he does not pay compensation for what it becomes damaged in his care.

892. The employer – as long as he was not the cause – does not pay for what happens to the worker in terms of illness, harm or death when doing his work, unless the worker has stipulated a condition of compensation in some form, or if it falls within modern work laws, explicitly or implicitly, in which case he must pay compensation according to the conditions.

893. In every situation in which the worker does not (normally) become obliged to pay compensation for what gets damaged when at his disposal, the employer has the right to make compensation conditional; also, it is acceptable to make not paying compensation conditional in situations when it is (common) to pay compensation; in each of these cases, if the other party accepts, he becomes committed to pay or not pay according to the condition.

Chapter Two

Rent/Lease (*Ijāreh*) of Assets

Contracts for renting/leasing assets are similar to contracts for people's employment or hiring regarding the (wording) form of the contract and conditions of the contracting parties, (but) with changes in the wording to make them suitable for renting/leasing assets. They are also generally similar in the specifications and rulings of the contract regarding commitment and invalidation/revocation. Exceptions to this will be discussed in the following.

(A) Conditions of the rented/leased asset

894. The asset is: every thing that has benefit for which it (the asset) is sought. The validity of its rental/lease is conditional to having the following:

1- The asset must have value, i.e. it must have a benefit that is appreciated and sought after, even if for a small number of people.

2- The asset must be suitable for benefiting from by its survival, so if benefiting from it is through destroying it, such as food and drink, its rental/lease is not valid; rather, it has no meaning.

3- Its benefits must be allowable (in the Sharī'ah), so if its benefits are limited to forbidden things, rental/lease is not valid; also not valid is renting/leasing for the sake of forbidden benefit when (the asset's benefits are) not limited to it.

4- The asset must be suitable to fulfil the sought after benefit, so it is not valid to rent/lease land for cultivation if its soil is not suitable for farming, and the like.

5- Both the asset and the benefit must be known and specified in a way that distinguishes the asset from other assets and the type of benefit from other types of benefits, so that the renting person can be introduced to the asset's features by viewing it or by listing them, and he can also be introduced to the details of benefiting in a way that does not cause misunderstanding that leads to dispute and loss of benefit.

6- The owner must have the capability, even if only probable, to hand over the rented asset; sufficient in this is the ability of the renting person to get it handed over to him in the case of the owner's failure to hand it over. Handing over can be made a condition for the rental/lease, such as saying: 'I will rent this asset from you if you can hand it over,' making it valid if the asset is handed over, otherwise not.

This is regarding the conditions of rented assets; the conditions of the rental payment, however, are not different to what we have mentioned in the employment/hiring of people.

(B) Commitment to the contract and causes of its invalidation (feskh)

895. If the rent/lease contract is completed with its conditions, the two parties become obliged to abide by it and neither one of them will have the right to invalidate it or retreat from it except if the right of invalidation becomes confirmed through one of the choices explained under the employment/hiring of people.

896. The rent/lease is not invalidated by selling the rented/leased asset before the end of the rent/lease duration, (but) the asset is transferred to the buyer lacking its benefit because of the renting person/lessee's ownership of the benefit through the rent/lease contract.

897. If the rented/leased asset is sold and transferred to the buyer without its benefit and the renting person/lessee revokes the contract for any reason, in this case the benefit, during the rest of the contract period, returns to the seller, not the buyer; this is because when he sold the asset without its benefit to the buyer, the benefit remained in his ownership, even though the buyer was himself the renting person/lessee.

898. The rental contract does not become invalidated by the owner's death and the inheritors must meet their obligations towards the renting person and enable him to benefit from the rented asset despite its transfer to them by inheritance. Also the contract does not become invalidated by the death of the renting person if the owner had not made it conditional that only he (the renting person) was allowed the right to benefit from itand his wish was not to separate renting the house from allowing the specified renting person to benefit from it [.

899. If the renting contract becomes void or if the invalidation takes place before any benefit is received, there is no problem in this; but if this takes place after the elapse of some time after the beginning of the contract, three situations arise:

1- If the contract is ruled invalid, meaning that its invalid status is discovered (shortly after) the outset, in this case the owner must return the agreed rental/lease to the renting/leasing person and to take as rent the value of a similar rental for the duration in which he benefited from the asset.

2- If the invalidation is ruled during the contract, which is called 'invalidation when something that renders it void takes place after being valid', in this case the owner has the right of rent that equals the amount which the renting person had benefited from it in ratio to the agreed rent, not the rent of a similar property (*ojrat al-Mithl*).

3- If the contract remains valid, but something happens that gives the right of invalidation to one of them, or if they agree on /invalidation, in this case the ruling is as in the second situation above.

(C) Handing over (*teslīm*) rulings

900. If the contract is complete with its conditions, the renting person will own the benefit from the owner and the owner will own the rent from the renting person; the consequence of this is that each of them must hand over what he has to the other, which means that the renting person must pay the rent immediately and in advance, unless a condition contrary to this is made by the owner.

Handing over the benefit takes place by handing over the asset/property, which differs according to the asset in question, so a house is handed over by handing over its keys while a piece of land is handed over by allowing the renting person to have control over it – this kind of handing over is called '*tekhliyeh'* (vacating/emptying). However, handing over a 'right' takes place by handing over the thing that is related to the right, so handing over custody is done by handing over the children and so on.

901. If the owner submits the rented asset to the renting person and prepares all the necessary things for handing it over but the latter voluntarily abstains from taking the asset, or he takes it but does not voluntarily take the sought-after benefit, or if the renting person has a private excuse for not taking the asset, such as illness, forgetfulness or the like, and the rent was restricted to a certain time or a time that is commonly accepted to be needed for getting the benefit, in all these cases the renting contract is valid and the renting person has to pay rent to the owner. However, if the rental contract has no time restriction, or if the benefit was not one that should be benefited from – as is commonly acceptable – within a certain time period, the renting person will still have the right to keep the owner waiting until he obtains the benefit after the disappearance of the obstacle.

But if the obstacle to taking it was not private, such as bad weather or disturbances in the security situation, in this case the renting contract becomes void and the owner is not owed anything by the renting person.

902. If the obstacle to obtaining the benefit was losing the asset by such things as misappropriation (e.g. theft), then if the misappropriationhad taken place before the renting

person had handed over the asset and the misappropriation was directed towards the renting person out of the misappropriator's wish to harm him, in this case the renting contract is valid and all its rulings apply. But if the misappropriation was not to harm the renting person in particular, the renting person will have the right to revoke the contract and to claim the rent back, or to stay with the contract and go back to the misappropriator to claim payment equal the lost benefit. However, if the misappropriationtook place after paying the rent, the contract is valid and the renting person should turn to the misappropriatorto claim his rights.

903. If all the asset's benefits are damaged, two situations arise:

First: If the damage was due to a natural phenomenon such as lightning or the like, then if the damage took place before the hand-over or immediately after it, but before benefiting from it, the rental contract becomes void; but if this takes place after benefiting for some time, the contract will become void starting from when the damage takes place and the renting person pays the owner rent in the ratio of the benefiting time to the agreed rent.

Second: If the damage was due to an intentional act committed by a sane person, here if the damaged party is the renting person, the rental becomes void as in the first situation and compensation for the asset is confirmed if the matter was one of transgression and negligence. And if the damaged party was the owner, the rental will stay valid absolutely, but the renting person will have the right of choosing to go ahead with the contract and to claim a replacement for the damaged asset or to invalidate the contract and claim back the agreed rent in the ratio of his benefit from the asset during that time. However, if the damaged party was other than the two contracting parties, then if the damage took place before handing over the asset, the renting person will also have the right to choose to revoke the contract and claim back the rent or to go ahead with claiming a replacement to the damaged asset; but if the damage took place after the hand-over, the contract will not be invalidated and the responsibility will be on the damaging party for his transgression, so the renting person turns to him to pay compensation for the lost benefit while the owner turns to him to claim a replacement for the asset or its value without the benefit, according to the compensation rulings explained.

904. If the damage to the rented asset did not completely prevent benefiting from it by ways other than what was sought in the beginning, then if the owner made it conditional to use the asset for the particular benefit that was (later) lost by the damage, the contract will not become void, but the renting person has the right to choose to go ahead with the contract and benefit from the asset and to claim the difference in rent if it is less, or to invalidate the contract and claim back what he paid of the agreed rent if this is due to him.

905. If the asset damage was partial, the renting person will have the right to exercise the option of a split deal, so he may choose to go ahead with the contract with compensation for the loss in benefit in its ratio to the rent, or to invalidate the contract and pay the owner the amount of the rent in ratio to the amount that he benefited from the asset. This is if the party who did the damage was not the renting person; if that was the case, he would not have that option, but the rent would remain due in full in addition to compensation to the owner for the damaged part, estimated according to the benefit lost.

906. The rented/leased asset is entrusted to the renting person, but if it is damaged he is not obliged to pay compensation if he did not transgress nor is guilty of neglect, meaning that he did not violate the permissible extent of benefiting from the asset nor subject it to whatever might cause damage; otherwise compensation will be due (to the owner). Also, compensation will be due if the owner made compensation conditional, even if the renting person did not transgress or is guilty of neglect.

Chapter Three

Payment of Reward (*Jo'āleh*)

907. In jurisprudence, *jo'āleh* is: announcing a promise and commitment to give something, or to do work, for anyone who will carry out a certain task, according to the wish of the announcing person (*jā'il*). *Jo'āleh*, or payment of reward, is similar to *ijāreh* (rent/lease/hire) in having the element of using others, but it differs from it that a rent/lease/hire agreement is a contract that requires proposal and acceptance while the payment of reward is regarded as '*Īqa'*', i.e. confirmation for which the announcement by the person promising the reward is sufficient.

908. For the form (of the announcement), any wording that shows the wish of the person promising the reward and his will to do something for whoever accomplishes a certain task is permissible; no specific wording is conditional, nor any specific announcing method; as mentioned above, there is no need for the acceptance of the other party who is carrying out the task

909. The person promising the reward (*jā'il*) must meet the conditions of sanity and choice, not be interdicted for unreasonable conduct (*sefeh*), also not be interdicted for bankruptcy if the task requires the disposal of the assets of the interdicted person; otherwise it is valid, such as if the reward of *jo'āleh* is in itself work; the *jo'āleh* of a child is acceptable with the permission of the guardian.

910. No conditions apply to the person who responds to a *jo'āleh*, except the ability to do the task and achieve it (the purpose), so the reward will be due to him even if the means to carry out the task are forbidden, such as if a woman in menses cleans the mosque or the person carrying out the task uses a stolen car to search for a lost possession, or even if ththe person carrying out the task is a child or insane. That said, in such a case, the lost possession which is required to be found must be in the possession of someone other than the one who finds it, hence the meaning of searching for it and finding it stems from it really being lost.

911. It is conditional that the task for which the reward is announced is allowed, has a worthwhile benefit and that it is not something that is known in the Sharī'ah to be a duty on the person that he must perform; so *jo'āleh* is not valid on for forbidden task, nor on something that has a forbidden pre-requirement, nor on a purposeless task such as filling water from a pond then pouring it back into it, nor on things like acts of worship– prayers, fasting etc – which the announcer of the reward (*jā'il*) has to perform himself. In addition, the task must be known in itself and in its details to a degree that prevents dispute.

912. It is generally allowed for both parties to change their mind and stop pursuing the *jo'āleh* and the task in question; the announcer of the reward is allowed to withdraw from his promise before the person undertaking the task starts, also after it upon agreement with the person undertaking the task, otherwise it is not allowed to withdraw, as a precaution; also it is allowed for the person undertaking the task to abandon the objective needed for the reward, or not to complete it, unless abandoning the task leads to harm to the announcer of the reward or to whoever the task is for, such as in medical treatment and the like, in which case it must be completed since harming is forbidden – not because the *jo'āleh* is binding.

913. The *jo'āleh* (i.e. the reward) is due to the person undertaking the task when he completes the task as it is announced, so if he carries out only some of it, nothing will be due to him from the announcer of the reward unless the reward on the whole of the task was divided into parts, either by the *jā'il* announcement or because it is commonly known in similar works, in which case payment is due for the parts achieved in ratio to the complete task.
Added to the condition mentioned above are all conditions which the announcer of the reward puts in his *jo'āleh*, such as immediate commencement of the task and the like.

914. If dispute takes place between the announcer of the reward and the person undertaking the task over the existence of the *jo'āleh* itself, or the kind of the task for which the reward was announced, or the nature of the reward or the amount of work required, here the decision follows the claim of the announcer of the reward, if affirmed under oath (*yemīn*). But if the dispute is over the amount of the reward, the decision follows the party who disputes the additional amount, if affirmed under oath (*yemīn*).

SUB-PART ONE

Unit Two

Gifts

Al-Hibāt

Gifts

Al-Hibāt

Al-Hibeh – according to the scholars' terminology – is specific to the owner giving his own assets in his life to someone else for free; for this they detailed the rulings under '*Hibeh*' (gift). However, since this 'free' giving is not limited to this transaction, but other transactions are also of that sort, we thought it more appropriate to include in this sub-part both *hibeh* and others, giving it the title '*Hibāt*' (gifts), thus making it cover *hibeh* as in its meaning mentioned above and *'āriyeh* (loan), *weσ≅iyyeh* (will) and *waqf* (entailment). This is because the *'āriyeh* is a gift (*hibeh*) of the benefit, the *weσ≅iyyeh* is a gift (*hibeh*) of both the asset and benefit or the benefit alone, but only after the giver's death, and the *waqf* is taking the owner's asset out of his ownership, entailing the asset and rendering it unavailable for transfer to others and giving as gift (*hibeh*) its benefit, for good or charitable causes, to all people or to a particular type of them. These are the transactions the rulings of which we shall explain in several sections.

Section One

The Gift (*Al-Hibeh*)

915. A *hibeh* is: giving ownership of an asset or the right to absolute ownership, which is transacted during the life of the giver, who makes the gift for free without payment and without the intention of *qorbeh* to God. It is a contract that needs proposal and acceptance (*Ījāb and qobūl*), but is sufficient in this if it includes any wording or act that identifies them (the proposal and acceptance).

916. The conditions for the validity of the gift are as follows:

First: For the giver, sanity, intention, free will and not being indicted for unreasonable conduct (*sefeh*), or for bankruptcy if the indictment is inclusive of the asset given; also reaching the Islamic legal age (*bolūgh*), so a child's gift is not valid unless it comes with the permission of the guardian, and in giving the child's assets there should be interest for the child himself.

Second: For the recipient, sanity, intention and free will if the one accepting it is the recipient himself or his proxy, otherwise the guardian of the insane may accept on his behalf. The same applies to the child that has not reached the age of sexual awareness (*momayyiz*); the child who has reached such an age can carry out valid acceptance and the hand-over of the gift if with the guardian's permission.

Third: The gift, must be either a material asset such as a house or money, or a right such as the right of custody or jurisdiction/authority and the asset must be suitable for the ownership of the recipient; so giving alcohol(lic drink) or pig (pork) to a Muslim is not valid.

917. To establish the giving of a gift, the given asset must be handed over, so if the recipient does not get the gift the contract becomes void and everything goes back to its original status, such as if the giver dies after the contract but before handing over.

918. Immediate handing over is not conditional, but when it is carried out; its consequences come into effect from the time of handing over not the time of the contract, so any benefits that accumulate before the hand-over is for the giver not the recipient.

919. It is possible for the giver to make something conditional in exchange for the gift, in which case the gift is described as a compensated/exchanged (*hibeh mo'awwaδ≅≅eh*) or conditional (*hibeh meshrū τ≅eh*) gift.

920. It is allowed to retract a gift except in four situations:

1- The recipient is a kin of the giver, such as a son, brother, uncle etc.

2- The gift is a compensation/exchange gift and the recipient has (already) started to meet his obligation regarding that which is compensated/exchanged.

3- The asset becomes damaged, or the recipient acts in a way that transfers it from his ownership or that changes it, such as if an animal dies or is sold, or making a piece of material into clothing and the like.

4- The giver dies after handing over, in which case his heirs are not allowed to retract the gift, or the recipient dies, in which case the giver is not allowed to turn to the heirs of the recipient.

921. It is better not to retract a gift between a husband and wife if the matter is not applicable to one of the four above-mentioned cases, otherwise it is not allowed.

Section Two

The Loan (*Al-'Āriyeh*)

922. An *'ā riyeh* is: a contract that enables another person to have disposal of an asset in order to benefit from it free of charge (i.e. lending), and is made by the person who has control of that asset. The *'āriyeh* is, hence, a gift of the benefit of that asset. This transaction is established by using any wording that identifies it and also includes proposal and acceptance (*Ījāb and qobūl*), also by *mo'ā τ≅āt* (handling or pursuing a job upon a request; see no. 863.)

923. Lending is not valid if from the insane, but is valid from a child or *sefīh* (a person of unreasonable conduct) with the permission of the guardian, also from an indicted person with the permission of the creditors to whom he owes his debt. It is conditional that he is an owner of the benefit or has permission for its disposal. This all applies to the lender. The borrowing person must be worthy of benefiting from the lent asset; he must also be specified, whether a single person or more, otherwise the loan to a person that can in fact be one or two or more individuals is not valid.

924. The conditions of the loan are that it must be suitable for benefiting from, with an allowable benefit from a non-perishable asset, such as property, books, a car etc, so it is not valid to lend something that cannot be benefited from except by destroying it such as food and drink, nor if its benefits are limited to forbidden things such as gambling equipment, from which the benefit comes from that (gambling).

925. The *'āriyeh* contract is a type of allowed contract in which both parties can retract from it, unless the borrower includes a condition on the owner not to invalidate the contract for a specified period of time; then if he violates the condition and invalidates the contract it is an obligatory precaution to do whatever leads to the certainty of relief of the obligation for both parties by mutual agreement (*σ≅ol η≅*) or the like. Also, if he lends him his land for burial or farming, then he has no right to retract from this after the burial or after the commencement of the work on the farm.

926. If the loaned asset's owner dies the *'āriyeh* contract becomes void and the borrower is obliged to take or send the loaned asset back to the heir or his guardian and to informhim about this so that he can make his decision, unless others besides the heirs have a right to the asset.

927. It is obligatory on the borrower, in the benefit and its amount, to limit it to what is covered by the lender's wording (in the proposal and acceptance), so it is not allowed to widen the scope of the benefit to more than that; also it is obligatory to limit the benefit to the way such benefit is commonly applied, otherwise he will become a usurper, and compensation will be due or payment/rent will be due for the complete benefit or that which goes beyond the permissible amount.

928. The borrower is not allowed to lend or rent the asset unless with the permission of the lender.

929. The loan is entrusted to the borrower, and he will not be liable to pay compensation if the asset is damaged unless if this occurs due to his transgression or negligence, unless if compensation is made conditional even without transgression or negligence. Compensation will also be due – even if without transgress or negligence – if the loan is gold or silver unless the borrower has made no compensation a condition.

930. If the borrower comes to know that the loan is a misappropriated asset, he must return it to its (true) owner and it is not allowed to give it to the lender.

931. If the loan becomes impure when at the borrower's disposal, he is not obliged to inform the owner about this unless he is concerned about the loan and if the asset is something that may be used in an activity that would lead to the user into violating a binding prohibiting duty, such as if it is used for eating or drinking, or falling into a binding obligatory duty, such as using an impure plate for ablution or washing to offer the obligatory prayer.

Section Three

The Will

(Al-Waσ≅≅iyyeh)

The *waσ≅iyyeh*, in the scholars' terminology, is: giving the ownership of an asset or benefit voluntarily, or giving control of disposal of the asset, after death. The Holy Qur'an encouraged it as in the verse: **((It is prescribed that he should make a proper bequest (will)…))** 2:180; it was narrated that the Prophet (sawa) said: '**For one who does not leave a proper will when dying, this (points to/shows) shortcomings in his chivalry and reason.**'

(A) Types of wills

932. There are two types of wills: ownership (*temlīkiyyeh*) and entrustment (*'ahdiyyeh*). The first is when the person making the will (the testator) wants to transfer ownership of some of his assets, or some of the rights, to others (the beneficiaries), whether an individual or party; the will may relate to the asset itself, such as to give it to the poor for example, or relate to a person who is to give it to the poor after his death. The second type is entrusting a specific person to carry out certain things that the person making the will wants to be done after his death, in the following matters:

1- Making him guardian to his minor children.

2- Paying off other peoples' rights over him, such as trusts or debts, or religion-specified money obligations, such as *khoms* and *zekāt* and the like.

3- Arranging for someone to perform any acts of worship (which he could not perform).

4- Spending some of his assets for good or charitable causes in a specific or unspecific manner; however, it is not an entrusting will if it is a question of ordering the payment of some of his assets to the poor or to a particular person, since this is a kind of ownership will as described earlier.

However, if someone includes in their entrusting will deeds in other areas that are regarded as interfering in the affairs of others, these are not valid or binding on the *waσ≅ī* (executor of the will), such as if the testator asks his friend to pray (in congregation) with a certain scholar or to marry off his daughter to a particular person and the like.

933. Making a will is recommended in the Sharī'ah, but if some of an entrusting will relates to obligatory matters, such as paying off debt or performing worship duties as *qeδ≅≅ā'*, it becomes obligatory for the person not only to mention them in the will torelievehim of his responsibility, but also to do his utmost to make sure of relieving his responsibility; hence if this depends on making the will it becomes obligatory, otherwise not.

(B) The form (*σ≅īgheh*) of the will

934. It is acceptable for the testator to register a will using any form of wording, act, sign or writing that identifies it, using his hand or signed by him, provided that it shows that what he wants to follow after his death. Wills, whether one of entrustment or ownership, do not require the acceptance of the beneficiary, rather he will have ownership as a result of an ownership will even if he rejects the will both during and after the life of the person making the will. With an entrustment will, however, the matter is different in three situations:

First: If the executor rejects the will and renounces it – even if before it is announced by the person making it – and the latter is informed about the rejection in sufficient time to appoint another executor, in this case the first appointed executor will not be bound by anything in respect of the person making the will.

Second: If the rejection occurs after the death of the person making the will or in his absence and he is not informed about the rejection, or with insufficient time to appoint another one, in this case his rejection has no effect, including if the testator appointed him as guardian to the minors among his children.

Third: If there are things that are required in the will to be carried out, such as prayers to be offered as *qeδ≅≅ā'* by the entrusted person personally or pilgrimage also, in this case if he accepts them, they become binding, but he is free to reject such a will even after accepting it, and thus to release himself from it, if his rejection reaches the person who made the will, otherwise, it remains binding upon him.
In the cases of wills of entrustment, if the person entrusted with the will rejects it but the person making the will insists on him carrying out his wishes and does not accept his rejection, the will stays valid but is not binding on the executor, who may choose to execute it, or not, in which case it is regarded as a will without an appointed executor, and is therefore handed to the Islamic authority.

935. A will is something allowed for the person making it, so if he entrusts someone with something, he is allowed to retract from it and change it as long as he is alive and meeting all the conditions. There is no particular wording for the retraction, but it is sufficient that he makes a will that is different to the earlier one.

(C) Conditions for the person making the will (*al-Mūσ≅ī,* the testator)

936. So that the will goes through, the testator must meet the following conditions:

1- Having reached the age of ten or more for males: so the will of a child will be valid only if he has reached ten years and his will contains charitable and good matters, or things that are acceptable to sane people, even if they are directed towards others who are not part of his kinship. With females, however, since they – as a precaution – reach the Islamic legal age at nine, caution must be practised in accepting their will at this age, with the stipulation of reasonable conduct (*roshd*).

2- Sanity: so a will by an insane or drunk person, or one who lost conscious thought during the time when he lost his sanity, is not valid. However, if he registered his will then lost his sanity, his will stays valid.

3- Reasonable conduct, which means reasonable and acceptable behaviour regarding his affairs in a manner that is the norm for sane people.

4- Free will: so a will made by someone who is forced into it is not valid even if he accepts it later, in which case a new will must be made as an obligatory precaution.

5- He must not have killed himself, which is specific to any individual who made a will after carrying out an act that would lead to his death and that his will concerns his assets; however, if he made the will before that, it is valid even if he had decided to commit suicide when making the will; also, his will regarding matters other than his assets is valid absolutely.

937. There is no difference between the person making the will being healthy when making the will or ill; a will made by someone who the ill is valid, even if he is in the last stage of illness before death.

(D) The persons towards whom the will is directed

938. Ownership wills are valid to anyone, individuals or parties/organisations to whom the person making the will wants to give, whether amongst the family heirs or others, young and old, sane and insane, Muslims and non-Muslims, individuals or groups. Generally, a will of entrustment is valid (to be entrusted) provided that it is not directed to the completely insane or the very young.

939. An ownership will, and the entrustment will as well, is valid if directed towards whoever is present in the life of the person making the will, whether this be his grandchildren or others; in fact, it is more probable that both types of wills are valid if directed towards those

who will be born after the life of the person making the will. However, no will is valid if directed towards beneficiaries that are dead.

940. If the testator puts something in his will to someone who is yet to be born, but he is never born, or to someone for whom he made certain things conditional but these conditions were not met, these stipulations become void and what he designates for such persons is to be turned over to the heirs of the person who made the will to be divided amongst them according to the ratio of their shares.

941. If the testator allocated an asset or money in his will to a group of people, male, female or mixed, the asset/money is to be divided amongst them equally.

942. If a person in the will dies before the death of the person who made the will and before the asset is transferred to him, the will does not become void, but the asset is to be transferred to the deceased's heirs immediately after the death of the testator, in a way that seems as if the latter put them, not their deceased, in the will; and as a consequence the rulings regarding the assets of their deceased do not apply to the transferred asset, so it is not included in the third (see 943 below), nor are his debts to be paid from it, and his wife is to be paid from it even if it is a property (house, land, etc); but it must be divided among his heirs in the same way as inheritance money.

(E) The amount of things given in the will

943. It is conditional that the amount given in the will, whether as ownership or entrustment, does not exceed one third (1/3) of the deceased's estate, after the exclusion of what must be taken out from the estate, which are: debts he owed to people, religion-specified money obligations (*hoqūq shar'iyyeh*) that are due from his assets, the *khoms* and *zekāt* in particular, pilgrimage that was obligatory (on him) depending on his ability (to perform it), in addition to the expenses of his coffin, burial etc.

944. If the will is more than the third, the excess is not carried out unless if the heirs approve of giving the excess from their shares, and if only some of them allow that and the rest reject it, it is carried out using only the shares of those who approved.
However, the approval of the minors amongst the heirs is not valid, neither by themselves nor through their guardian. In this case, either the non-minors accept to take on the whole of the excess, or its execution must wait until the minors become qualified by *bolūgh*, sanity or *roshd*.

945. If a person who has no heirs except the Islamic authority has made his will to give all his assets to the poor and stranded [travellers, or to charitable, good or pious causes, his will must be executed, but it is good to observe the precaution of getting the permission of the Islamic authority (*al-H≅ākim ash-Shar'ī*).

946. If a person gives another an amount of money and asks him – in his will – to spend it on certain things, it seems that he must make sure that is equal to no more than the third before spending it – it is not allowed to hasten to spend it before that, even if he thinks it probable that he will have the heirs' permission to execute this request, or if he has an Islamically legal (*shar'ī*) demand that calls for spending it from the estate.

947. If the person asks in his will to exclude some of his heirs from their share in the estate for noble or non-noble reasons, his will must not be executed unless those excluded approve of fulfilling this wish, in which case it is executed by excluding them. However, if the deceased has not registered a will regarding the third of his assets, but left it as general inheritance, in this case the will of exclusion must be executed by the amount which the excluded individual(s) was going to inherit from the third of the deceased had he not excluded him – all this after calculating and subtracting the obligatory amounts.

(F) The executor (*al-Waσ≅ī*)

948. The *waσ≅ī* is the person or persons to whom the testator entrusts the execution of his will. An executor must have reached the Islamic legal age, if the things which he is entrusted to execute so demand, so the actions of a child will not be accepted if he was made an independent executor of financial matters. Also, sanity is also conditional, so it is not valid to make an insane person, during his insanity, an executor. But Islam is not a condition; that said, it is better, but if entrusting the non-Muslim leads to religious or worldly blight, in this case the will is not valid.

949. Righteousness (*'adāleh*) is not conditional for the executor, but it is sufficient that he is trustworthy to do the important things that the person making the will has made him responsible for. However, if a righteous (*'ādil*) person is made executor then he becomes corrupt, any will directed to him becomes void if it is known that the person who made the will had made his righteousness a condition, otherwise it is not invalidated. The same applies if he makes a truthful person executor then he lies, or a knowledgeable person who he then becomes ignorant.

950. If the executor fails to execute the will due to his old age, illness, travel or other reasons that prevent him from following up and supervising the matters of the will, in this case the (Islamic) authority should ask someone to join him and meet the demand.

951. If the executor betrays the trust in him, his executor's position becomes invalidated if it was conditional upon his trustworthiness and the execution of the will is handed over to an (Islamic) authority who will either appoint another executor, or take on the matter himself. But if it was not conditional upon his trustworthiness then it would not be invalidated by betrayal, but the (Islamic) authority may ask another trustworthy person to join him and prevent him from betray his trust, but if this is not possible, he will be sacked and someone else appointed instead or the (Islamic) authority will take on the matter himself.

952. If the executor dies before the execution of the will, wholly or partially, the (Islamic) authority takes over or appoints someone else in his place; the same if he died during the lifetime of the person who made the will but the latter was aware of this, or if he came to know about it but failed to appoint someone else and there is nothing that implies that he had rejected any part of the will itself.

953. The (Islamic) authority takes over the responsibility of the will in each case where the entrustment of the will is conditional upon something and then this thing does not take place.

Section Four

Entailment (*Al-Waqf*)

Waqf is: when the owner of an asset taking the asset out of his ownership and entailing it for people to benefit from it without the party for whom it is entailed having authority of transferring it from his (the owner's) ownership. The scholars have added to the *waqf* a section they called '*ta η≅bīs*', which is: *η≅abs*, i.e. entailment by the owner of the asset's benefit to a person or organisation for a period of time without taking the asset out of his ownership. The difference between *waqf* and *ta η≅bīs* is that the former is perpetual and the owner takes the asset out of his ownership, while in the latter it is not the case in both these aspects.

(A) Types of *waqf* and its form

954. Regarding ownership by the beneficiaries of both the asset and benefit, or of the benefit without owning it, *waqf* is divided into two types:

First: specific *waqf*, which is when a person makes something a *waqf* for another person or a group of people, or something else specified, such as a mosque and an orphanage etc.

Second: general *waqf*, which is when a person makes something a *waqf* as a general thing, which is either human which is given to individuals for all time, such as a *waqf* for the religious *merji'*, scholars, travellers, the poor etc, or something which cannot be applied to specific things, but it is intended to facilitate charitable or good deeds using it; in this case it is given the term '*al-Jiheh*', such as making a farm a *waqf* to provide revenue for treatment of the ill, or feeding the poor in general, or for religious teaching and similar general endeavours and good causes.

955. Regarding specific *waqf*, the asset made *waqf* and its benefit come under the ownership of the beneficiary if the the person who made the *waqf* announced the form of the *waqf*, especially if he declared formally or wrote down that they would become the owners; in these cases, the asset made *waqf* will have all ownership consequences including *khoms*, *zekāt* – when their conditions are met – selling any gains that accumulate, renting the benefit, inheritance etc, unless he made conditional the actual benefiting, in which case it is not allowed to transfer its benefit to other parties than the beneficiaries. That said, excluded from the ownership consequences is transferring the asset itself from the ownership of the beneficiary, since he has no right to sell the asset, give it as gift (*hibeh*) or transfer the ownership in any other way.

956. The ownership of the asset in a general *waqf* according to the beneficiaries is as follows:

1- **If the asset is made a *waqf* for a human party**, here the asset comes into the ownership of the beneficiary, but its benefits may have three applications:

a- That the person making the *waqf* wants the beneficiaries to benefit themselves from the asset made *waqf*, such as praying in the mosque or sleeping in a hotel, then it is clear that in such benefit, compensation/exchange for it is not allowed, nor inheritance, but rather it is limited to the beneficiaries alone receiving the benefit themselves according to the fixed entitlement of the *waqf*.

b- That the person making the *waqf* wants to make a type of beneficiary the owner of the asset and appoints a guardian for distributing it to the individuals of that type who are present at any time; in this case the individuals of that type who exist then do not own their share before the guardian hands it over to them, but then if he hands it over to them, they become its owner and become allowed to dispose of it as they like.

c- That the person making the *waqf* wants the ownership of the benefit by the existing beneficiaries to be seen as a common property without a guardian. In this case also, they do not own their shares until after each one of them gets his share as an independent owner.

2- **If the *waqf* is made for *al-Jiheh***, the *jiheh* is either specific (such as when designating the produce of a farm *waqf* to be spent on feeding Moη≅ammed and his family), or general (such as spending its revenues on treating the ill). The asset and its benefits are owned by that *jiheh* in general, but in things like the spending for feeding Moη≅ammed, his ownership of the produce follows what the person who made the *waqf* wanted when he made it: if his intention was that, the ruling of which will then be like the first type (specific *waqf*), but if his intention was to spend it on him without making him owner of the benefits, then he does not own anything except the share that the guardian gives to him, but he has the right to transfer it from his ownership by selling or the like, and it may be inherited after he dies, and has all the other consequences of ownership.

(B) Basic elements of the *waqf*

957. Several matters have to be observed in the *waqf*:

First: The form (*σ≅īgheh*), so it is not sufficient to show intention only without demonstrating it using words or deeds that make it clear.

Waqf is a transaction that does not need the acceptance of the other party; also, to validate it, it is not conditional that there exists the intention of *qorbeh*, although it is a cause for reward from Allah, the Most High.

Second: Perpetuity (*te'bīd*), so if the person making the *waqf* specifies time, it is not valid as *waqf*, but it would be regarded as *taη≅bīs*, and have the consequences of *taη≅bīs* that will be explained, unless he meant *waqf*, in which case it becomes void.

Third: Fulfilment (*tenjīz*), which means making the asset ready for actual benefiting, so it is invalidated if the *waqf* was pending a future matter, whether certain to happen or probable, such as if he says: 'My house is *waqf* if Moη≅ammed returns from his travel'; the same if he makes it pending something that at the present time is probable (not certain), unless this present thing is required for the validity of the *waqf*, in which case it seems that it is acceptable, such as if he says: 'My house is *waqf* if it was owned by me' and the like.

And if he made the *waqf* form pending his death, the *waqf* becomes invalidated if he meant establishing the *waqf* now depends on death, not if he meant by it a will to make it *waqf* after his death, in which case the will will be valid at the third and it must be executed after his death.

Fourth: The *waqf* must be for others, so a *waqf* for one's self independent of others or joined to them is invalid, such as if he says: 'My house is *waqf* for me', or 'My house is *waqf* for me and my brother'. It would be a kind of making *waqf* for one's self if he made his house *waqf* and made renting it conditional, so that its rent would be assigned to pay his debts after his death, or to be spent for performing the duties of worship on his behalf or the like.

Firfth: Handing over: if the asset is handed over to the beneficiary, the *waqf* has been established and becomes binding; however, before handing over, it is an obligatory precaution in the ownership *waqf* that the person who made the *waqf* does not retract this during his life. If he dies and the heirs are adults, then it is an obligatory precaution that they give up the asset made *waqf* and leave it as *waqf*, but if they are young, it is more probable that the *waqf* is not regarded as binding, making it (the asset) inheritance for them; this is if the *waqf* was specific. If the *waqf* was general, handing over is not conditional for its validity and establishment, nor is being binding, but it becomes binding for the mere making of it, even if no one would benefit from the *waqf*.

958. If he made *waqf* for someone for whom (the beneficiary) is guardian, such as a *waqf* of the father for his children, and the asset is at the guardian's disposal, handing over will be enough on behalf of those for whom he is guardian; however, if the asset is with someone else

as a trust or loan, in this case he must take it (back) so that handing over on behalf of those for whom he is guardian is established.

959. The ability to hand over is not conditional when establishing the *waqf*, nor is it essential that the asset made *waqf* is at the disposal of the person making the *waqf*, but it is enough for securing a hand-over after that, even if it was not possible when the *waqf* was made; so, making a misappropriated asset *waqf* is valid, so is making it for absent, imprisoned or similar people who cannot be handed over – the important thing for the *waqf* to become established completely is handing it over to them, even if after a long time, if the conditions continue to be valid; even, immediate handing over is not obligatory even when possible after the *waqf* was made.

960. If the *waqf* is established with all its conditions, it becomes binding, whether the intention of *qorbeh* is involved or not, making it unacceptable for the person who made the *waqf* to retract from it and bring the asset back to his ownership. Moreover, if he had specified conditions, format and beneficiary for it, the *waqf* becomes established and binding as he made it, and he has no right to replace or change it.

(C) The person making the *waqf*/entailer (*al-Wāqif*)

961. The person making the *waqf*, or the entailer, must be free to dispose of his assets by *bolūgh*, sanity, free will and not being indicted, so a child cannot make *waqf* even if he has reached ten years of age unless with his guardian's permission and unless there is a potential benefit to the child from the *waqf*. That said, *waqf* made in a will by him after his death is valid if he had reached ten years when registering his will. Also, *waqf* cannot be executed if it was made by force, even if the entailer accepted it after the disappearance of the person doing the forcing; nor is it to be executed if he made it *waqf* when he was young or insane then later accepted it or his guardian later accepted it. In other words: to establish a *waqf* the aforementioned conditions must be present: acceptance afterwards, in case of absence of some of them, is not enough, but the *waqf* must be re-made after the disappearance of the obstacle.

962. '*Al-Fo*δ≅≅*ūlī*' (one who is intrusive) is a term used to describe someone who is not the owner but who establishes a transaction in the interest of the owner but without his knowledge. When established by a non-owner, it is possible that the *waqf* may become valid if the owner's acceptance is later secured.

(D) The asset made *waqf*

963. The following things must be present in the asset made *waqf*:

1- It must be an asset, so a benefit separate to the asset cannot be made a *waqf*.

2- It must exist when the contract is made or be subsidiary to an existing *waqf*, such as a *waqf* of a tree or a *waqf* of the tree or an animal with its renewable produce of fruit or young; so, it is not valid to make a *waqf* of the fruit or the embryo before they come to existence. That said, a ruling of the validity of an existing asset before the completion of its existence is probable (but) with satisfaction of the criterion that it would be complete within its specified time, such as making an embryo *waqf* before it is born.

3- The asset made *waqf* must have a specified (external) entity, i.e. a specified existence that can be pointed to and felt, so it is not valid to make *waqf* a general thing that is unspecified, such as a debt that someone else owes a person before paying it back, or any unspecified sheep from a herd, and so on.
However, a share of a common property is not regarded as unspecified, but it has an existence specific to it, so it can be made *waqf* without any problem.

4- The asset must be specified, so a declaration involving possibilities it is not valid such as if someone who owns two houses says: 'I have made *waqf* one of my houses; it may be this house or that one.'

5- The potential benefit in the asset must be allowed.

6- It must have a benefit that can be reaped with the asset remaining unaffected, such as the benefit of the shadow of a tree, or the benefit of riding an animal or obtaining milk from it etc.

7- The asset must be owned by the person making the *waqf*, so it is not valid to make a *waqf* with something that is owned by others unless they give permission; it is also not acceptable to make a *waqf* with something for which the Sharī'ah prohibits ownership, such as aggressive, unruly (*harāsh*) dogs or the like.

(E) The beneficiary

964. The conditions for the beneficiary are:

1- The beneficiary must exist or will exist in the future, and cannot be utterly non-existent or someone who cannot benefit from the *waqf*, such as making a *waqf* for Muhammad who died before the *waqf* was made; this is in the specific *waqf*. In the general *waqf*, the existence of the beneficiary, actual or in the future, is not a condition for the validity of the *waqf*; as for the utterly non-existent thing, although it can be imagined in a general *waqf*, making a *waqf* for it is pointless and leads to the invalidation of the *waqf*.

2- It must be specified, so it is not valid if involving possibilities, such as a *waqf* for the benefit of either the scholars or the poor, unless if what is meant is choice, in which case it will be valid.

3- It must be allowed, so it is not allowed to make a *waqf* for the propagation of falsehood or the spreading corruption and vice etc.

965. *Waqf* is not conditional on Islam, so it is allowed for a Muslim to make a *waqf* for a non-Muslim amongst his relatives or others; *waqf* for them is valid and allowed if it comes within humanistic or charitable areas that are reasonable in Islam in general and if there is a benefit or specific merit that justifies it.

(F) Disposal of the *waqf*

First: The *waqf* guardian

966. In general, the *waqf* must have a guardian who supervises it, protects it and disposes of it to its beneficiaries. The person who made the *waqf* has more right to attain this position than any other, so if he appoints himself or another person a guardian, he or his appointee is the guardian; but if he did not appoint a guardian, then if the *waqf* was specific and for ownership, in this case guardianship is given to the beneficiary, and if the *waqf* was specific or not for ownership but to be used to spend on the beneficiary, in this case guardianship is given to the Islamic authority.

967. The person making the *waqf* has the right to specify the guardianship over the asset made *waqf* in the format, time and character that he wants – he may limit it to one guardian who has exclusive rights of disposal, or make others, one or more, join him, either for execution or supervision, and other situations that differ according to cases and people.

968. It is not obligatory on the person appointed guardian to accept this appointment, and his becoming a guardian does not depend on his approval; so if the person making the *waqf* appoints a guardian, he becomes a guardian even if he did not declare his acceptance and his guardianship does not become void merely by rejecting it if he accepted it after this. Also, if he accepted it, he has no right to reject it and it becomes binding. Moreover, the person who made the *waqf* has no right to sack the guardian unless he has made the right to sack him a condition.

969. It is not conditional that a guardian is appointed when the *waqf* is established, for it is sufficient that his intention was to appoint him afterwards; also, if he was unaware while making the *waqf* then realised afterwards, is acceptable to appoint the guardian then. However, if he did not appoint a guardian at the time of making the *waqf* on purpose, in this case he has no right to appoint either himself or anyone else guardian after that.

970. The guardian should qualify to dispose of the *waqf* by *bolūgh*, sanity and reasonable conduct; so neither Islam nor righteousness (*'adāleh*) are conditional, but it is sufficient if he

had the ability to manage the *waqf* even if through the co-operation of experienced people, and he should be trustworthy, especially in a general *waqf*; the same applies to supervisors (of the *waqf*).

971. It is allowed for the person who made the *waqf* to allocate for the guardian some of the growth of the asset made *waqf* as a payment for carrying out the guardianship duties, according to the payment that the person who made the *waqf* sees as suitable. But if he did not allocate a payment for him, it is allowed for the guardian to take the amount equal to the payment for similar work, if there is a common rate of payment for his work.

Second: The disposal

It was mentioned earlier that benefiting from the *waqf* must be limited to what the person who made the *waqf* had specified for its disposal. However, he might not have detailed the disposal; there are various reasons why this might become an issue:

972. If the asset was made *waqf* for a particular benefit, such as a building for living in, it is – from the principle standpoint – not allowed to change it to another benefit; this may be seen in two situations:

1- If it is known that the intention of the person who made the *waqf* was to keep that usage forever, either by stating it or through indications that imply that, it is not allowed to change it, such as a building for living in being changed into a shop and the like. Moreover, changes from what it is probable that he intended are not allowed.

2- If none ofof (1) above apply, but the aim of the usege for which it was made *waqf* was an abundant benefit then it was reduced not because of some temporary reasons but continuously, in this case it is allowed to change it to something that is more beneficial.

973. Legitimate conditions set by the person making the *waqf* are valid and must be observed; so if he made it conditional that the house made *waqf* is not to be rented for more than one year, or requires immediate disposal by the beneficiaries, for example, it must be implemented according to his conditions.

974. Things made *waqf* for general usage, such as mosques, libraries and the like, may be benefited from by a usage other than those specified in the *waqf* if it is not contradictory or harmful to the original one; so there is no problem in sitting in the mosque for purposes other than worship, such as giving lessons and the like.

975. If something was made *waqf* to be spent on one or more dead persons, it must be spent in his/their interest, prioritising according to importance; so if there is a debt and a pilgrimage which was obligatory due to ability to perform it, these must be given priority over other worship obligations, (and so on) until reaching the non-obligatory.

976. If something was made *waqf* so that its revenues are spent on a mosque, public library or other public establishments, the revenues must be spent according to what is suitable for the beneficiaries and its needs; a *waqf* for a mosque, for example, may be spent on renovations, carpets, lighting and the like which are all regarded as part of it; the same applies to other entities besides than mosques.

Third: Rulings regarding damage to the *waqf* and situations in which its selling is allowed

977. If some parts of the asset made *waqf* or its accessories are subjected to damage so that it can no longer be benefited from at all, such as if a tree in a farm gets uprooted, or some of the furniture gets worn out, there may two scenarios:

1- If the person who made the *waqf* had made the asset for benefiting in a specific way, such as a farm that is a *waqf* for a mosque for example, and the damage cancelled the benefit intended by the person, in this case it is allowed to sell it and the revenue from the sale must be spent on the rest of parts if they need it, otherwise it should be spent on the beneficiary.

2- If not the same as above, but rather a kind of *waqf* – specific or general – such as a farm the revenue from which is made *waqf* for the poor (a general usage) or for the offspring of

Muhammad (a specific usage), in this case it must be spent on them. The same ruling applies if the person who made the *waqf* wanted the asset to be used in a special way then some of it got damaged; in this case if it was possible to benefit from the asset made *waqf* in other ways, such as a dry tree to be used as a pole or a ceiling in the farm, it becomes obligatory, otherwise, it is allowed to sell it and to use the revenue from the sale in the same manner on the farm if it needs it, otherwise it must be spent on the beneficiary.

978. If something happens to some of the parts of the asset made *waqf* or its accessories that calls for getting rid of it although it is still useable, such as the mosque carpet if a new and better carpet is laid to replace it, here:

1- If it can be used as it is, in this case if it can be used in the place it is made *waqf* for, even if in another benefiting way, such as using the carpet as a curtain from hot or cold for example, it is obligatory to keep its *waqf* status and use it in its place; but if it can no longer be used in any way in its place and it is feared that it may be destroyed or lost if it is kept unused, here it must be used in another place that is similar to the first, if it was a kind of *waqf* made for immediate benefit, such as mosques, boarding schools, Husainiyyehs and the like. But if it was a *waqf* the revenues from which are to be spent on the beneficiary, then it should be sold and the revenue from the sale is to be spent on the asset if it needs it, otherwise on the beneficiaries, such as the poor or the offspring of Moη≅ammed.

2- If it cannot be benefited from if it stays as it is and if it stayed as it is, it would be destroyed or lost, in this case it must be sold and the revenue from the sale is to be spent on the premises if they need it, otherwise on a similar place if it was for immediate general use; but if there is no similar place, it should be spent for any good cause; if it was not for general use, then it must be spent on the beneficiaries.

979. It is not allowed to sell a *waqf* except in the following cases:

First: If it was subjected to damage, preventing benefiting from it in the manner for which it was made *waqf*, such as a slaughtered animal, an old tree-trunk, a knocked down building and the like, or if little, appreciable benefit was left, or if it was subjected to some causes of damage that if sustained it would lead to damage that would cancel any appreciable benefit from it, in these cases it can be sold; but selling it shall, however, be delayed until such time that all its benefits are exhausted (but) before the damage sets in it, such as a building which suffers cracks, a farm the soil of which turns saline and the like.

Second: If major dispute takes place between the beneficiaries, which would only happen if the *waqf* was of the ownership type, for the offspring or others, not if it was for spending on them, or in other types of *waqf*. If such a dispute takes place and it is feared that it would lead to disputes that harm the persons and the assets and it is not possible to reach an agreement between them, nor control the dispute, except through selling, in this case selling is allowed, rather it becomes obligatory. If it is possible, after selling it, to buy an asset similar to the sold one and establish it as a *waqf* on the same lines as the first one without causing a new dispute, this becomes obligatory as a precaution.

Third: If the person who made an asset *waqf* had made selling conditional if something takes place, either because of loss of benefit, or if selling it is more beneficial, or if the beneficiaries need the revenue from the sale, or the like, where the person who made the *waqf* has dictated as conditions.

980. If selling the *waqf* becomes allowed, then if it was of the specific ownership type that the beneficiary himself is in control of, in this case he does not need the permission of anyone to sell it; if the *waqf* has a designated guardian, he has the right to sell it when appropriate and the others will have to seek his permission to sell it, otherwise the Islamic authority (*al-H≅ākim ash-Shar'ī*) will have to be referred to for permission for the sale as an obligatory precaution.

Epilogue

Ta η≅bīs entailment and its 'sisters'

We have mentioned previously that *ta η≅bīs* is similar to *waqf* in entailing the asset in order to gradually reap its benefit, but that it is different in being not based on taking the asset out of the owner's ownership, but it remains in his ownership and to be inherited by his heirs, and the one to whom it is entailed has no right to dispose of it as the owner by selling, buying etc. The 'sisters' of this form of entailment (*ta η≅bīs*) are:

First: ***As-Soknā*** (derived from *seken*, i.e. living), which is a name for *tahbees* if the asset is a house or the like which is entailed for specific kinds of living, such as a hotel, boarding school etc.

Second: ***Al-'Omrā*** (derived from *'omr*, i.e. time or age), which is a name for any *ta η≅bīs* the time of which equals the age of the person making the entailment or the what is entailed, whether the asset is a house, a book or anything else.

Third: ***Ar-Roqbā*** (derived from *reqebeh*, i.e. soul), which is a name for any *ta η≅bīs* the time of each is less than the age of one of them, whatever the entailed asset.

These three are specific for the cases where the beneficiaries are specific individuals, one or more, but if the *ta η≅bīs* is to a *jiheh* or general entity, it is only called '*η≅abs*'.

981. The ruling of *ta η≅bīs* is not different to that of *waqf* in that to establish it it must be done by something that identifies it, whether wording or acts, and it does not need the acceptance of the beneficiary, and it does not depend on the existence of the intention of *qorbeh*, and it becomes binding after handing it over, even before handing it over if it was for a *jiheh*, even if to a person as an obligatory precaution, and other conditions mentioned in the *waqf*, except what relates to perpetuity and taking the asset out of the ownership of the entailer.

982. If the entailer dies before handing the entailed asset to the beneficiary and the heirs are young, the entailment will not be binding and the asset returns back to the heirs.

983. If the owner established the *ta η≅bīs* and did not declare a certain duration for it, here are two situations:

First: If the *jiheh* for which he entailed the asset is limited and is not continuous, such as a certain person, in this case the entailment is cancelled when the entailer and the asset returns as an inheritance for his heirs; but it seems that it is binding on him during his life and he has no right to retract from it.

Second: If the *jiheh* is not limited, but it is continuous, such as scholars and the poor, in this case the *ta η≅bīs* stays as it is and in force as long as the asset exists, and when the asset is no longer beneficial, it returns to the ownership of the entailer.

984. If the entailer declared continuity and perpetuity for it, it seems that it is a *waqf* in the form of *ta η≅bīs*, in which case the rulings of *waqf* apply.

985. Since the asset in *η≅abs* does not leave the ownership of the owner, the owner can, then, sell the entailed asset without its benefit without invalidating the entailment or contradicting it; the beneficiary, however, has no right to sell the benefit or to transfer it away from him himself because he is clearly not an owner.

SUB-PART ONE

Unit Three

Purchase and Sale

Al-Mo‘āweδ≅≅āt

Purchase and Sale

Al-Mo'āweδ≅≅āt

Mo'āweδ≅≅āt (derived from *ta'wīδ≅≅*, which is compensation) are the transactions in which the ownership is based on compensating the other party, i.e. by exchanging one asset for another, something which is the aim of *bay'* (sale) and *σ≅olη≅* (a sort of umbrella transaction that may cover purchase, sale, gifts, loans etc) both of which will be detailed in separate sections.

Prelude: Forbidden trading

Before that, it is necessary to discuss what God has prohibited trading in by purchase and sale etc, the assets and the things associated with them.

First: *Moskirāt*

986. It is absolutely forbidden to trade in substances that cause drunkenness (or loss of one's normal mental awareness), whether manufactured as a fluid – including *foqā'* which is known as beer – or solid which is known as drugs (*mokheddirāt*). The exception to this are drugs used for medical use, something which is regarded as essential benefits, in which case it is allowed to trade in them under the supervision and advice of the just authority.

Second: Inherently-impure things

987. It is forbidden to trade in things that come under this category as follows:

a- **Dogs**, which are of two types:

1- Dogs that have an allowed benefit sought after by people, such as hunting dogs, guard dogs, dogs used by police detectives etc – it is allowed to trade in this type.

2- Dogs that have no benefit, such as aggressive, unruly dogs – it is not allowed to trade in these through sale or other means.

b- **Impure dead animals**, which can also be divided into dead animals that have an allowed benefit sought after by people so it is allowed to trade in them(such as using them as food for animals or fertilisers for crops), while some are not benefited from except as forbidden food, in this case it is allowed to sell them to people whose *sharī'ah* allows them to eat it, although it is better to abstain from that; but if their Sharī'ah does not allow it, it is then an obligatory precaution not to sell it to them.

However, pure dead animals, such as dead snakes, fish or the like, are allowed to be sold even if they do not have an appreciable allowed benefit, although it is better to abstain from getting involved in any form of exchange (*mo'āweδ≅≅eh*) when there is no benefit in them.

c- **Pigs**, which it is forbidden to trade in with people, Muslims and followers of other religions that do not allow (i.e. their *sharī'ah* does not allow) eating it(s meat, i.e. pork), even if it has a sought-after allowed benefit. Selling pork to those who have it allowed (in their *sharī'ah*), however, is allowed, although it is better to abstain from it, both where the benefits are allowed or prohibited.

But although it is allowed to sell pork to these people, it is an obligatory precaution not allowed for the Muslim to purchase it for the purpose of selling it to them, so one's ownership of pigs is to be limited to hunting, rearing and the like.

d- **The rest of the inherently-impure things**, such as blood and excrement: it is allowed to trade in these if this is for a sought after allowed benefit, such as blood for treatment and excrement for fertilisation, otherwise it is not allowed.

988. The person who has such things under his disposal/control will have what is called *η≅aqq al-Ikhtiσ≅ãσ≅* (right of jurisdiction/authority), thus it is not allowed for others to take them from him by force or misappropriation; he is also allowed to transfer them to others in exchange for money paid to him, so as to take the thing out of his disposal/control, but not as an exchange for his jurisdiction/authority, as an obligatory precaution.

989. It is allowed to sell inherently-impure things that can be purified, also ones that are not suitable for purification when benefiting from them does not depend on purity and where its benefit is allowed and commonly appreciated, otherwise it is not allowed to sell it as an obligatory precaution.

990. It is obligatory on the seller to inform the buyer about the impurity of an impure thing if the buyer is going to use it for acts that subject him to binding prohibitive duty, such as using them for eating and drinking, or that subject him to violation of a binding obligatory duty, such as using impure water for ablution or washing for obligatory prayers – this is if the buyer is one who cares about his religious obligations so that it is probable that the consequences of the Sharī'ah will take effect, otherwise it is not obligatory to inform him.

Third: Tools limited to forbidden usage

991. It is forbidden to trade in tools that are used specifically for forbidden activities, such as gambling tools the usage of which is limited to forbidden betting, or instruments used for playing forbidden music, also whatever forms part of the rituals of atheistic beliefs and false religions, such as idols and the like or things exclusive to them and showing, through their usage, false beliefs.

Fourth: Miscellaneous things

992. It is forbidden to sell anything which has a forbidden goal in such a way that the contract is based on it, such as selling grapes to be made alcoholic drink, with no distinction between having the agreement of the contracting parties within the contract or outside it, so if the agreement about this was like a condition not a binding provision, in this case the sale is valid but the condition invalid, and the person making this the condition has sinned. However, if there is no agreement, then it is allowed even if the seller knows that his product will be used for forbidden things. That said, if the forbidden aim forms part of infidel rituals, selling them is absolutely forbidden.

993. It is allowed to sell the Holy Qur'an to Muslims, although it is better to make the transaction on things like the cover not the Qur'an itself, or to give it away as an exchanged gift, not as sold goods. It is also allowed to sell it to non-Muslims if the seller thinks it probable that the buyer is going to embrace Islam through it, or if it will introduce him to the Qur'anic facts as a means to correct his misinformation on Islam, something which may guide him to Islam or prevent the intellectual war on Islam.

994. It is forbidden for a person to sell or buy books of deviation or the like if he thinks it probable that he, or others, may become deviant because of them, but it is allowed when safety from that is secured, or when there exists a more important interest, such as exposing these thoughts and innovations and warning against them.

995. Cheating is forbidden when practising trade – it was narrated that the Prophet (sawa) said: '**Whoever cheats his Muslim brother, Allah (will) take away his bounty's blessings, (will) close on him his livelihood and (will) leave him to himself (i.e. stop His care.)**'

996. Monopoly in any essential commodity is forbidden, as its absence leads to people getting into intense difficulty, harm and pain; this applies to wheat, rice, salt, cooking utensils and the like which are regarded as part of the maintenance or prerequisites of human life; also things that it is hard to do without, such as fuel, medicines and the like, the importance of which may differ according to the time and place.

Section One

Purchase and Sale

Al-Biyū‘

We mean by *al-Bay‘*: transferring the asset to other people in exchange of another thing/asset. *Al-Bay‘* is established by the buyer and seller through a contract of words or deeds which includes proposal from one of them and acceptance from the other.

We said ‘*al-Biyū‘*’ using the plural form because the two assets may be present in the exchange, which is ‘*al-Bay‘ an-Neqdī*’ (cash sale); or the price may be held at the present price but the delivery of the purchased good is postponed, which is ‘*bay‘ as-Selef*’ (lending sale); or the good may be taken now but the payment of the price is postponed, which is ‘*bay‘ an-Nesī’eh*’ (postponed-payment sale). Although these three meet in many rulings, we preferred to separate them into three chapters in light of the differing rulings.

Chapter One

Cash Sale (Al-Bay‘ An-Neqdī)

(A) Form and conditions

Since – as we mentioned above – the cash sale means that the two assets, the goods and the price, are present, it will then be normal to have this included in its form (*σ≅īgheh*), even if through including no limitations it is understood from it that it is binding on each of the two parties to hand over what he has to the other.And as in all other contracts, it is sufficient in the form that is done verbally or in writing, using any wording that indicates the will to sell and buy and establishes this will and shows it to the other. It is also sufficient in this handing-over type contract (*mo‘ātā≅āt*) to have the seller handing over the goods and the buyer handing over the payment with the intention of selling and buying shown through this handing over.
The conditions that must be present in the cash sale and other purchase and sale contracts are:

First: Conditions for the contract

997. The conditions for the contract are:

First: Hastening to accept the sale before the seller retracts from the sale, but if he retracts, the sale is not valid unless a new contract is made.

Second: Fulfilment, so the sale cannot be made pending something that is not present at the time of the contract, whether it is known to happen in the future, such as the birth of the new moon, or unknown, such as the rain falling.

Third: Exact similarity between the content of the proposal and the content of the acceptance, in the price, the goods and all other subsidiaries; so if Muhammad sells his book to Ahmed for a thousand, it becomes binding on Ahmed to buy the book for a thousand, not a (certain) dress for two thousand, for example, since there is no exact similarity either in the price nor in the goods.

Second: Conditions for the contracting parties

998. The conditions for the contracting parties are:

First: Reaching the Islamic legal age, so a child’s contract involving his assets is not valid without the guardian’s permission; in contracts involving the assets of others, however, it is sufficient if he has permission from the asset’s owner, is aware of sexual matters and of reasonable conduct, even if the guardian did not give permission.

Second: Sanity, so it is not valid when any of the contracting parties is insane.

Third: Free will, so it is not valid if undertaken by someone who is forced to do so.

Fourth: Each of the contracting parties owns what is at his disposal under valid ownership, or as if he is regarded as the owner, such as someone who has permission of the owner or his representative/proxy; it is not valid for the non-owner of another person’s asset to sell it without his permission, and also not valid if the person selling has been indicted for bankruptcy.

999. If a person sells another’s asset without his permission, his sale is an intrusion (*foδ≅≅ūl*) and the seller is an intruder (*foδ≅≅ūlī*), hence the sale is invalid unless if the owner accepts and allows it. It is sufficient in such permission to offer words or acts that show satisfaction; the owner cannot retract from this permission after giving it and the sale remains valid and binding.

Third: Conditions for the two exchanged things

1000. The conditions for the exchanged things are:

First: The thing sold must be an asset, i.e. whatever is not a benefit, which will then be suitable for renting; it is not conditional that the price (i.e. the payment) is the form of an asset. A right (being sold) may, in general, be an asset or a price (payment) (as will be explained).

Second: Each of the two things must be owned by the person giving it away, or like an owned thing, such as selling something not present to be handed over later, like if one sells a flat that is non existent yet, but is represented by a promise to build it in the future, and both seller and buyer rely on the specifications in the drawings for knowledge of it.

Third: It must be pure ownership, not made *waqf* except in the cases that were mentioned under *waqf*.

Fourth: Both parties should know the nature and descriptions of the two things exchanged if they are of different value, such as colour, taste, quality (good and bad) and the like, unlike when the value is not different; it is sufficient to know the thing by any means that remove ignorance about it.

Fifth: Each of the two things must be possible to hand over, so it is not valid to sell something that one cannot hand over, such as lost money or escaped bird, unless it is possible to find it, in which case it is valid. Also, contracting is valid on something not possible to hand over if in addition to another thing that meets the conditions, such as if one person sells to another his stolen car in addition to a book. Also, it is valid to sell a misappropriated asset to the misappropriator, even though the seller is not able to take it from him when establishing the contract.

1001. A right is a situation stemming from different things that identify the authority of the rightful owner of a thing or person; there are two kinds:

1- What is exclusive to its owner for *shar'ī* or legal reasons, such as the right of sexual intercourse, or guardianship of a minor.

2- What is not exclusive to its owner and there is nothing that prevents transferring it to others, such as jurisdiction, exclusion (of land etc) or custody rights.

It is not allowed to make the first type one of the two exchanged things, while it is allowed to make the removal of control from this right, the freezing of it or the complete removal of itt – in rights that are suitable for complete removal – one of the two exchanged things. The second, however, as long as it has a financial status and value for which sane people might compete, then it is allowed to make it both an asset and a price (payment), not to mention allowing the removal of control from it as one of the two exchanged things.

Fourth: Handing over and getting paid

1002. When the sale is complete with all the previously mentioned conditions, it becomes binding and neither of the two parties has the right to revoke the contract except by mutual agreement, or by conferment of choice (*khiyār*) that will be explained just below. Also, each one of the parties has to live up to the promise to the other and hand over his obligation – it is sufficient for handing over if the seller presents the sold thing and gives it to the buyer, and if the buyerpresents the payment to the seller.

(B) Commitment and revocation

If the two parties mutually agreed to revoke the sale, it can be revoked, otherwise each one of them cannot unilaterally revoke the contract unless one of the following choices (*khiyār*) has been conferred on him:

1- Choice during the contracting meeting

1003. It is the right of the two meeting parties when making the contract to invalidate the contract as long as they are still meeting, since a sales contract does not become binding until after they separate, which is what is called '*khiyār al-Mejlis*' (derived from the verb '*jelese*' which is 'he sat'). This is exclusive to sales contracts, and not applicable in other exchange contracts.

1004. It is not conditional that the parties meeting for contracting are the original parties, for it is sufficient that the representative/proxy meets for the agreement, unless the representative is a proxy for carrying out the form (seegheh, i.e. the formulation of the contract)ly, in which case his presence does not negate the need for the original person to be present at the contracting meeting (*al-Mejlis*) so as to be able to activate this choice for his authoriser.

1005. The choice that is available during the contracting meeting is cancelled if its non-existence is made conditional in the contract or in another contract, and can be cancelled after making the contract and before leaving, with anything that shows cancellation.

2- Choice relating to animals

1006. The animal choice is conferred when one of the exchanged things is a live animal, in which case the choice for revocation for the seller and the buyer is available for three days (and even stretches to the fourth day when, for instance, the selling takes place in the afternoon of the 10th day of the month; in this case the choice does not end on the 12th day of the month but stretches to the afternoon of the 13th day of the month.) It can be cancelled in the same way as the choice during the contracting meeting.

3- The choice of delay

1007. The situation for a choice of delay is if the seller agrees that the buyer delays paying the price without specifying the waiting duration, neither explicitly nor implicitly, and the seller does not hand over the thing sold until the buyer brings the payment. Here he must allow him three days; if he brings the money then, the buyer has the right of sale, otherwise the seller has the right to invalidate the contract. This is exclusive to sales, the seller in particular; also, it is specific to when the seller is ready to hand over but does not hand over the sold item because the buyer is not able to hand over the price now. However, if the seller refuses to hand over the sold item to a person other than the buyer, in this case the buyer has no choice of delay and he is forced to hand over, as was explained in '(A) Fourth: Handing over and getting paid' above. It seems that getting paid some of the price or handing over some of the sold item is like not handing it over or getting paid, so the basis for the choice of delay continues to exist.

4- Choice relating to a failure of description

1008. The choice relating to a failure of description is conferred when the buyer saw the item with certain characteristic, or the owner described to him likewise, then when it comes into his possession he finds it different to what he saw or what was described; in this case he may choose to withdraw from the deal or to go ahead; this is particular to specific assets, or the unspecific (amount) of a specific type of asset, such as one kilo from a sack of wheat. However, if the thing sold was unspecific and not present and the item handed over is different to the description, here if there is an alternative, the buyer may simply ask for another item with the descriptions/features; otherwise he has the choice of withdrawing or going ahead.

1009. What is meant by the description that, when it fails to match (on the handed over thing), confirms the choice, is the sought-after descriptions that are additional to the thing, such as the fat in a sheep, the shoe leather being original, or illiteracy or old age in a servant. But if the description is something essential to the thing sold, or if the price is specified according to it, such as the buyer asks someone to sell him a sheep then he sells him a cow, this is not a situation for this choice; rather, such matters invalidate the sale, even if the buyer is presented the requested thing afterwards.

1010. The choice relating to a failure in description is conferred on both the seller and the buyer if the description failed in the price (payment) or in the item sold, for the right of each of them depends on both.

1011. One must hasten – as is commonly acceptable – to use the choice, otherwise one's right is cancelled.

1012. Included under this heading the choice relating to cheating (*khiyār at-Tedlīs*), which takes place when the owner of the viewed thing makes it look better than it is, and decorates it to show it looking different to its actual state, or he mentions only some good features or descriptions to the buyer, who cannot view it to check if they are different to its actual state, so as to trick him and encourage him; if the matter is uncovered to the (second) cheated party, he has the choice of accepting the sale or revoking the contract, but he has no right to request

compensation for the difference between the requested asset and the handed over or presented asset, except in the case of marriage, which is if he marries a woman thinking that she is a virgin then finds out that she is not, as will be explained in the section on marriage.

5- Choice relating to failure in the conditions

As a terminology, a condition is the request by one or both contracting parties – within the contract – of an asset, benefit, work or right from the other; if the other party accepts it, meeting the obligations of the condition becomes binding on him in general. The details are as follows:

1013. There is no distinction, regarding the obligation of meeting the condition, between the condition being part of the binding contract or part of a potential contract; however the obligation with the potential contract is conditional to the continuation of the contract, so if the contract fails to materialise, there is no point in meeting the obligation.

1014. Declarations (*īqā'āt*) such as divorce, relief from responsibility/commitment and the like, do not by definition include conditions, such as making their consequences dependent on the commitment to the condition or otherwise of the party declaring divorce, for example; thus if the declaration was initiated pending something, such as if he says: 'You are divorced if you give up your dowry', it is invalid.

1015. It is allowed to include as a condition any work, assets, words or rights which the person putting the condition wants, even if not common and this applies to all areas of private and public life, but according to the following conditions:

a- It must not violate a binding ruling, such as including a request to do a forbidden thing, abstain from doing an obligatory thing, requesting doing something which the Sharī'ah commands not to do it in a given act, or requesting the abstention from something which the Sharī'ah commands to do; in non-binding matters, however, there is no harm in making its violation conditional, such as making abstention from the *newāfil* prayers conditional.

b- The condition must not be contradictory to the contract, such as if a person sells to someone something on the condition that it has no price.

c- The condition must be – at the time of the making the contract – possible, so it is not valid if the contracting parties know when making the contract that it cannot be met; also, it is not valid if they thought they could meet it but then the failure to do so is discovered at the beginning, or it was possible then that failure to meet it would take place.

d- The condition must be something clear and specified to an appreciable degree, sufficiently so to be specified in reality in a way that prevents any failure to know one of the two exchanged things; so it is valid to sell a car on the condition that the buyer offers as *qeδ≅≅ā'* what his deceased father failed to pray for a duration of between one to two years (i.e. not exactly specific).

e- The condition must be clearly stated in the contract, so that the contract is based on it and restricted by it, by mentioning it before the contract and so as to establish the commonly practised agreement that is the intention of the contracting parties, which is called *ash-Sherτ≅ aδ≅≅-Δ≅imnī* (implicit condition).

1016. The effect of the choice of failure in a condition is that the person who included the condition has the choice of accepting the contract without the condition and without requesting payment of the value of what he had lost due to failure to meet the condition, or revocation of the contract and returning the asset to its owner. However, if he included a condition of payment of a money fine as a penalty for violating the contract conditions in addition to his right of revocation, in this case he is allowed to claim it and it is binding to the other party.

1017. The choice relating to failure in the conditions is cancelled if the person who included the condition cancels the choice without cancelling the condition itself, or if he cancels the condition and retracts from it, because cancelling the condition cancels its consequences, one of which is the choice.

6- Condition choice

1018. A condition choice is: one or both contracting parties gives himself or the other the right to invalidate the contract under certain circumstances up to a certain time, even if something like '… as long as I am/you are living', or based on what is known in reality but unknown to the contracting parties or one of them, such as the arrival of Muhammad from his travels. It is, then, a choice that results from putting a condition, which is why it is called condition choice (*khiyār ash-Sherτ≅*). The consequence of it is that the person who includes the condition will have the choice of revoking the contract and returning the asset or accepting the contract as it is.

1019. It is not valid to include a condition choice in declarations such as divorce and relief from responsibility/commitment, nor in a potential contract since it is meaningless when it is (only) possible. But it is allowed to include the condition choice in binding contracts, including compensation ones, except marriage, alms (*σ≅edeqeh*) or binding gifts (*hibeh*).

7- Choice relating to unfairness (*ghobn*)

1020. Unfairness in selling takes place when an asset is sold at a price that is less than that of similar items in the market, or when buying the asset at a price that is more than that of similar items in the market. The parameter measuring 'less' or 'more' is the non-tolerance of people towards the excess or deficit, something which differs according to the type of commercial transaction and its amount.

But the 'less' or 'more' must also be weighed alongside the conditions that one or more of the contracting parties may have imposed on the other, which may be related to the excess or deficit of the price in the market.

1021. The effect of the choice relating to unfairness that the disadvantaged party is given the choice – in the beginning – of accepting the transaction at the price that was agreed without claiming the difference or invalidating the contract and cancelling the agreement, unless the norm in the country in which the transaction took place works on the basis that the disadvantaged party has the right to claim the difference in price first, and if the party that has acted unfairly accepts to pay, the other party has no right to invalidate the contract, limiting the right of revocation, therefore, to the case in which the party that has acted unfairly refuses to pay the difference.

1022. If the choice between invalidation and accepting the contract is conferred on the disadvantaged party, it is not obligatory on him to accept the difference if the party that has acted unfairly presents it, but he has the right to invalidate it regardless. Also, he can agree with him to accept the contract in exchange of an amount which the party that has acted unfairly pays to cancel the right of invalidation of the disadvantaged party, in which case the choice is cancelled and the party that has acted unfairly must pay the compensation specified in the agreement.

1023. The choice is conferred on the disadvantaged party as described above only if he was unaware of the unfairness and insists on dealing at the market price, otherwise if he is aware of the unfairness, or will buy the goods regardless of the price, in this case he has no choice.

1024. When knowledge of the unfairness and conferment of the choice takes place, the disadvantaged party – if he decides to renounce the contract – must hasten to use his right of invalidation in a way that is not regarded as a delay that is longer than what is common, something that differs according to the type of the sale; if he is ignorant, unaware or forgetful of one or both of them (the unfairness and the choice) for a period of time, this does notaffect the validity of the conferment (of the choice), provided that he then hastens – in the normal way – to use his right after learning about and realising the choice that is available to him.

1025. The choice relating to unfairness is cancelled if its cancellation is made conditional in the contract, or by cancelling it after the contract, or when the disadvantaged party disposes of the asset after his knowledge of the unfairness in a way that shows his commitment to the

contract and his choosing to go ahead in it. That said, if the disposal does not show his acceptance of the contract, as in cases of ignorance of the unfairness, the choice does not become cancelled.

8- Choice relating to defects (*'ayb*)

1026. The choice relating to defects is confirmed/conferred on the buyer when discovering a defect in the sold item, and to the seller when discovering a defect in the form of payment received. A defect is: whatever is an addition or reduction in the thing so that it is different in its nature and original creation, or something that is – according to the norm – regarded as a defect even if it is naturally formed and the item is still complete, something that differs according to the assets and societies.

1027. If the defect in the asset is confirmed, the choice is conferred on the asset's owner (after the transaction), then if the buyer chooses he can go ahead wit the transactions and accept the asset as it is without claiming a compensation for the difference between the value of the good and defective asset, or he may choose to invalidate the transaction and return the asset to its original owner. However, if he cannot return it, he is bound to go ahead with the transaction and claim compensation. The cases where returning the asset is not possible include:

- damage to the asset, for whatever reason.
- transfer of ownership either by a binding transfer, such as selling, or by a potential transfer such as a non-compensated/exchanged gift (*hibeh*).
- disposal of the asset when with the new owner, whether through his own actions or those of others; this could be either an external disposal that leads to a change in the asset, such as dyeing clothes or tailoring them, or disposal that involves a change in the status of the asset, such as its benefit leaving its owner's control by renting or mortgaging.
- a defect occurred in the asset after it was received from its past owner, whether that defect was a result of actions of one of them, a third person or natural accident.

1028. Just as choice relating to defects may be conferred when the defect takes place before the contract, it may also be conferred when the defect takes place after the contract if used by its original owner (before handing it over).

1029. (The right of) returning the item and claiming compensation can be cancelled by making cancellation of both conditional and the acceptance of the other party of this condition, or their mutual understanding of this. Also, this is cancelled upon the buyer's cancellation of his right of choice, or his knowledge of the defect before the contract, or his acceptance of the contract and abiding by it after gaining knowledge of the defect, if he shows whatever clearly implies his surrender of the compensation, otherwise acceptance alone is not sufficient to cancel the compensation.

1030. Just as it is possible to make the cancellation of the rights of returning the asset and compensation conditional, it is possible to make the cancellation of one of these conditional. It is also valid to make the cancellation of the right of the choice (itself) conditional.

9- The choice of a split deal

1031. A split deal choice is conferred in any situation where the sale cannot be completed in part of the sold item or part of the price (payment). This may be because the item sold was believed to be one thing then it is discovered that part of it is not included in it due to lack of conditions for sale, such as if it was a *waqf* (trust/entailment) or was owned by others; or because they are two or more things that were sold in one deal on the condition of staying together, then the sale is discovered to be void in one or more of the sold items. When the deal gets split in this way, the right of revocation is conferred on whomsoever saw the asset in his possession split for this reason; the buyer can accept the sold item to the degree that was delivered and give to the seller the amount of payment that is equal to the amount of the sold item received; or the buyer can return to the seller that part of the sold item equal to the reduction in his payment.

Addition in *iqāleh* (agreed invalidation)

Iqāleh is invalidation of the contract by one of the two contracting parties upon his request to the other; it is established with any wording or acts that show it. It may be practised in all binding contracts except marriage, compensation and alms; it is valid for all the parts of the contract and in part of it as well. The details of this are as follows:

1032. *Iqāleh* is exclusive to the two contract parties, so it is not applicable to, nor valid for, the heirs after the death of one of them.

1033. Damage to one or both of the exchanged items does not stop the validity of the *iqāleh*, so if they establish *iqāleh*, each of them returns the exchanged good to its original owner; if it was present, he takes it, but if it has subsequently been damaged, he returns a similar item (or its value on the day when the damage occurred).

If the asset is transferred out of the ownership of its new owner, this is like (in its consequence) damage, so its ruling applies to it.

1034. If one of the two exchanged items becomes defective when in the hands of who dispose of it, the *iqāleh* is valid, so the defective asset is to be returned to its original owner with compensation.

1035. The *iqāleh* of a repenting person is recommended and many narrations encourage it, one of which is: **'If any (of God's) servants agree with a Muslim to invalidate a sale with him, Allah will pardon/forgive his (sinful) lapse on the Day of Judgement.'**

Chapter Two

Postponed-payment Sale (*Bay' An-Nesī'eh*)

Nesī'eh sale is: the postponement of paying the price for a certain period after the completion of the contract.

1036. If the contract is complete in its conditions without one of the two parties making postponing the payment of the price conditional, the payment becomes due as soon as the contract is complete. But if one of them made postponing the payment of the price for a certain period conditional, it becomes binding on the party on which the condition was made. If the party who made the condition was the buyer, the seller would have no right to request payment before the postponement date, but he must receive it and accept it if it was paid before that date, unless there is an indication that the seller wanted to receive it at the specified date.

1037. The postponement date must be clear for the two parties with the least of efforts, so it is not valid to specify a date that requires thinking, calculation and turning to experienced people, even if it would be precise and known after the calculation, such as if making it pending the sun entering a certain sign of the zodiac, not to mention its invalidity if it was specified that at a certain time it is open to increase or decrease, such as the harvesting season of the like, or some unknown matter, such as the return of a traveller. That said, knowledge is not affected if it was specified on a lunar month that can have an increase or decrease (in the number of days) and the like.

1038. If the price was to be paid immediately, or postponed to an unspecified date, the seller is not allowed to demand a higher price in exchange for postponing it to a specific date; nor allowed demand a higher priceover and above the payment postponed to a specified date in exchange for increasing the postponement; nor to increase the period in exchange for the other party paying some of the debt earlier. However, it is allowed for the seller to reduce the price in exchange for bringing forward the date of the postponed payment, something which may be done to relieve the buyer of the responsibility for a part of the price.

1039. If it is a question of a specific asset/thing, or an unspecific (amount) of a specific type of asset/thing, it is allowed to sell the postponed 'more' — for the immediate 'less', when what is involved is something that is neither weighed (measured by *wezn*, i.e. weight) nor measured (measured by *kayl*, i.e. a measuring vessel), otherwise it is not allowed since this is interest (*ribā*). However, if the item sold was unspecific and to be handed over in the future, it would then be a kind of *bay' as-Selef* (lending sale), that will be explained.

1040. It is allowed for the buyer to sell what he bought as *nesī'eh* after the completion of the contract, before the arrival of the postponement date or after it, at an increase or reduction in its price or the same price, whether the second sale was to be paid immediately or postponed and whether the buyer was the seller or anyone else. However, it is invalid that the seller in this postponement sale puts a condition on the buyer to sell it back to him in cash for a price that is less than the price at which he bought it from him, nor is it valid for the cash buyer to put a condition on the seller to buy it from him as a postponed-payment sale at a price higher than the price at which he sold it to him cash – the sale is invalid in both of these cases.

1041. There is no objection to the merchant putting one price on his goods when sold for cash and another higher price for them if sold postponed – whichever the buyer chooses and accepts, the sale is valid without problem. That said, the sale is invalidated if the seller offers two different prices when the selling the goods in a way that reflects a possibility of more than one price and confusion regarding the price at which the sale has taken place, such as if he says: 'I am selling you this book for eight pounds cash and ten if payment is postponed'; also the sale is invalidated if he says: 'I am selling you this book for eight pounds if payment is postponed for two weeks, and ten if it is postponed for one month', because the price is generally unknown (certain).

Chapter Three

Lending Sale (*Bay‘ As-Selef*)

1042. A lending sale is based on the thing sold being an unspecific asset to be handed over in the future at a specific time. It does not apply if the sold thing is a specific asset or an unspecific (amount) of a specific type of thing/asset, but has to be an ordinary sale in which delaying handing over the bought thing is made conditional.
A lending sale is also based on the buyer paying the seller the price; this is why it is also called *bay‘ as-Selem* (handing over).

1043. Conditions of *bay‘ as-Selef* are:

1- Specifying the sold item regarding its description/specification and amount in a way that makes it commonly known and specified.

2- The two exchanged assets must not be gold or silver, or one of them gold and the other silver. However, if the two exchanged assets are measured by weight (*wezn*) or measure(ing vessel) (*kayl*), or one of them is weighed by weight and the other by measure(ing vessel), the price is not allowed to be something that is weighed or measured, of its own type, and even not of other types as an obligatory precaution. Also, it is an obligatory precaution in things that are measured by numbers that the price must not be something of its type when there is specific, asset-type excess in one of them over the other.

3- Specifying a precise date for handing over the sold goods, by days, months, years or anything that is precise and known; so it is not valid to specify it by the harvest time, the return of a traveller etc, and if the postponement date is made likewise, the sale is invalidated.

4- Specifying in the contract the country or town of handing over if the places are different regarding the ease or difficulty of handing over, the wishes (as to the country of handing over) were involved and loss was possible due to it, so that ignorance of it may lead to misunderstanding by either of the parties.

5- The seller at the time of contracting must not be aware that he will be unable to hand over on the postponed date, in the country or town which is specified for handing over, otherwise the contract is invalidated. But if he was not aware of his inability and something unexpected came up which prevented handing over in the specified time, the buyer will then have the choice of either waiting until the seller can hand him over the goods, or invalidate the contract and demand the return the price paid or its alternative without addition or deduction.

6- The receipt of payment is secured when it takes place before leaving the contracting meeting, if the two parties are together, or by paying before the contract if they establish the contract from a distance; included in this if the buyer has a debt owed by the seller and its payment date arrives before the contract, or after it but before they separate. But if the payment time has not yet been reached, or if the buyer does not pay him the price as described above, the sale will be invalidated.

1044. If the date arrives and the seller hands over the sold goods according to the specifications and amount, the buyer cannot refuse to take it. However, if he hands it over not observing one or both of them (i.e. the specifications and amount), the ruling is as follows:

First: If its specification was inferior to the contract’s specification, then if the buyer accepts it, the transaction is valid, otherwise, the seller must hand over the goods according to the agreed specifications. But if the item has superior specifications, then the buyer must accept, unless his desire was specific to the desired specification not any other, in which case he is not obliged to accept and the seller will have to hand over the goods according to the agreed specifications.

Second: If the goods handed over are of a different amount, if it is less and the buyer accepts it and relieves the seller of the obligation to supply the rest, the sale is valid; otherwise the seller must hand over the amount agreed on, but if it is more than the agreed amount, he is not obliged to accept it until after the seller had taken away the excess.

1045. If the buyer wants to sell what he bought in lending, the ruling is as follows:

a- It is not allowed to sell it to anyone other than the seller before the specified date arrives, neither for cash nor as a postponed sale (*nesī'eh*), whatever the type of the sold goods.

b- He is allowed to sell it to the seller before the arrival of the date as a cash sale, but not allowed as a postponed-payment sale.

c- He is allowed to sell it to the seller or to others after the arrival of the date as a cash sale, also to sell it as a postponed-payment sale unlessthis included interest. Interest will take place:

1- if the two exchanged things are measured by weight or measure(ing vessel) and are the same in type, or different in type as an obligatory precaution.

2- if the two exchanged things are from the same type, measured in numbers, with one more than the other by a specific addition, such as if one person sells to another one thousand apples for one thousand and two hundred apples; this is as an obligatory precaution.

Chapter Four

Transaction Interest (*Ribā*)

(A) Selling things measured by weight and measure(ing vessel)

In general, it is valid to sell absolutely any commodity in exchange for something of another type, whether the two exchanged things are seen, measured by weight or estimated using other measures, with differentiation (differences in value or quality) or without it. Also, it is generally allowed to sell a commodity for a similar one if the two exchanged things are both measured by weight or by measure(ing vessel) and are not gold or silver, with differentiation (differences in value or quality) or without it, except in situations involving interest (*ribā*), as follows:

1046. It is not allowed to sell two things of the same type if they are measured by weight or measure(ing vessel) with excess in one of them over the other, whether the sale is for cash or for a postponed payment, and whether both are measured by weight, such as selling twenty kilos of wheat for twenty two kilos of wheat; or if they are measured by measure(ing vessel), such as if selling two *modd*s of wheat for one and a half *modd* of wheat; or if one of them is measured by weight and the other by measure(ing vessel), such as if selling him one *modd* of wheat that weighs in some countries fifteen kilos for twenty kilos of wheat. An example of *nesī'eh* (postponed-payment) sale is if a person sells twenty kilos of wheat for twenty-five kilos of wheat postponed for one month.

1047. The excess in question in the above is any additional description which has value – it is either an **asset-type (*'ayniyyeh*)** excess, which is the material addition that is of the same type as the sold items; or from other types, such as wheat, books, money and the like that are external and seen; or a **consequence-type (*η≅okmiyyeh*) excess**, which is like rights or work or delay for one month as in the previous example (no. 1046), in which case if the delay is considered an advantage for one of them over the other and hence a consequence-type excess, it will make it a forbidden interest.

1048. It is an obligatory precaution not to exchange, with postponed payment, different types of commodities that are measured by weight or by measure(ing vessel), whether they are equal in amount, such as selling one hundred kilos wheat for one hundred kilos rice postponed for one month, or if they are unequal in amount, such as selling one hundred kilos rice for one hundred and twenty kilos of wheat postponed for one month.

1049. It is an obligatory precaution not to sell, as a postponed-payment sale, goods that are of the same type that are measured by numbers with asset-type excess, such as selling twenty apples for fifteen apples postponed for one month.

1050. If the amount of the weighed goods differ in the two states of wetness and dryness, such as in grapes and raisins or unripe and ripe dates, it is not allowed to sell the wet for the dry when there is differentiation (differences in value or quality), even if when in considering the differentiation (differences in value or quality) it is observed the amount of the wet that is going to be reduced when it dries out so as to make it equal to the dry; it is allowed to do so, in cash, when they are similar, although recommended to abstain from it.

1051. The commonly used banknotes (paper money) is regarded as measured by numbers, so it is not forbidden to sell them for each other with differences in denomination and type, both for cash and for postponed payment (*nesī'eh*), such as selling GB pounds for French francs. It is also allowed to sell these banknotes when they are similar in type, for cash with differences in denomination. However, selling them for postponed payment is to be abstained from as an obligatory precaution.

1052. It is forbidden – as an obligatory precaution – to conduct transactions with interest between father and son, husband and wife, non-Muslim and Muslim. In addition, the *thimmī* (i.e. the non-Muslim living as a citizen of a Muslim country) is not allowed, like the Muslim, to enter into interest-bearing transactions. But if a person disobeyed and dealt in interest, he is allowed to take the excess from the other person if it is allowed in the latter's *sharī'ah*, otherwise it is not allowed to take it without his acceptance; this is also the ruling regarding dealing with any person who allows it in his religious and legal obligations.

1053. It is possible to get rid of the interest by adding something else to one of the two exchanged items or both of them from their type, as follows:

a- When similar items sold, as cash sale, with differentiation (differences in value or quality), the seller can add something of another type to the part in deficit, intending that this added thing is to compensate for the excess amount in the other, such as if he sells for cash twenty kilos of wheat and one book for twenty five kilos of wheat.

b- When selling similar items, for cash or postponed payement, even with differentiation (differences in value or quality), he can, for example, sell twenty kilos of wheat and one book for thirty kilos wheat and two books, provided that their intention is making the book for the thirty kilos of wheat and the two books for the twenty, or vice versa. The rule here is: the added thing to each part is for the sold item or the price in the second part. The same example may be used to get rid of the interest in cash selling: that they intend to have the book in the shortfall part for the two books and the excess amount in the other part.
But in both situations in (b), the intention of selling the book for the wheat must be serious – in fact their involvement in such transaction must be due to a commonly-accepted compelling reason that secures the serious intention and that excuses them from deviating into the obscurity (*shobheh*).

1054. Interest transaction is invalid if it is made by someone who knows the prohibition of interest, in which case he cannot own the interest money, nor is able to dispose of it: he must return to whom he got it from, as detailed in no. 1052 above.
However, someone who is ignorant of the interest prohibition – as a ruling or issue – can own what he has earned by interest; he is not obliged to return it to the party he got it from, but he must give up such transactions as soon he has knowledge of the prohibition.

(B) Exchange sale (*bay' a*σ≅-Σ≅*arf*)

1055. The term 'exchange sale' refers to the sale of the two precious metals gold and silver because of their characteristics as gold or silver, not their other characteristic as money or jewellery, whether made into coins or not, used in commercial exchange or not, or sold by weight or numbers.
1056. It is not allowed to sell gold for gold, nor silver for silver, with excess in one of them over the other, even if the one with a shortfall is jewellery, whether as a cash sale or postponed-payment sale. Also it is not allowed to sell one for the other – i.e. gold for silver and vice versa – with or without excess, if the sale is postponed (*nesī'eh*), however, if it is a cash sale, it is absolutely allowed.

1057. It is allowed to sell gold money for parts of it, such as selling the Reshadi lire for two halves of it, or four quarters of it, even if the weight of the parts together is more or less than the weight of the one whole piece, since it seems that this is regarded as measured by numbers not by weight, so there is no harm in selling it with differentiation (differences in value or quality).

1058. In exchange selling, handing over the exchanged assets must be done before leaving the contracting meeting, whether when selling gold or silver for similar or the other commodities; so if the contracting parties leave the meeting without completing the hand-over, the sale is invalidated. However, handing over (itself) is not obligatory on any of the two parties, even if the other party did hand over to him, i.e. each one of them may cause the invalidation of the sale by abstaining from handing over.

1059. The exchange handing-over condition is exclusive to selling; if the exchange of the two exchanged assets is done by mutual agreement (σ≅ol η≅≅), handing over then (when establishing the σ≅ol η≅ sale) is not obligatory.

1060. It is allowed to sell one of the two monies – gold or silver – for its type with excess if an additional thing that has appreciable value is included with the other, even if its value is much less than the excess which exists in the other, provided that serious intention is present

is such transaction, such as if someone sells ten gold English pounds plus a certain book for fifteen gold Reshādī lires. The element of serious intention is conditional as mentioned.

1061. The additional amount of copper added in making gold money into coins, which is known as ‘cheating’ (i.e. 'alloying'), although acceptable and necessary industrially, is not valid as an additional thing that justifies the excess in the other money that is of similar type, in a way in which the contracting parties regard the excess here as the amount of copper inside these lires or pounds, since the copper has little value, in addition to the lack of seriousness in including it as an additional thing.

1062. It is not allowed to sell one of the two metals that is made into jewellery for more money than would normally be paid for items of a similar type, even if it is a postponed-payment sale for the items of similar type, with the intention that the excess is for the goldsmithing/workmanship. It is also not allowed to sell one gram, for example, of pure gold for one gram of ‘cheated’alloyed/debased (impure) gold on the condition that is made into a ring, even if the intention is that the goldsmith's work will be paid for by the excess in the pure gold over the impure gold. However, he can ask the goldsmith to make a ring, for example, and the reward (*jo‘āleh*) of that work and its payment is to sell him a gram of pure gold for a gram of impure gold, provided that the intention is serious.

1063. It is allowed to sell a gram, for example, of one of the two metals for a ring, for example, of the same type, since the goldsmith's work in the other is not an interest excess.

1064. It is not allowed to forge currencies, banknotes and coins, used in our time within the common international currency system, nor is it allowed to use them, whether selling or buying, but it is obligatory to confront whoever does that and to forbid them to do this wrong (evil) with all means that succeed in refraining them from doing so, according to the explanations in the part relating to enjoining others to do what is good and forbidding them from doing what is wrong (evil). It is also obligatory to make the ignorant know of this prohibition and to stop them from behaving according to their ignorance even if they are excused. The same ruling applies to gold or silver money – although dealing with these is rare.

Section Two

Mutual Agreement (*Aσ≅-∑≅ol η≅≅*)

Σ≅olη≅ is: an agreement between two parties to give ownership of an asset or benefit, cancel a debt or right, with or without compensation, with or without dispute. According to this definition, it has the effect of exchange (*mo'āweδ≅≅eh*) contracts in transferring the ownership from one party to the other, even the effect of relieving responsibility that includes giving ownership of what is owed by the other to them; however, its distinctive feature is that it includes all of them in one form, and can be an alternative to each one of them, without abiding by their conditions and restraints. This is because the owner 'sells', 'rents', 'makes a will', 'gives as gift', 'loans', 'relieves the other from their obligations' and 'cancels' the right he has with them, doing all this in the *σ≅olη≅* form and contract and with more freedom in areas of mutual agreement and satisfaction. Regarding its particularities, here are the rulings:

1065. *Σ≅olη≅* is a kind of contract that is independent by itself, not dependent in its rulings and conditions on other contracts and declarations, although it may have their same effect. Thus, a *σ≅olη≅* on giving ownership of an asset in return for compensation is not a sale, so not all choices (*khiyār*) that are possible in a sale are applicable here, although some are applicable; also, handing over before leaving the contracting meeting is not a condition if the two exchanged assets are money; and although a *σ≅olη≅* will see giving ownership of an asset for free, handing over the asset is conditional, as is the case in a gift (*hibeh*); and so on.

1066. The *σ≅olη≅* contract – as any other contract – requires proposal and acceptance even in things that have the effect of relieving obligations, so if someone who has a debt owed to him by someone and he relieves him of it, this is a declaration (*'īqā'*) that does not need acceptance from the other party; however if he establishes this relief from the debt without compensation, in *σ≅olη≅*, the other party must accept, otherwise it is not a *σ≅olη≅*. The proposal and acceptance are secured with any wording suitable, although the word '*σ≅ālaη≅tok*' is the best to give the meaning of what is intended. *Mo'āτ≅āt* (handling or pursuing upon a request) is also valid in it.

1067. The conditions of the two parties establishing a mutual agreement (*σ≅olη≅*) are reaching the Islamic legal age, sanity, free will and intention. Also, if the agreement requires disposal of a person's assets, he must not be indicted for unreasonable conduct (*sefeh*) or bankruptcy.

1068. A mutual agreement is valid when made by a *foδ≅≅ūlī* (on behalf of someone else but without their consent) and takes effect after the acceptance of the owner, even if it relates to cancelling a debt or right with the consequences of relieving him from the obligation and cancellation (of the right or debt). This is despite the fact that a relief from an obligation that is independent of a *σ≅olη≅* – a cancellation as well – if established by a *foδ≅≅ūlī*, will have no effect even after the acceptance of the right owner, but a new declaration from the owner of the right, his proxy or guardian must be established.

1069. A mutual agreement contract is binding in itself even if involving no compensation and its effect is one of a gift or loan. Therefore, it is not invalidated except in the following situations:

First: If the two mutually agreeing parties agree on invalidation, so one party relieves the other through the agreed invalidation (see no. 1032-5.)

Second: If one of them – or both – imposes on himself for the other the right of invalidation, which is known in a sale as the 'condition choice'.

Third: If one of them imposes conditions on the other, one of which is handing over the asset that is mutually agreed on in a certain time and the other party fails to meet the condition, which is called in a sale 'choice relating to failure in the conditions'.

Fourth: If he delays handing over the asset – involved as a compensation or something that is compensated for – more than is normally accepted, in this case the one who has the right can choose to invalidate the mutual agreement, which is similar to the 'delay choice' in a sale but its rulings do not apply here except on this point only.

Fifth: If the asset handed over – involved as a compensation or something that is compensated for – fails to have the specifications that it had when the recipient saw it or when it was described to him, which is known n a sale as ‘choice relating to a failure of description’ – its application here is the same as its application there.

Sixth: If a defect appears in the asset – involved as a compensation or something that is compensated for – but it is not possible to give a clear-cut ruling as to confirming a right to the owner of the defective asset to claim the difference between its value when not defective and its value when defective.

Neither the ‘choice relating to animals', nor the ‘choice during the contracting meeting’ apply in *σ≅olη≅*; nor does the ‘choice relating to unfairness’ if the *σ≅olη≅* is for solving a dispute; however in circumstances other than solving a dispute, its conferment does not enable a clear-cut ruling.

1070. It is allowed to establish a mutual agreement in any situation and on any matter, especially in matters that are not clear and in situations of dispute, provided that this does not lead to making a forbidden thing allowed or to abiding by things that it is not valid to abide by, in parts and conditions of actions, both in doing or abstention from doing, as was explained when talking about conditions in the section on sale (see no. 1015.)

Based on this, it is valid to make *σ≅olη≅* with compensation on an asset, benefit, debt or right, and with an asset, benefit, debt or right – which are sixteen situations resulting from multiplying four by four; if we add one situation when the *σ≅olη≅* on these four is without compensation, the situations become twenty, all valid.

1071. Just as interest is not allowed in a sale transactions in the two precious metals (gold and silver) or things that are measured by weight or by measure(ing vessel), as detailed above, it is not allowed to involve interest in a *σ≅olη≅* transaction as well. So, if each party has an asset at the other's disposal or owed by him, and one of them was worth more than the other, and they were either measured by weight or by measure(ing vessel) or one of the two monies, establishing a mutual agreement through exchange of one with another commodity of similar type is not allowed, even when it is probable that there is an excess of one of them over the other, as an obligatory precaution. That said, it is allowed – in such situations – to establish a mutual agreement through giving as a gift or through each of them relieving what is at the other’s disposal, provided that the other gives it to him as a gift or relieves him of what is at his disposal.

1072. It is not conditional, in *σ≅olη≅*, to know the asset used for establishing it; so if the asset of one of the two parties gets mixed with the assets of the other without knowing the amount of each of them, they are allowed to mutually agree on becoming partners in it either equally or otherwise; it is also allowed for one of them to mutually agree with the other using a specified external asset for his asset the amount of which is unknown, regardless of whether it is possible to distinguish between the two assets or not.

1073. It is clear that the most important situations of *σ≅olη≅* is disputes, for which – instead of the two parties resorting to courts – they resort to mutual satisfaction by solving the dispute in a certain way that they agree on. When *σ≅olη≅* is established between the disputing parties, the right of the claimant to resort to legal proceedings is cancelled, and the oath on the defendant is also cancelled, with the claimant losing the right to renew his claim and go to the court in the mutually agreed on matter. However, the mutual agreement – although solved the dispute – does not see a real relief of the obligation, so if the defendant was unjust to the claimant since he knew that he deserved his right, his obligation will not be relieved with that mutual agreement until he can be sure of the absolute satisfaction of the owner of the right as result of the agreement, even if he still knows that he still has something with the other party; the same ruling applies in the situation where the claimant is the liar.

1074. If one party of the mutual agreement imposes a condition on the other to entail (establish as *waqf*) the money used as *σ≅olη≅* for a certain beneficiary that is related to the

first party himself, or to others, or to a public organisation, during the life of the person or after his death, the condition is valid and binding.

SUB-PART TWO

Matters Relating to Ownership

‘Awāriδ≅≅ at-Temellok

Having explained in Part One the means through which ownership is achieved, such as possession, rent, gifts and sale, and detailed their rulings, we are going to explain in Part Two what occurs with the owned asset or right, in fields such as companies, debts, deposits, misappropriation (*ghaσ≅b*), banking, lending, guarantees, money transfers, plus other related matters, such as endorsement and power of attorney, in addition to matters for which we could not find a better place except in this part, which is oaths, vows, food, drink and attonement (*keffāreh*), summarising in this part the rulings of each section – total of eighteen sections – as is appropriate for the areas of common test (*maη≅al ibtilā’*).

Section One

Companies

Ash-Shirkāt

A company (*shirkeh*) is: ownership taking place, for more than one person, over one owned thing, as a form of common ownership, when one or more partnership (*ishtirāk*) reasons come into play. The details are as follows:

1075. Reasons calling for joint ownership fall into three categories:

First: Purely forced reasons, which are inheritance, also wills and *waqf* since they are types of declarations as explained. Joint ownership is established as a result of inheritance and wills concerning assets, benefits and transferable rights; a *waqf* joint ownership is exclusive to assets, not benefits or rights, while a *η≅abs* (i.e. entailment for a fixed time duration) joint ownership is exclusive to benefits, not assets or rights.

Second: Purely free-will reasons, which are:

a- Two or more people agree on joining their assets through a company contract, so the company is established by a contract, making the asset of each of them owned by the others in common ownership (partnership), even if each of the assets stays with its (original) owner without mixing with the others.

b- A contract giving ownership to more than one person taking place at the same time, such as a gift or by more than one person authorising one person to buy an asset for them, or the like.

c- The transfer of a common part of the owned asset or its benefit by one means of transfer, such as if a person sells half of his house or rents it, rendering the person to which it was transferred a partner to the transferring person in the ownership of the asset or the benefit.

d- Hiring two or more workers to accomplish one piece of work in a way that the payment/wages is for the one work, such as cutting a tree or farming a piece of land, so when they finish the work, they become partners in the payment/wages.

Third: Reasons that are based on free-will sometimes and forced at others, which are two in number:

a- Possession, because of which the company/partnership is established out of free will, such as if two or more persons choose intentionally to shoot one animal, dig one canal or *iη≅yā'* (renovate, cultivate etc) a piece of wasteland, or when one person possesses one freely allowed thing on behalf of a group of people without their asking, so if they allow what he does, they become owners of what he possesses. The company/partnership becomes forced on them when one of them shoots an animal at the same time that the other shoots it without their knowledge, both hitting their target and killing it, or the like. This reason for a partnership is exclusive to assets, not rights or benefits, as is clear.

b- Mixing, because of which a company is established if the two mixed things are of one type, cancelling with this mixing the independent identity of each part of them, such as olive oil mixing with more olive oil. It is also established when the two mixed things are of different types and the identity of each of them is cancelled and a new third nature is created, such as mixing vinegar with honey. However, if each type in the mix continues to keep its independent entity in spite of the mixing, such as mixing wheat with wheat or sesame with sesame, in this case a partnership is not established with such mixing, not to mention not being established if the mix is of two different types and each one can by separated from the other, such as mixing wheat with barley, and the like; in this case if each one of them wished to take his asset, he has to resort to *solη≅* (mutual agreement) with the others (but) without involving interest – if the things are measured by weight or by measure(ing vessel) – as according to the rulings explained in the section on transactions that introduce interest (see Part One, Chapter 4.)

And since this mixing may take place out of the free will of the owners, the partnership/company becomes one of free will; and since it may take place out of their control, the partnership/company becomes forced.

1076. It has become clear from the above that a company/partnership is established as a result of the agreement of two or more parties to bring together their assets through contracts and agreement, either out of their wish to become partners or with the aim of utilising their joint

assets for making profit in productive ventures. This type of partnership is what we are discussing in this section.
A company's contract must contain the proposal (*Ījāb*) of one of them using any wording that means partnership, such as '*shārektok*' and the like, and the acceptance (*qobūl*) of the other using any wording that means accepting; it also becomes established through *mo'ātāt* (handling/pursuing upon a request). In addition, the qualifying conditionsthat apply to financial contracts must be present in the contracting parties – sanity, choice and intention, not have been indicted for unreasonable conduct or bankruptcy, and the guardian's permission if the contracting party has not reached the Islamic legal age.

1077. It is not conditional for a partnership by contract that the assets are present in one place, not to mention their mixing, but it is sufficient the mere contracting that the specified asset of each of them becomes jointly owned by the parties in common ownership despite the assets of each of them staying in its place, for example in their safes or depots.

1078. For a contract company to be established, the asset involved in the partnership must be owned and at the owner's disposal even if some time later, so establishing a company is not prevented if the asset is a debt, mortgaged, rented, loaned, or any similar arrangement that does not contradict the partner's ownership. This is in contrast to an agreement to become partners in an asset that is not present at the time; although such an agreement may be a kind of agreement that is acceptable to all parties, it is not acceptable in the Sharī'ah; this may take place in two ways:

The first: What the scholars call '*shirket al-Wojūh*', which is when two or more people agree that each one of them buys by postponed payment (*nesī'eh*) one item, then each one of them sells what he bought independent of the other, but the profit is shared by both, as are any losses.

The second: What is called '*shirket al-Mofāwaδeh*', which is when two or more people agree that the profit that each of them gains for any reason is common toall of them, whether this takes place through one of themhiring outhimself or his assets independent of the others, from the profit of a trade he practises or farming he pursues, a gift given to him or inheritance or possession or through any other source; provided that any loss that befalls any of them is shared by all them, whether this is a result of a damage compensation, offence, trade or otherwise.
If they contract on the basis of one of these two ways, the contract is not valid and each of them will keep his own profit for himself, and bear his own losses, without the others sharing in the outcome. This is because the asset which is intended to be used for the partnership has not yet entered in the ownership of its owner.

1079. A contract company is binding and cannot be cancelled except through dividing the shares. This is despite the fact that their assets sometimes are not mixed in such a company; this is because the contract has brought each asset used in the company into the common ownership of all the parties of the company, in which case the shares cannot be distinguished except through dividing them between them, either by force or through an agreement that is acceptable to all.

1080. Since the result of a company is the joining of its parties with every part of the owned assets in common ownership, it is not allowed for any of them to dispose of the asset or part of it except with the permission of the rest of parties as long as the company exists; and they have to come into an agreement acceptable to all on how to dispose of any common asset.

1081. If a partner gives his partner permission to dispose of a company asset in a certain way, the permission is binding to the former for all time, it is allowed for him to back down from his permission after issuing it, even if after a short time. The partner given the permission must keep to the extent and manner that has been permitted.

1082. If a person wishes to make profit using his asset by trading in partnership with another, then if the asset prepared for trading is (already) jointly held between them, they need to

contract on the investment only; otherwise they contract for two inter-related matters: the specified asset of each of them is to be jointly held between them, and the aim of partnership is to trade using it in a certain way and under certain conditions. When the investment contract is established, it becomes obligatory on all parties to observe what is agreed in it both in its limitations and its allowances. Such a contract is binding and does not become invalidated unless by relieving the contracted parties from its obligations (*iqāleh*), or by invalidation decided by the person who has the choice, or by the end of the term of the company if it has a limited term. When the company is terminated, however, the asset itself remains common to all parties under common ownership that does not terminate except by dividing the shares. This type of partnership is called an 'investment company'.

1083. It is not allowed for one of the parties of an investment company to borrow anything from the assets of the company, even if buying some of its assets and paying the price from its other assets, unless he is given permission to do so.

1084. It is allowed to buy shares in stock investment companies that are involved in allowed business, and in even those that are involved in several types of business, both allowed and forbidden, if the shares boughtare limited to the allowed side, unless there is another *shar'ī* objection to his involvement with them, such as if buying their shares serves as a kind of encouragement to the company to do forbidden business and so on.

1085. For the partner who is permitted to carry out a disposal, or the one who has the right of disposal according to a binding contract or condition, his control over the asset is regarded as one of trust, so he is not obliged to pay compensation for any defect or damage unless this results from his transgression or negligence.

1086. An investment company is terminated when its capital is damaged as a result of an accident – natural, unintentional or intentional – or when the losses exhaust it, or when it is lost without hope of finding it; this is because the company is established on the basis of capital, so if it loses it, it is terminated and cancelled. In fact, for it to be terminated, it is sufficient if most of its capital is damaged in a way that the rest of it cannot enable the company to do any kind of beneficial business that corresponds to its aim.

1087. Whatever the type of the company, any one of the partners has the right to request the dividing of the assets and to become independent and sole owner of his commonly owned share, unless he is committed to a binding condition or a company contract as explained above, in which case if the asset is suitable for dividing by one of the types of divisions – agreement that is acceptable for everyone or by force – then they must accept that; but if the asset is not suitable for dividing, or if the division is based on an agreement but they cannot agree on how to carry it on, in this case he is allowed to request selling it and dividing its price. The question of dividing is too detailed to cover here, but you can consult our detailed guide 'Fiqh ash-Sharī'ah', vol. 3.

Section Two

Speculation

Al-Moδ≅≅ārebeh

In the Sharī‘ah, speculation is: a contract of partnership in profit in which the asset is from one person and the work from another. It is, then, different to a company contract in which partnership in the capital is intended; this is because with a speculation contract, although it involves sharing the profit, the capital is not subject to sharing. Some of the speculation's characteristics are:

a- It is trading in an asset that may be owned by a single party or jointly owned, and the work is in that asset.

b- Investment in speculation is limited to trade, not other investment fields, such as farming etc.

c- Although the profit from a speculation is shared between the worker and the asset owner, the loss is borne by the asset owner only.

d- The work in the speculation is carried out by someone other than the asset owner, while in a contract company it may be done by some of the partners or others.

In a speculation contract, it is sufficient to have a proposal from one party and the acceptance of the other using any wording that gives this meaning. Words are not conditional in the contract, but it can be done by *mo‘ātāt*, in which the owner hands over his asset intending to trade using it and the worker receives it intending to accept that.

The conditions that must be met by the contracting parties are the same as in other contracts – sanity, intention, free will and the guardian's permission if the contracting owner is still young. Also, the owner must not be indicted for unreasonable conduct or bankruptcy. The worker, however, does not need a guardian's permission, nor the lack of any indictment if the speculation does not involve the disposal of his assets.

When the speculation contract is established with all its conditions, it becomes binding, and cannot be invalidated except by relieving the contracting parties from its obligations (*iqāleh*), choice (*khiyār*) or the end of the term if it had term.

The rest of the speculation rulings are:

1088. If the speculation contract is established on the basis of a certain amount of money, and the owner wants to increase the capital, he does not need a new contract. He is also allowed to pay the money agreed on to the worker in instalments.

1089. It is allowed for each one of the contracting parties to impose any reasonable conditions on the other within the speculation contract, and if the latter accepts the condition, he must observe it for as long as the contract exists and is not invalidated, whether the profit they hoped for is achieved or not.

1090. Several requirements are to be present in speculation:

1- Investment in the asset must be limited to trade not other types of asset growth; so speculation is not valid if they contract that the worker buys something using the owner's money to benefit from its growth, such as cars or houses to rent to benefit from their rental, or craft tools to practise his craft, and the like.

2- The worker must be capable of carrying out the business in the manner required from him, whether doing this himself or using others – unless he made it conditional that he works himself. So the speculation is invalidated if he is incapable at the outset, and becomes invalidated the moment this is discovered, if this incapacity takes place during the work; the owner has the choice of invalidation if he has made the pursuit of the task by the worker himself a condition and the worker fails to meet this condition.

3- The speculation asset must be an external asset, money or goods, so speculation is not valid using a benefit as an obligatory precaution. That said, speculation using a benefit's payment/wages/rental is valid, such as saying: 'Rent my house and speculate using the rent.'

4- The asset must be known both in amount and its description.

5- The profit from it must be destined for whoever spends assets or does the work, and it is limited to the two parties of the contract: the asset owner and the worker, whether each of them was one party or more. So if one of them allocates a share of the profit to a person who

is not one of the parties, and who is not participating in an asset nor has a condition on him to participate in the speculation work, the speculation becomes invalidated. It is also invalidated if the owner imposes a condition that all the profit is for him.
In addition, specifying the share of each one of them must be according to the ratio, not numbers, so they make it a third, half etc; if someone specified this using whole numbers –one thousand pounds, for example – the speculation becomes invalidated.

6- The whole of the loss must be borne by the asset owner, so if he imposes a condition on the worker to share in the loss, the condition is invalid if the aim was to take it from his share of the profit, and the worker is not bound by it. In fact, the ruling of the validity of the condition that he takes it (the loss) from his asset not from the profit is not clear-cut. However, if he inserts a condition on the worker to share the whole of the loss, provided that the whole of the profit is for him, the condition is valid, although this ruling is not clear-cut either.

1091. It is allowed to involve several workers in a single speculation, whether the owner is one party or more, dividing the profit between the workers equally or in varying proportions according to the manner they contracted with the owner. It is also allowed to have many owners in a speculation, whether there is one worker or many.

1092. Establishing a speculation contract without conditions implies that the worker himself carries out the trading in the way that is common and suitable from him; so it is not acceptable for him to ask someone else to do the task without the owner's permission, unless it is normal that other people carry out some actions involved in the speculation, such as accountancy, transport of goods etc. Also, if the worker takes the capital at his disposal, he is not allowed to abstain from trading with it and to freeze the use of it to an extent that is not normal, and if he does this, he is regarded as negligent and compensation will be due from him if damage has been done.

1093. A speculation contract implies that all expenses involved in the speculation process are to be met from the speculation asset unless it was made conditional otherwise; this includes the costs of advertising, storage, transport, guest expenses and the like. However, the worker's personal expenses are to be borne by him when in his home(land) and by the speculation asset when travelling provided he is travelling with the owner's permission, otherwise it is to be borne by the worker. If the worker falls ill during this travel, he must bear the cost of his medical treatment, even if he is travelling with the owner's permission.

1094. Any loss in the speculation process is to be compensated for from the profit made in that process – for as long as the speculation continues – in a way that the owner and the worker agree on. Therefore, any profit does not become fixed until after the end of the speculation by invalidation or the like, or after the elapse of the term if they made it limited to term, or by specifying a time period for compensating the loss in the speculation of all goods or the loss of certain goods, and so on.

1095. As was mentioned in entry no. 1090, speculation condition no. 6, the worker is not responsible for any loss, but this refers only to loss in the capital that cannot be compensated for;, the loss in profits, however, that can be compensated from them is a responsibility of both owner and worker, unless the worker inserts a condition of no compensation, as will be explained just below.

1096. It is valid if the worker imposes a condition on the owner absolutely not to compensate any loss or damage or both from the profit, or from the early or late profit, or imposes a condition to make compensating it at a certain ratio and in a certain format; if the owner accepts this, it becomes binding on him. However, it is not valid for the owner to make it conditional to take all profit for himself – it was mentioned previously – if this makes the worker wholly or partially responsible for the loss, unless the owner gives the whole of the profit for the worker; in that case he can impose the whole of the loss on him, but such ruling is not clear-cut.

1097. It is not valid for one of the contracting parties to take his share of the profit before dividing the profit and separating the shares.
The share of each of them in all types of assets must be distributed according to the ratio of the share to the whole of the asset; this covers money and other assets, without any one of the parties having the right to take his whole share of the money, for example, and give the other his share of the other assets, unless they agree on it. Regarding the debts of others owed to them , however, the worker has to abide by the owner's wish, so if he attributes the worker's share of the profit wholly or partially from these debts that result from the speculation, he must accept this, unless he had makes it a condition otherwise when contracting. And when they reach an agreement that is acceptable to both to distribute the debts owed on their shares, in this case dividing them is not valid until after collecting them, or they can reach an agreement to sell these debts and divide the income received.

1098. If the speculation is invalidated out of choice, or if this happens due to an unexpected reason after it was established correctly, the ruling is according to two situations:

1- If this takes place before commencing any speculation transactions or its pre-requirements, the worker must return the asset and he retains nothing.

2- If this takes place after the completion of the work or during it, then if no profit has been made, the asset must be returned to the owner without the worker retaining anything. But if profit has been made, there are two possibilities:

a- If the asset is of one type, such as if all of it is money or all of it goods, the owner takes his capital and they divide the profit between them.

b- If the asset is of different types, such as if some is money and some goods, the owner takes his capital from both types according to his ratio in what exists, not from the type of the original speculation money, then divides the profit from both types with the worker.
However, if the invalidation is such that the speculation itself is rendered void, and the worker speculated using the asset out of ignorance of the situation, but with the acceptance of the owner in any case, in this case the transactions that took place are valid and the whole profit is given to the owner, and the owner has to pay the worker the least of the two: the profit agreed on or the payment for similar work (*ojrat al-Mithl*), unless the speculation invalidation was due to the owner making it conditional that the worker would not have any profit, in which case, nothing shall be due from the owner to the worker.

1099. If the capital was shared jointly between two people and they speculated using one worker, then one of the partners invalidated the use of his share, the speculation does not become invalidated in the other's share.

1100. The worker is entrusted with the speculation asset at his disposal, so he does not pay compensation for any damage that is done to it unless as a result of his own transgression and negligence; any violation of the limits specified by the owner on how to speculate, and when and where, may be regarded as negligence.

1101. If the owner made it conditional on the worker to pay compensation for whatever part of the capital is damaged even without transgression or negligence on his part, the condition is invalid and the owner has no right to force the worker to abide by it even if the worker had accepted it before.

1102. If one of the contracting parties dies after the contract has been established, with all its conditions, here if he is the owner, the contract will not be invalidated and his heirs have to observe their obligations towards the contract as it was made. If the deceased is the worker and the owner has not made handling the work himself conditional on him, the heirs should carry out the speculation work in the way committed to by the deceased, otherwise the speculation becomes invalidated and they have to return the asset to its owner.

Section Three

Pre-emption

Ash-Shof'ah

1103. Pre-emption (*shof'ah*) is one of the rights stemming from the joint ownership of assets. In the Sharī'ah it is: a right that gives priority to one of the partners to the ownership of the other's share that has been made common, if he (the latter) transfers it from his ownership to another party other than his partner for payment or exchange, and this is at the same price or value of the thing exchangepaid by this other party.

1104. A pre-emption right is only conferred upon partnership in the asset; it is also not conferred unless the partners are two in number. Sso there is no pre-emption right for a neighbour – in his status as neighbour– in a house or property which his neighbour sells and which is not common to both of them; nor is there any pre-emption right in an asset that is jointly owned by more than two parties even if all the parties sell except one.

1105. Excluded from the condition of partners numbering more than one are three situations in which a *shof'ah* gets conferred:

1- If the partners become more than two due to reasons beyond their control, such as if the *shafī'* (the person who has the right of *shof'ah*) dies before taking the pre-emption right, then the right transfers to his heirs even if they are more than two in number, but upon their agreement on pursuing the pre-emption right; otherwise it will not be conferred on some of them only.

2- If the partners become more than two out of free will, such as if one of the two partners sells some of his share; in this case the partners becoming three or more will not prevent the other partner from pursuing *shof'ah*.

3- If the owners of houses or properties – the number of whom is more than two and each one of whom has exclusive ownership of his house or property – are partners of a private road or path exclusive to them and one of them sells his house with his share of the common road/path, his partners in this road/path will have the right of pre-emption in the sold share of the road/path despite the fact that the number of partners are more than two – in fact, they have a pre-emption right in what is not common as well, which is the house itself.

1106. Pre-emption right applies only to assets in which the ownership of the partner is absolute, so if a partner sells his common share with *waqf*, the beneficiaries will have no pre-emption right, whilst this right is conferred on the partner if the beneficiaries sell the share made *waqf* to them, in the cases where they are allowed to sell it.

1107. Pre-emption is conferred in transferable assets, such as tools, clothes and animals, and is also conferred in nor-transferable assets, whether they are divisible or indivisable, such as narrow rivers, roads, wells and the like; it is better, however, with transferable assets and with indivisible, non-transferable assets, it is better to reach an agreement that is acceptable to both the *shafī'* (the person who has the pre-emption right) and the buyer.

1108. Requirements in the *shafī'* are:

1- Islam if the buyer is Muslim.

2- The Islamic legal age, sanity and reasonable conduct.

3- Not having been indicted for bankruptcy, for the bankrupt have no right to pre-emption if this requires paying the price from the indicted assets, unless the people to whom he owes a debt give permission, or the buyer accepts that the price remains owed by the indicted person, or that he will pay it from any assets that he has obtained after the indictment.

4- The *shafī'* must be capable of paying the price to the buyer, so it is not conferred on one who cannot – even if he presents a mortgage or someone becomes his guarantor – unless the buyer accepts. However, he who claims that he does not have the payment with him can be given three days, in addition to the time needed to bring it from another country/town if the payment is not in the country/town of the transaction; the duration starts from the time of the claim of pre-emption.

1109. The pre-emption is cancelled if the buyer would be subjected to appreciable harm if he had to wait three days, especially if the wait was to be for more than three days or for any period that is more than normal.

1110. It is not necessary that the *shafī'* is present in the country/town in which the sale takes place, nor does he have to have knowledge of it if he is present; in fact, pre-emption is conferred on the ignorant when he comes to know about the sale and to the person absent from the country/town when he comes to know about the sale, regardless of the time period.

1111. If the conditions needed for conferring the *shof'ah* are met, as well as the conditions in the *shafī'* and the *shafī'* comes to know of the sale, he must hasten in the way that is common to claim the *shof'ah*, using whatever words or acts that mean this, coupled with the immediate payment of the price, or after the elapse of however much time is acceptable to delay payment for, unless the buyer accepts otherwise. So, if he comes to know of the sale, but does not hasten to claim the *shof'ah* and he has no excuse for failing to hasten to do this, he loses his right to it.

1112. The right of the *shafī'* in the *shof'ah* is limited to taking the share that is sold to the buyer at the same price paid for it, without excess or reduction.

1113. Any expenses which the buyer has to meet on top of the price, such as the commission of an estate agent, the porter etc, are not on the responsibility of the *shafī'*. On the other hand, the *shafī'* will not benefit from any reduction in the price which the seller made to the buyer after the sale out of his good will, but the *shafī'* is bound to pay the price on which the buyer and the seller agreed in the contract.

1114. It is not the right of the *shafī'* to oblige the buyer to accept his pre-emption in only some of the bought asset: he is either to pre-empt in all or to leave all.

1115. The knowledge of the amount of the price is not necessary for claiming the pre-emption right, it is acceptable even with ignorance of its amount.

1116. The transfer of the sold asset to the ownership of the buyer before the *shafī'*'s claim of pre-emption does not cancel his claim, so if he claims it, any transaction that involves an exchange and that transfers the sold asset on will become invalid unless the buyer allows it, in which case he has the right of pre-emption directly from the buyer, or from whoever comes after him if he allows the buyer's transaction.

1117. Claiming pre-emption (*shof'ah*) is not possible in the following cases:

1- Failing to hasten to claim it without any excuse, as explained above.

2- Failing to bring the payment after becoming capable of paying it, as explained above.

3- The person who has the right of pre-emption selling his share, thus cancelling his right of pre-emption because he, through the sale, is no longer a partner.

4- The damage of the whole of the sold asset when with the buyer before the *shafī'* claims *shof'ah*; so (but) if some of it (only) is damaged, his right is not cancelled.

5- The buyer and seller relieving one another (of the sale) before the pre-emption is claimed.

6- The *shafī'* cancelling his right of *shof'ah* after the sale or before it. However, the *shafī'* is allowed to take money or an asset in exchange for cancelling his right by words or actions.

Section Four

Loans and Debts

Al-Qarδ≅≅ and *Ad-Dayn*

In jurisprudence, debt is: an owned asset that is owed by someone to another as a result of an action. Related to it is the loan, which is: giving ownership of an asset to someone else who will repay this asset either with a similar asset or its value.

A loan is different to a debt in that the former relates to things that are specified external assets or an unspecific item of a specified type of asset, and it is a transaction that is based on proposal and acceptance. A debt relates to an unspecified item of a specified type of asset owed to someone; it is neither a transaction nor a contract, but a connection between one party and the other resulting from different reasons, one of which is the loan transaction.

Chapter One

Loans

1118. There are several conditions for the validity of a loan:

1- Both contracting parties must be qualified – Islamic legal age (*bolūgh*), sanity, intention, free will, reasonable conduct and the lender must not be under indictment for bankruptcy.

2- The asset must be a specific external asset, or an unspecific item of a specified type of asset, such as lending this pound, or one pound from these two pounds or these several pounds.

3- The asset must be specified, so it is not valid to lend something that is not clear, such as 'a thing' or the like.

4- The asset must be Islamically suitable for ownership, so it is not valid to lend something for which the Sharī'ah has prohibited ownership, such as alcoholic drinks or pork.

5- The borrower must receive the asset, so if the contract is established and the borrower does not receive it, he is not regarded as owning the asset, so any appreciation in its value belongs to the lender, as does responsibility for damage.

1119. If the contract was established with its conditions and the handing over took place, the consequence of it is binding to both parties, so if the lender requests the return of the asset, the borrower does not have to accept it; also the lender is not obliged to accept if the borrower wishes to invalidate the loan. That said, the borrower can end the transactions by hastening to pay the debt back using the same borrowed asset – later we shall explain the ruling of hastening to pay back the loan when the contract is not specific (in this regard).

1120. It is allowed in loans for one or both parties to insert any reasonable conditions except whatever would attract a financial benefit for the lender himself or for individuals or organisations which the lender wants to see benefit, such as the lender making it conditional on the borrower to pay money or assets or to carry out some work for him, a third party, the mosque or others – this is not allowed, because it is a forbidden *ribā* that is called '*ribā of dayn or qarδ≅≅*' which is 'interest'. An example of such a thing is if he lends the borrower ten pounds on the condition that he repays him twelve pounds, or that he makes a piece of clothing for him on top of the value of the loan, or that he lives in his house or disposes of a mortgaged asset that is at the disposal of the lender, and so on. But if the excess is not financial, nor a question of payment with an asset, nor attracting any materialistic benefit for the lender or others, but is a hereafter-type benefit that does not cost the borrower effort or assets, such as to pray for the lender or for whomsoever he wants, or a condition that relates to the nature of the transaction, such as asking for a mortgage (for a thing to keep with the lender) or a guarantor, all this is not a forbidden interest.

1121. All that is not allowed for the lender to set as conditions because it is a forbidden interest is allowed for the borrower to set as a condition on the lender.

1122. It is regarded as forbidden excess if the lender imposes a condition to sell the borrower or rent to him something at less than its value, or to buy from the lender or rent from him something at more than its value, such as saying: 'I lend you one hundred pounds on the condition that you buy these goods – which are sold in the market for ten pounds – from me for twenty pounds' or the like.

1123. It is allowed to borrow with an excess in a way opposite to what we mentioned in the previous entry, which is when the contract to buy at a price greater than the price of similar items on the condition that the lender lends him the money, so he says to him: 'I shall sell you this book for twenty pounds and I shall lend you one hundred pounds', but the buying according to this transaction must be serious and stemming from the desire in it and need for it, otherwise if the intention is to borrow at interest, this way will not work to avoid *ribā* as an obligatory precaution.

1124. Just as it is forbidden to make interest conditional on the part of the lender, it is forbidden to accept such a condition and to pay it on the part of the borrower, unless his intention within himself is serious that he is not going to pay it unless forced to do so, especially if he is going to be harmed or to fall into intense difficulty by not borrowing.

1125. A loan transaction does not become invalidated as a result of including an interest condition or other forbidden conditions; only the condition is regarded as void and cancelled, so the borrower still owns the asset or money which he takes as a loan with all the

consequences of ownership, while the lender does not own the excess that he made conditional unless the borrower accepts him taking it and disposing of it eventhough he was compelled to pay it or forced to do so; this applies in the case where he comes to know that the lender has no right to that excess, then if he is happy to give the excess, it becomes allowed for the lender despite the fact that his request for it and making it a condition is forbidden in principle.

1126. Despite that, dealing with the modern interest-system banks is an area for common test (*maη≅al ibtilā'*) for a lot of people, who are forced to deal with them sometimes; this does not allow depositing money with them with the intention of lending at interest, whether this (bank) is private or state-owned. However, if a person does not intend to take the interest when depositing his money with such banks, but rather his intention is to protect his money, in this case depositing the money with them is allowed despite his knowledge that the bank will give him interest; it is also allowed to take it as long as the provider of the interest is satisfied with him taking it, meaning that the bank management gives interest to the person depositing money with them, even with the knowledge that it is not due to him in the Sharī'ah, and this is to encourage people to deposit (with them).

1127. The borrower – at the time of borrowing – must be firm in his intention to abide by the loan agreement, which is based on observing the rights of the lender and the commitment to pay his money back to him so that taking it is allowed; this is because if the lender knew that he intended not to pay it back, he would not have lent it to him.

1128. What the borrower borrows comes under two categories:

1- A similar thing: in this case the borrower must pay back the loan with an item similar in type and description which its value differing according to their agreement; so if he borrows one GB pound or Thai rice, he must pay this back with something similar to what he borrowed, unless the lender has made paying back with a different type of thing conditional, or if the lender accepts another type, regardless of whether its value has risen or fallen during the period.

2- A value: in this case he must pay back with whatever has a value equal to its value when it was handed over to him by the lender, not its value when paying back. In addition, the value is to be paid using the common currency in the lending country, unless they set another condition or mutually agree on something else.

1129. The exception in paying back with something of similar type is if the borrowing involved some common banknotes which were then cancelled and replaced by others; in this case paying back using the cancelled banknotes will not relieve the borrower of his obligation, but he must pay the loan back with a sum that equals the loan using the accepted currency in the transaction county at the time of paying back. It is obligatory also to consider the original value of the currency if its value has fallen considerably; this applies to all cases of debts which have to be paid back in that currency, so its value before it fell is considered and the amount that should be paid is to be calculated on this basis.

Chapter Two

Debt

It is now clear that the reasons for debt fall into two categories:

First: That which results from a transaction that involves a thing becoming owed, such as the seller owing the sold item to the buyer in the case of a handing-over sale (*bay' as-Selem*), the

buyer owing the seller the price (payment) in the case of a postponed-payment sale (*bay‘ an-Nesī’eh*), the husband owing the wife the delayed portion of the dowry, the tenant owing rent to the owner under a rental agreement, and the like.

Second: What results from the acts of the person in which compensation is due from him, such as compensation for an offence or compensation for damage caused by him, or what results from some of his relationships with others, such as the permanent wife’s alimony, and other financial dues that result from a reason other than the transaction itself.

On the basis of this, what we are going to explain regarding the rulings of debt cover every debt, including that which is the result of a ‘loan’ transaction as detailed in the previous chapter in what relates to it as a loan, leaving the rulings that relate to it as a debt, which is like other reasons of debt.

(A) Postponement and its rulings

1130. A debt – regardless of its reason – becomes due immediately if postponing it was not stated within a binding or potential contract, so the creditor has the right to claim it whenever he wants, and the debtor – when capable – has to pay it back if requested. If it is postponed, the creditor has no right to claim it back before the arrival of the date, generally; also, the debtor has to do his best to pay back the debt to the creditor when the date arrives – as will be explained.

1131. The paying back date must be specified so as to remove any doubts about it; here are two situations:

1- The debt is a result of a loan contract; in this case it is sufficient to know its date in general terms, such as the harvest season, pilgrims' arrival and the like as the minimum; but if it is not known (even) with this degree of accuracy, the postponement condition is invalidated and the loan becomes immediately due.

2- The debt is for reasons other than a loan; in this case the preciseness of the date differs according to the contract involving the debt; so it must be extremely clear in things like a handing-over or postponed-payment sales, while it is not essential to be likewise in a marriage dowry – thus, the paying back date is to be specified according to what is suitable to the debt.

1132. Just as it is not allowed to postpone an immediately-due loan in exchange for an excess on the borrowed asset, this is the case in all debts. Also, it is not allowed to extend the duration (push the date back) by increasing the debt for the creditor, since this is forbidden interest. That said, the creditor – if he wishes to accelerate paying back (by bringing it forward) – is allowed to cancel some of the debt in exchange, as it is allowed for the debtor to accept it and be relieved of his obligation (towards that part).

1133. If the debtor dies with a postponed debt outstanding, the debt becomes immediately due as a result of his death and the creditor is allowed to ask the heirs to pay it back, and the heirs are obliged to pay it back from the estate. If the creditor dies, the date stays as it is and the heirs have no right to claim it from the debtor before the arrival of the date.

(B) Paying back the debt

1134. It is obligatory on the debtor – when capable – to pay back the debt due immediately, unless the creditor accepts a delay in doing so; the debtor is not allowed to put off (delay unnecessarily) and stop from paying it back – it is in one of the grand sins. The same applies to the postponed debt when the date for paying it back arrives.

1135. If the debtor made postponement a condition, the creditor has no right to ask him to pay it back before the postponement date, whether the postponement was a condition set by the creditor or not. However, if the postponement was a condition set by the creditor only, and the debtor was ready to pay it back if the creditor accepted it before the date, in this case the creditor has the right to claim the debt back and the debtor is obliged to pay it back.

1136. If the debtor wishes to pay back the postponed debt before the arrival of the date, there are two possibilities:

1- If the postponement condition was imposed by the debtor, in this case the creditor must receive his debt from him.

2- If the postponement condition was imposed by the creditor, or by both of them, in this case the creditor has the right to refuse receiving the debt from the debtor.

1137. How the debtor becomes able to pay back the debt can be imagined in two situations:

1- If he has the means to pay back the debt out of what he does not need for his living expenses – money, debts he has with others which he can claim back, transferable or non-transferrable assets – in this case he has to pay it back even if at the cost of selling some of them or renting them at less than their market value, unless the reduction is considerable (grossly unfair). But if he has only what he needs for his life and maintenance, i.e. what are regarded as necessities commonly seen as suitable for people of his status, so that giving them up or leaving them would be intensely difficult or belittling to him(things such as his home, clothes or books, even his servant, all of which are called 'the debt exclusions'), in this case he is not obliged to sell themin order to pay back the debt, although it would be valid to sell them for that reason – unless selling them contradicts another obligation, such as housing his wife and meeting her expenses, in which case it becomes forbidden.

2- If he does not have the means to pay back the debt, but he can borrow from others, or work to earn in a way that is suitable for him, in this case it becomes obligatory on him to the extent needed to pay back the debt.

1138. The debt exclusions mentioned above are to be observed only during the life of the debtor; however, after his death, they are not excluded, including his home, so his heirs must pay back his debt from his estate without excluding anything from it and giving the priority to the obligatory pilgrimage and will, even if some of his heirs are young.

1139. It is valid for the creditor to make it conditional in the contract on the debtor to sell the exclusions if paying back the debt depends on them and the debtor has to abide by it in this case.

1140. A debt is either a similar-type or value-type:

1- If it is a similar-type, in this case it must be paid back with what is similar in type and amount, even if its value at the time of paying is different to its value when borrowed, unless the debt involves modern banknotes and its value has crashed; in this case its value before crashing must be considered.

2- If it is a value-type, here are two cases:

a- If what is owed is an asset that is of a specific type, such as if it is the price of a postponed sale of an animal or oil, in this case it must be paid back with whatever equals the value-type asset involved.

b- If what is owed is the value itself, such as the compensation for damaged value-type assets, in this case settlement of the debt must be done by paying money that is equal to the value of the asset at the time of paying back not when it was damaged. Regarding the loan, we have explained its ruling (no. 1128).

1141. It is allowed to volunteer to pay back someone else's debt, alive or dead, and the debtor will be relieved from the obligation, whether the debtor accepts or not; it is even valid in the case where the debtor tries to stop one from doing so. The creditor has no right to refuse accepting the volunteer's settlement of the debt.

1142. If the asset that is at a non-Muslim's disposal is a payment for an alcoholic beverage, dead animal or pig, the Muslim is free to take these payments as settlement of a debt he has to the non-Muslim or the payment of an exchange agreement between them.

1143. If the debtor does not pay back the debt due from him when he is capable, here are two situations:

1- If there is no dispute among them on the amount of the debt, how to pay it back or the like, in this case the creditor who is acting on his behalf is allowed to force him to pay, even if by resorting to the unjust ruler, provided that obtaining his rights cannot be achieved otherwise.

2- If there is dispute over this, in this case they must turn to the Islamic authority and not any one else, unless obtaining the debt cannot be achieved by other means.

1144. If the debtor presents the debt before the arrival of date for paying it back, the creditor cannot refuse, and if he refuses, the debtor is allowed to force him; if forcing him is not possible, it is allowed to hand over the debt to the Islamic authority instead, when possible, not to any other – so it is not sufficient to, for example, deposit it in the bank in the creditor's name, or to leave it as a trust with someone, and the debtor is not relieved of his obligation if the payment becomes damaged in this case. If the Islamic authority is not present, or if he refuses – if it is allowed to refuse – to receive the debt, the debt stays owed by the debtor and he should wait for a period that is normal in such cases until the creditor or his proxy takes it; otherwise he is allowed to relieve himself of the asset provided that he is certain it would not be lost and with the permission of the Islamic authority.

1145. If the debtor is unable to pay back the debt, it is forbidden for the creditor to pester him with claiming and pressing; rather he has to wait until he can pay. However, if he was not truthful in claiming his inability to pay, it will be allowed to dispute it until he proves his inability, even if through turning to the Islamic authority. Also, creditors have the right to resort to the Islamic authority when the debtor becomes bankrupt, which is what we are going to discuss separately.

1146. The creditor may cancel the debt that is owed by the debtor and relieve him of it, something which is called '*ibrā'*', which is a recommended thing even when the living debtor is not poor and is capable of paying back, not to mention if he is dead.

1147. The *ibrā'* is a declaration that does not need the acceptance or satisfaction of the debtor; it is sufficient to declare it using any wording that means it, such as '*sāmeη≅tok*' (lit. I forgive you), '*aη≅leltok min ad-Dayn al-Lethī 'alayk*' (I have relieved you from the debt that is owed by you), '*wehebtok mā fī thimmetik*' (I have given you – as a gift – what is owed by you) or the like.

1148. If *ibrā'* is declared by the creditor, it becomes binding, so the debtor is relieved of his obligation even if he (the creditor) retracts from it afterwards, in which case if the creditor claims it from him, the debtor is not obliged to respond unless if he chooses to do so.

1149. It is recommended (*mosteη≅abb*) to be gentle in claiming payment of the debt even when the debtor is financially comfortable, and it is recommended to abstain from (*mekrūh*) pressing him to pay. It is also recommended to pay off the parents' debts, especially after their death. It is also recommended to relieve the living believer, not to mention the dead, from debts he owes.

(C) Unilaterally-performed compensation (*Moqāσ≅σ≅eh*)

1150. A *moqāσ≅σ≅eh* is: the initiative taken by someone who has something – assets or debts – owed to him by someone to take something else from the other person's assets which is at his disposal, without his knowledge, when he does not pay back the asset or debt when it is due. *Moqāσ≅σ≅eh* is allowed and a right that is confirmed independently for the owner of the asset in question, without the need to turn to the Islamic authority nor to seek his judgement, if the creditor cannot obtain what is rightfully his through the Islamically legal or ordinary ways without difficulties; it has priority over seeking the help of the unjust to obtain the settlement of the debt. A *moqāσ≅σ≅eh* may be assumed in two situations:

1- If the debtor misappropriated his asset (*ghaσ≅b*), through stealing or the like, or refused to pay back a debt that is obligatory on him and commits injustice and transgression upon the creditor's the right to settlement, for example in the payment for a postponed-payment sale,

wages for work, returning a borrowed asset and any similar situation in which the person performing the *moqāσ≅σ≅eh* has a clear right over the other person, in both assets and debts.

2- If he makes a claim from the debtor but the debtor refuses to pay out of ignorance that what the claimant is claiming is due, in this case, and in spite of it – since the person performing *moqāσ≅σ≅eh* believes that he has a right in the particular asset that exists in the other person's possession or is owed payment by him – he has the right of *moqāσ≅σ≅eh* and may take back his asset if it is an asset or take his debt related to this asset if it is a debt. However, if the debtor does not deny his right, but asks him to wait so that he can make sure of the claim, or if he wishes to resort to the Islamic authority, or to take a similar action that shows the wish of the person to pay back the debt to the claimant once it is proven, in this case the claimant has no right to rush the matter and to perform *moqāσ≅σ≅eh* against an opponent who does not deny the debt.

1151. Although *moqāσ≅σ≅eh* is allowed in the two previous situations, it is recommended to abstain from it, especially if the other person shows a feeling of injustice and inability, such as turning the matter to Allah, the Most High, or if he swears to the claimant that he had no right over him – if this is out of his own personal initiative, but not if such swearing is done as an oath in front of a judge, in which case *moqāσ≅σ≅eh* is not allowed.

1152. It is conditional in the asset used to perform *moqāσ≅σ≅eh* – when possible – to be similar to the asset which is claimed by the person performing *moqāσ≅σ≅eh*; the asset taken from him should be of a similar-type, or of the same value if it was a value-type; but if he cannot do that, he is allowed to take any asset that comes into his disposal that is equal to the debt owed to him.

1153. It is not allowed to hasten to carry out *moqāσ≅σ≅eh* before exhausting the Islamically legal and ordinary means when there is no difficulty for him to do this; he must start with all means of persuasion to have his debt paid back using any way, or to force him after refusal using common ways; then, if afterall this payment does not materialise, he is allowed to perform *moqāσ≅σ≅eh*.

1154. If the claimant and the opponent turn to the Islamic authority and he issues his ruling for one of them, the losing person – (even) if he believes that he has the right – has no right to perform *moqāσ≅σ≅eh* on the winning person, as an obligatory precaution.

1155. Things that have to be observed in the asset using to perform *moqāσ≅σ≅eh* are:

1- It must not be one of the debt exclusions (see no. 1137.)

2- It must not form part of a bankruptcy settlement, otherwise it would become an asset to be shared by all creditors in the ratio of each of them; the same applies if the opponent dies and his estate is not sufficient to pay all his debts, whether the person performing *moqāσ≅σ≅eh* wants to take the whole of his debt or only his share as one of the creditors.

3- The asset taken must not be the subject of a claim by others, such as an asset mortgaged for others, or when a vow (*nathr*) is involved and the like.

1156. *Moqāσ≅σ≅eh* is allowed if the claimed (misappropriated) asset is a benefit, such as if the debtor misappropriated his house's benefit and was denying it or putting it off unnecessarily; in fact, it is allowed if the claimed (misappropriated) asset is a financial right, such as an exclusion (*taη≅jīr*) right.

1157. It is not allowed to perform *moqāσ≅σ≅eh* using the opponent's asset if it was jointly owned by him and a partner, unless with the partner's permission. On the other hand, the fact that a misappropriated asset is jointly owned by two people does not stop one of the two partners performing *moqāσ≅σ≅eh* on the misappropriator equal to his share, including if the misappropriator is his partner.

(D) Selling the debt

Although some goods may be a debt owed by the merchant who is exporting them, buying them is often sought after; the Sharī‘ah has allowed – on the whole – dealing with debts by buying and selling them when they are still owed by the debtors. The details of this are as follows:

1158. Owed debts (*dayn bith-Thimmeh*) are of two kinds:

1- What becomes a debt at the time of selling it, such as if Moη≅ammed sells a certain car to ‘Alī, but the car itself is not physically present when selling, rather he will deliver it later, and ‘Alī buys this car for an amount of money that is not physically present but which he will bring later. This makes each of the car and the money a debt owed by one of them to the other, becoming two debts through the sale itself, having not been owing each other anything before. This is called ‘selling something that shall be owed for something that shall be owed’, or ‘debt through sale’ or ‘debt through a contract’. However, such a category of sale is not limited to the situation where both of the exchanged assets are to be owed; one of them may be a debt through a contract and the other physically present when contracting, which makes it an example of the loan sale or postponed sale that were explained before. This type of debt through sale is allowed in all its forms, except when it contradicts some of the necessary conditions that must be met in it, as is the case in the loan sale and the like. That said, it is better to abstain from selling something that will be owed for something that will be owed, especially if they are postponed.

2- What is a debt before the sale is carried over to it: what is not allowed in this kind is ‘selling a debt for a debt’ in particular, i.e. when the two exchanged assets are debts before the contract, whether they were due immediately on the debtors or postponed, or whether one is immediately due and the other postponed. So it is not allowed for one of the creditors to sell his debt for the other’s debt, whether one sells to the other or they sell using their assets assigned to other parties. For example: Sa‘īd owes Samīr one tonne of wheat as a loan postponed for one month and Jamīl owes Zaineb an amount of money as a dowry delayed for one month, in this case, it is not allowed for Samīr to sell Zaineb that wheat which Sa‘īd owes him for the dowry which Jamil owes her. Also – if Samīr owes Sa‘īd something –it is not allowedthat each one of them sells the debt the other owes him for the debt which he owes the other.

1159. A *kompiyāleh* (IOU = I owe you) or *sened* (document) is a written document signed by the debtor, which includes in it his confirmation that he owes a given person a given debt, for a certain period or without a specific time-scale. An IOU is regarded as a document about the debt, without having – in itself – any intrinsic financial weight or value, so if it is damaged when with its bearer, the debtor is not relieved of his obligation as a result of that damage, and no asset loses it value because of that. IOU’s are of two types:

First: What confirms a real debt owed by the debtor signing the IOU to the creditor for whom the IOU was prepared.

Second: What establishes an imaginary debt which has not taken place, but the aim is to give its bearer the power to take money equal to its value from another person or the bank.

And since the IOU allows for benefiting from it before its due date arrives through selling it to a third person or a bank, so as to make that third person the creditor who has the right to claim the debt from the debtor when its due date arrives, the ruling regarding such sale is as follows:

In the first type, the creditor who has the debt document is allowed to sell it to whoever is interested, such as people, banks or other organisations, for less than its value, whether the debt sold is immediately due or postponed, and whether a postponed debt is sold for the same type or not, and for an immediately due sale or a postponed-payment one. That said, one must be cautious not to fall into what may be an example of ‘selling a debt for a debt’, and also cautious to avoid what is not allowed to sell among things that are measured by weight (*wezn*) or by measure(ing vessel) (*kayl*), especially within a loan sale, which are matters discussed in previous chapters.

The second type is not allowed as a sale, since the document does not include any intrinsic financial value, nor otherwise, but the transactions will then be a loan that is given to the IOU bearer; therefore, in the case of selling the IOU to the bank on the basis that the bank pays less than what the bearer would get from the person who owes the debt represented by the IOU when the date arrives, this is regarded as a loan at interest. In addition, the person who will be paying off the loan to the bank is the person who owes the debt represented by the IOU, not the one who benefits from the loan, something which makes transferring the payment of the debt onto him like 'transferring onto the obligation-free party', which may lead the person who owes the debt represented by the IOU into paying interest when he wants to take its value from the beneficiary after the bank turns to that beneficiary for it.

1160. It is possible to avoid *ribā* (interest) in the second type of an IOU sale in several ways, the best of which are the following two:

a- The bank – upon agreement with the IOU bearer – regards what it cuts out of the IOU value not as interest on the loan, but as payment for the bank's registration of the debt, and its collecting and similar services.

b- If the person who owes the debt represented by the IOU – after the bank turns to him to claim the whole of the IOU value – turns to the beneficiary and takes the whole of the IOU value from him, this is valid if it is done on the guaranteeing (*δ≅≅emān*) basis, which is: since the beneficiary had directed the bank to the person who owes the debt represented by the IOU for the value mentioned in it, the meaning of this is that the beneficiary will guarantee for the person who owes the debt represented by the IOU the whole of the mentioned value after the beneficiary has become the person who owes him an amount equal to that, even if what he took from the bank was less than the IOU value; in this case he avoids interest.

(E) Bankruptcy (*feles*/*iflās*)

Bankruptcy (*feles* or *iflās*) is the state in which the debtor fails to pay off his many debts, which total are more than the assets that he owns and which are not needed for his living costs. This is in contrast to what is included in the 'debt exclusions' that was explained in no. 1137.

1161. There are many ways in which creditors may deal with the bankrupt – after bankruptcy has been confirmed:

1- The creditor may relieve him of his obligations, or wait until he becomes capable of paying.

2- Some, or all, of the creditors may press in their claim to pay off their assets. Here are two probabilities:

a- The debtor may arrive at a mutual agreement with them on the basis of which he gives each one of them some of what he possesses, provided that they stop claiming the rest from him until he can or relieve him of it.

b- They indict him, something that is carried out by the creditors – all of them, or some of them if the debt of that part of them is more than the bankrupt's assets can meet – by asking the Islamic authority to indict him over his assets, and if he indicts him, the bankrupt can longer dispose of his assets and the Islamic authority arranges to distribute what he has to the creditors in a special way.

1162. Indictment for bankruptcy is not confirmed unless certain matters exist:

1- His debts are confirmed through the Sharī'ah route. But if some of them are disputed and some confirmed and his assets are not too short for paying off the confirmed part, indicting him would not be valid in that time.

2- All the debts for which his assets are insufficient to pay them off are immediately due. So if some of them are postponed, he cannot be indicted, even if his assets will be insufficient to pay them when they become due.

3- The creditors ask the Islamic authority to indict him, as in the previous manner, for the creditors have no right to do this without turning to the Islamic authority, just as the authority

has no right to do it without the creditors, unless he is one of the creditors, or if he is a guardian of one of them who is an orphan or insane and his debt – on its own – is too large for the debtor's assets to meet.

1163. If the authority orders the indictment of the bankrupt, the bankrupt will not be allowed – from that date – to dispose of his assets of all kinds, whether the disposal is an exchange such as selling or renting, or without exchange such as *waqf* and gifts; and all of them (his assets) are now connected to the creditors' rights in order to pay off some of the debt owed to them. However, his disposal of his assets before the indictment is valid and executable. That said, if after declaring bankruptcy and before his indictment the debtor takes his assets – all of them – out of his ownership through a mutual agreement (*σ≅olη≅*) or gift (*hibeh*) so that he escapes his creditors – especially if there is no hope in getting another asset to pay off his debts, in this case a ruling validating his disposal of his assets is not clear-cut.

1164. If an asset comes into the ownership of the bankrupt, after his indictment, through things like inheritance, gifts or possession, the ruling will be:

1- If he becomes able to pay off the creditors, in this case the indictment is invalidated and he must pay off his creditors in the manner we explained before.

2- If the assets he has, including the new ones, continue to be insufficient to pay off his debt, in this case the new asset will not be subject to the indictment order that was declared before possessing it. However, the creditors are allowed to request from the authority to include the new asset with the other indicted assets.

1165. All creditors are equal in that each one of them must take some of his debt according to the ratio of his share; so it is not allowed – after the indictment – for one of them to take the whole of his share, whether through *moqāσ≅σ≅eh* or with the acceptance of the debtor also, the debtor is not allowed to give him preference over the rest of creditors, without any distinction in this being drawn between the creditors of a living or dead bankrupt, and without distinction regarding the dead bankrupt's creditors, between whose asset was part of the estate and those whose asset was not.

1166. The right to claim from the existing assets is exclusive to his creditors when he is indicted, so they are not to be joined by those to whom the bankrupt admits – after the indictment – of a past debt or asset, despite this admitted debt or asset being suitable for claiming as far as he (the bankrupt) is concerned. However, if after dividing his assets, someone comes up who has the right to claim payment of another debt, the division is invalidated and the new creditor will share the bankrupt's assets with them according to the ratio of his share.

1167. The bankrupt is not relieved of his obligation towards what remains of the debts by his indictment and the division of his assets, but he is obliged to pay off the rest when he can, even if after a long time; even after the death of the bankrupt, his heirs must pay off his debts from his estate before distributing it according to the will and to his heirs.

1168. Excluded from the equal status of the creditors in the bankrupt's assets are these special cases:

1- If the existing asset is subject to a shar'i right of *zekāt* or *khoms*, in this case it is obligatory to take it out before dividing, unless this right is a debt owed by him and due from him in the past and without any connection with the existing assets, in which case it is to be included in the division like the rest of debts.

2- If some existing assets are mortgaged with one of the creditors, in this case this creditor has priority in them, so he takes from them the whole of value of his debt and returns the rest to the other creditors.

3- If in the assets of the bankrupt there exists an asset that he bought without paying for it, the seller [– after the buyer's bankruptcy – will have the choice of invalidating the sale and taking back the asset or of going through with the sale and joining the creditors in the division of the estate – this is the example of the bankruptcy choice (*khiyār at-Teflīs*) that we explained

before. The same applies to loans when the lender finds his exact asset among the bankrupt's assets; in this case he has the choice of backing down from the loan and taking the asset, or of going through with the loan and joining in the division.

1169. Bankruptcy choice is not conferred in a sale or a loan unless the debt was immediately due, even if before the division, and provided that the asset is not one of the debt exclusions, and that the asset does not change to something else, such as if the bankrupt had planted seeds or the chick had become a chicken and so forth.

1170. The immediate usage of the bankruptcy choice is not obligatory as long as the delay does not delay the division; but if it does delay it, the person making the choice must hasten to decide and choose one of the two options, and if he does not do so, the authority may call him and ask him to choose, and if he refuses, the authority will force him into the division and pay his share to him.

Chapter Two

Debt

It is now clear that the reasons for debt fall into two categories:

First: That which results from a transaction that involves a thing becoming owed, such as the seller owing the sold item to the buyer in the case of a handing-over sale (*bay' as-Selem*), the buyer owing the seller the price (payment) in the case of a postponed-payment sale (*bay' an-*

Nesī'eh), the husband owing the wife the delayed portion of the dowry, the tenant owing rent to the owner under a rental agreement, and the like.

Second: What results from the acts of the person in which compensation is due from him, such as compensation for an offence or compensation for damage caused by him, or what results from some of his relationships with others, such as the permanent wife's alimony, and other financial dues that result from a reason other than the transaction itself.

On the basis of this, what we are going to explain regarding the rulings of debt cover every debt, including that which is the result of a 'loan' transaction as detailed in the previous chapter in what relates to it as a loan, leaving the rulings that relate to it as a debt, which is like other reasons of debt.

(A) Postponement and its rulings

1130. A debt – regardless of its reason – becomes due immediately if postponing it was not stated within a binding or potential contract, so the creditor has the right to claim it whenever he wants, and the debtor – when capable – has to pay it back if requested. If it is postponed, the creditor has no right to claim it back before the arrival of the date, generally; also, the debtor has to do his best to pay back the debt to the creditor when the date arrives – as will be explained.

1131. The paying back date must be specified so as to remove any doubts about it; here are two situations:

1- The debt is a result of a loan contract; in this case it is sufficient to know its date in general terms, such as the harvest season, pilgrims' arrival and the like as the minimum; but if it is not known (even) with this degree of accuracy, the postponement condition is invalidated and the loan becomes immediately due.

2- The debt is for reasons other than a loan; in this case the preciseness of the date differs according to the contract involving the debt; so it must be extremely clear in things like a handing-over or postponed-payment sales, while it is not essential to be likewise in a marriage dowry – thus, the paying back date is to be specified according to what is suitable to the debt.

1132. Just as it is not allowed to postpone an immediately-due loan in exchange for an excess on the borrowed asset, this is the case in all debts. Also, it is not allowed to extend the duration (push the date back) by increasing the debt for the creditor, since this is forbidden interest. That said, the creditor – if he wishes to accelerate paying back (by bringing it forward) – is allowed to cancel some of the debt in exchange, as it is allowed for the debtor to accept it and be relieved of his obligation (towards that part).

1133. If the debtor dies with a postponed debt outstanding, the debt becomes immediately due as a result of his death and the creditor is allowed to ask the heirs to pay it back, and the heirs are obliged to pay it back from the estate. If the creditor dies, the date stays as it is and the heirs have no right to claim it from the debtor before the arrival of the date.

(B) Paying back the debt

1134. It is obligatory on the debtor – when capable – to pay back the debt due immediately, unless the creditor accepts a delay in doing so; the debtor is not allowed to put off (delay unnecessarily) and stop from paying it back – it is in one of the grand sins. The same applies to the postponed debt when the date for paying it back arrives.

1135. If the debtor made postponement a condition, the creditor has no right to ask him to pay it back before the postponement date, whether the postponement was a condition set by the creditor or not. However, if the postponement was a condition set by the creditor only, and the debtor was ready to pay it back if the creditor accepted it before the date, in this case the creditor has the right to claim the debt back and the debtor is obliged to pay it back.

1136. If the debtor wishes to pay back the postponed debt before the arrival of the date, there are two possibilities:

1- If the postponement condition was imposed by the debtor, in this case the creditor must receive his debt from him.

2- If the postponement condition was imposed by the creditor, or by both of them, in this case the creditor has the right to refuse receiving the debt from the debtor.

1137. How the debtor becomes able to pay back the debt can be imagined in two situations:

1- If he has the means to pay back the debt out of what he does not need for his living expenses – money, debts he has with others which he can claim back, transferable or non-transferrable assets – in this case he has to pay it back even if at the cost of selling some of them or renting them at less than their market value, unless the reduction is considerable (grossly unfair). But if he has only what he needs for his life and maintenance, i.e. what are regarded as necessities commonly seen as suitable for people of his status, so that giving them up or leaving them would be intensely difficult or belittling to him(things such as his home, clothes or books, even his servant, all of which are called 'the debt exclusions'), in this case he is not obliged to sell themin order to pay back the debt, although it would be valid to sell them for that reason – unless selling them contradicts another obligation, such as housing his wife and meeting her expenses, in which case it becomes forbidden.

2- If he does not have the means to pay back the debt, but he can borrow from others, or work to earn in a way that is suitable for him, in this case it becomes obligatory on him to the extent needed to pay back the debt.

1138. The debt exclusions mentioned above are to be observed only during the life of the debtor; however, after his death, they are not excluded, including his home, so his heirs must pay back his debt from his estate without excluding anything from it and giving the priority to the obligatory pilgrimage and will, even if some of his heirs are young.

1139. It is valid for the creditor to make it conditional in the contract on the debtor to sell the exclusions if paying back the debt depends on them and the debtor has to abide by it in this case.

1140. A debt is either a similar-type or value-type:

1- If it is a similar-type, in this case it must be paid back with what is similar in type and amount, even if its value at the time of paying is different to its value when borrowed, unless the debt involves modern banknotes and its value has crashed; in this case its value before crashing must be considered.

2- If it is a value-type, here are two cases:

a- If what is owed is an asset that is of a specific type, such as if it is the price of a postponed sale of an animal or oil, in this case it must be paid back with whatever equals the value-type asset involved.

b- If what is owed is the value itself, such as the compensation for damaged value-type assets, in this case settlement of the debt must be done by paying money that is equal to the value of the asset at the time of paying back not when it was damaged. Regarding the loan, we have explained its ruling (no. 1128).

1141. It is allowed to volunteer to pay back someone else's debt, alive or dead, and the debtor will be relieved from the obligation, whether the debtor accepts or not; it is even valid in the case where the debtor tries to stop one from doing so. The creditor has no right to refuse accepting the volunteer's settlement of the debt.

1142. If the asset that is at a non-Muslim's disposal is a payment for an alcoholic beverage, dead animal or pig, the Muslim is free to take these payments as settlement of a debt he has to the non-Muslim or the payment of an exchange agreement between them.

1143. If the debtor does not pay back the debt due from him when he is capable, here are two situations:

1- If there is no dispute among them on the amount of the debt, how to pay it back or the like, in this case the creditor who is acting on his behalf is allowed to force him to pay, even if by resorting to the unjust ruler, provided that obtaining his rights cannot be achieved otherwise.

2- If there is dispute over this, in this case they must turn to the Islamic authority and not any one else, unless obtaining the debt cannot be achieved by other means.

1144. If the debtor presents the debt before the arrival of date for paying it back, the creditor cannot refuse, and if he refuses, the debtor is allowed to force him; if forcing him is not possible, it is allowed to hand over the debt to the Islamic authority instead, when possible, not to any other – so it is not sufficient to, for example, deposit it in the bank in the creditor's name, or to leave it as a trust with someone, and the debtor is not relieved of his obligation if the payment becomes damaged in this case. If the Islamic authority is not present, or if he refuses – if it is allowed to refuse – to receive the debt, the debt stays owed by the debtor and he should wait for a period that is normal in such cases until the creditor or his proxy takes it; otherwise he is allowed to relieve himself of the asset provided that he is certain it would not be lost and with the permission of the Islamic authority.

1145. If the debtor is unable to pay back the debt, it is forbidden for the creditor to pester him with claiming and pressing; rather he has to wait until he can pay. However, if he was not truthful in claiming his inability to pay, it will be allowed to dispute it until he proves his inability, even if through turning to the Islamic authority. Also, creditors have the right to resort to the Islamic authority when the debtor becomes bankrupt, which is what we are going to discuss separately.

1146. The creditor may cancel the debt that is owed by the debtor and relieve him of it, something which is called '*ibrā'*', which is a recommended thing even when the living debtor is not poor and is capable of paying back, not to mention if he is dead.

1147. The *ibrā'* is a declaration that does not need the acceptance or satisfaction of the debtor; it is sufficient to declare it using any wording that means it, such as '*sāmeη≅tok*' (lit. I forgive you), '*aη≅leltok min ad-Dayn al-Lethī 'alayk*' (I have relieved you from the debt that is owed by you), '*wehebtok mā fī thimmetik*' (I have given you – as a gift – what is owed by you) or the like.

1148. If *ibrā'* is declared by the creditor, it becomes binding, so the debtor is relieved of his obligation even if he (the creditor) retracts from it afterwards, in which case if the creditor claims it from him, the debtor is not obliged to respond unless if he chooses to do so.

1149. It is recommended (*mosteη≅abb*) to be gentle in claiming payment of the debt even when the debtor is financially comfortable, and it is recommended to abstain from (*mekrūh*) pressing him to pay. It is also recommended to pay off the parents' debts, especially after their death. It is also recommended to relieve the living believer, not to mention the dead, from debts he owes.

(C) Unilaterally-performed compensation (*Moqāσ≅σ≅eh*)

1150. A *moqāσ≅σ≅eh* is: the initiative taken by someone who has something – assets or debts – owed to him by someone to take something else from the other person's assets which is at his disposal, without his knowledge, when he does not pay back the asset or debt when it is due. *Moqāσ≅σ≅eh* is allowed and a right that is confirmed independently for the owner of the asset in question, without the need to turn to the Islamic authority nor to seek his judgement, if the creditor cannot obtain what is rightfully his through the Islamically legal or ordinary ways without difficulties; it has priority over seeking the help of the unjust to obtain the settlement of the debt. A *moqāσ≅σ≅eh* may be assumed in two situations:

1- If the debtor misappropriated his asset (*ghaσ≅b*), through stealing or the like, or refused to pay back a debt that is obligatory on him and commits injustice and transgression upon the creditor's the right to settlement, for example in the payment for a postponed-payment sale,

wages for work, returning a borrowed asset and any similar situation in which the person performing the *moqāσ≅σ≅eh* has a clear right over the other person, in both assets and debts.

2- If he makes a claim from the debtor but the debtor refuses to pay out of ignorance that what the claimant is claiming is due, in this case, and in spite of it – since the person performing *moqāσ≅σ≅eh* believes that he has a right in the particular asset that exists in the other person's possession or is owed payment by him – he has the right of *moqāσ≅σ≅eh* and may take back his asset if it is an asset or take his debt related to this asset if it is a debt. However, if the debtor does not deny his right, but asks him to wait so that he can make sure of the claim, or if he wishes to resort to the Islamic authority, or to take a similar action that shows the wish of the person to pay back the debt to the claimant once it is proven, in this case the claimant has no right to rush the matter and to perform *moqāσ≅σ≅eh* against an opponent who does not deny the debt.

1151. Although *moqāσ≅σ≅eh* is allowed in the two previous situations, it is recommended to abstain from it, especially if the other person shows a feeling of injustice and inability, such as turning the matter to Allah, the Most High, or if he swears to the claimant that he had no right over him – if this is out of his own personal initiative, but not if such swearing is done as an oath in front of a judge, in which case *moqāσ≅σ≅eh* is not allowed.

1152. It is conditional in the asset used to perform *moqāσ≅σ≅eh* – when possible – to be similar to the asset which is claimed by the person performing *moqāσ≅σ≅eh*; the asset taken from him should be of a similar-type, or of the same value if it was a value-type; but if he cannot do that, he is allowed to take any asset that comes into his disposal that is equal to the debt owed to him.

1153. It is not allowed to hasten to carry out *moqāσ≅σ≅eh* before exhausting the Islamically legal and ordinary means when there is no difficulty for him to do this; he must start with all means of persuasion to have his debt paid back using any way, or to force him after refusal using common ways; then, if afterall this payment does not materialise, he is allowed to perform *moqāσ≅σ≅eh*.

1154. If the claimant and the opponent turn to the Islamic authority and he issues his ruling for one of them, the losing person – (even) if he believes that he has the right – has no right to perform *moqāσ≅σ≅eh* on the winning person, as an obligatory precaution.

1155. Things that have to be observed in the asset using to perform *moqāσ≅σ≅eh* are:

1- It must not be one of the debt exclusions (see no. 1137.)

2- It must not form part of a bankruptcy settlement, otherwise it would become an asset to be shared by all creditors in the ratio of each of them; the same applies if the opponent dies and his estate is not sufficient to pay all his debts, whether the person performing *moqāσ≅σ≅eh* wants to take the whole of his debt or only his share as one of the creditors.

3- The asset taken must not be the subject of a claim by others, such as an asset mortgaged for others, or when a vow (*nathr*) is involved and the like.

1156. *Moqāσ≅σ≅eh* is allowed if the claimed (misappropriated) asset is a benefit, such as if the debtor misappropriated his house's benefit and was denying it or putting it off unnecessarily; in fact, it is allowed if the claimed (misappropriated) asset is a financial right, such as an exclusion (*taη≅jīr*) right.

1157. It is not allowed to perform *moqāσ≅σ≅eh* using the opponent's asset if it was jointly owned by him and a partner, unless with the partner's permission. On the other hand, the fact that a misappropriated asset is jointly owned by two people does not stop one of the two partners performing *moqāσ≅σ≅eh* on the misappropriator equal to his share, including if the misappropriator is his partner.

(D) Selling the debt

Although some goods may be a debt owed by the merchant who is exporting them, buying them is often sought after; the Sharī‘ah has allowed – on the whole – dealing with debts by buying and selling them when they are still owed by the debtors. The details of this are as follows:

1158. Owed debts (*dayn bith-Thimmeh*) are of two kinds:

1- What becomes a debt at the time of selling it, such as if Moη≅ammed sells a certain car to ‘Alī, but the car itself is not physically present when selling, rather he will deliver it later, and ‘Alī buys this car for an amount of money that is not physically present but which he will bring later. This makes each of the car and the money a debt owed by one of them to the other, becoming two debts through the sale itself, having not been owing each other anything before. This is called ‘selling something that shall be owed for something that shall be owed’, or ‘debt through sale’ or ‘debt through a contract’. However, such a category of sale is not limited to the situation where both of the exchanged assets are to be owed; one of them may be a debt through a contract and the other physically present when contracting, which makes it an example of the loan sale or postponed sale that were explained before. This type of debt through sale is allowed in all its forms, except when it contradicts some of the necessary conditions that must be met in it, as is the case in the loan sale and the like. That said, it is better to abstain from selling something that will be owed for something that will be owed, especially if they are postponed.

2- What is a debt before the sale is carried over to it: what is not allowed in this kind is ‘selling a debt for a debt’ in particular, i.e. when the two exchanged assets are debts before the contract, whether they were due immediately on the debtors or postponed, or whether one is immediately due and the other postponed. So it is not allowed for one of the creditors to sell his debt for the other’s debt, whether one sells to the other or they sell using their assets assigned to other parties. For example: Sa‘īd owes Samīr one tonne of wheat as a loan postponed for one month and Jamīl owes Zaineb an amount of money as a dowry delayed for one month, in this case, it is not allowed for Samīr to sell Zaineb that wheat which Sa‘īd owes him for the dowry which Jamil owes her. Also – if Samīr owes Sa‘īd something –it is not allowedthat each one of them sells the debt the other owes him for the debt which he owes the other.

1159. A *kompiyāleh* (IOU = I owe you) or *sened* (document) is a written document signed by the debtor, which includes in it his confirmation that he owes a given person a given debt, for a certain period or without a specific time-scale. An IOU is regarded as a document about the debt, without having – in itself – any intrinsic financial weight or value, so if it is damaged when with its bearer, the debtor is not relieved of his obligation as a result of that damage, and no asset loses it value because of that. IOU’s are of two types:

First: What confirms a real debt owed by the debtor signing the IOU to the creditor for whom the IOU was prepared.

Second: What establishes an imaginary debt which has not taken place, but the aim is to give its bearer the power to take money equal to its value from another person or the bank.

And since the IOU allows for benefiting from it before its due date arrives through selling it to a third person or a bank, so as to make that third person the creditor who has the right to claim the debt from the debtor when its due date arrives, the ruling regarding such sale is as follows:

In the first type, the creditor who has the debt document is allowed to sell it to whoever is interested, such as people, banks or other organisations, for less than its value, whether the debt sold is immediately due or postponed, and whether a postponed debt is sold for the same type or not, and for an immediately due sale or a postponed-payment one. That said, one must be cautious not to fall into what may be an example of ‘selling a debt for a debt’, and also cautious to avoid what is not allowed to sell among things that are measured by weight (*wezn*) or by measure(ing vessel) (*kayl*), especially within a loan sale, which are matters discussed in previous chapters.

The second type is not allowed as a sale, since the document does not include any intrinsic financial value, nor otherwise, but the transactions will then be a loan that is given to the IOU bearer; therefore, in the case of selling the IOU to the bank on the basis that the bank pays less than what the bearer would get from the person who owes the debt represented by the IOU when the date arrives, this is regarded as a loan at interest. In addition, the person who will be paying off the loan to the bank is the person who owes the debt represented by the IOU, not the one who benefits from the loan, something which makes transferring the payment of the debt onto him like 'transferring onto the obligation-free party', which may lead the person who owes the debt represented by the IOU into paying interest when he wants to take its value from the beneficiary after the bank turns to that beneficiary for it.

1160. It is possible to avoid *ribā* (interest) in the second type of an IOU sale in several ways, the best of which are the following two:

a- The bank – upon agreement with the IOU bearer – regards what it cuts out of the IOU value not as interest on the loan, but as payment for the bank's registration of the debt, and its collecting and similar services.

b- If the person who owes the debt represented by the IOU – after the bank turns to him to claim the whole of the IOU value – turns to the beneficiary and takes the whole of the IOU value from him, this is valid if it is done on the guaranteeing (*δ≅≅emān*) basis, which is: since the beneficiary had directed the bank to the person who owes the debt represented by the IOU for the value mentioned in it, the meaning of this is that the beneficiary will guarantee for the person who owes the debt represented by the IOU the whole of the mentioned value after the beneficiary has become the person who owes him an amount equal to that, even if what he took from the bank was less than the IOU value; in this case he avoids interest.

(E) Bankruptcy (*feles*/*iflās*)

Bankruptcy (*feles* or *iflās*) is the state in which the debtor fails to pay off his many debts, which total are more than the assets that he owns and which are not needed for his living costs. This is in contrast to what is included in the 'debt exclusions' that was explained in no. 1137.

1161. There are many ways in which creditors may deal with the bankrupt – after bankruptcy has been confirmed:

1- The creditor may relieve him of his obligations, or wait until he becomes capable of paying.

2- Some, or all, of the creditors may press in their claim to pay off their assets. Here are two probabilities:

a- The debtor may arrive at a mutual agreement with them on the basis of which he gives each one of them some of what he possesses, provided that they stop claiming the rest from him until he can or relieve him of it.

b- They indict him, something that is carried out by the creditors – all of them, or some of them if the debt of that part of them is more than the bankrupt's assets can meet – by asking the Islamic authority to indict him over his assets, and if he indicts him, the bankrupt can longer dispose of his assets and the Islamic authority arranges to distribute what he has to the creditors in a special way.

1162. Indictment for bankruptcy is not confirmed unless certain matters exist:

1- His debts are confirmed through the Sharī'ah route. But if some of them are disputed and some confirmed and his assets are not too short for paying off the confirmed part, indicting him would not be valid in that time.

2- All the debts for which his assets are insufficient to pay them off are immediately due. So if some of them are postponed, he cannot be indicted, even if his assets will be insufficient to pay them when they become due.

3- The creditors ask the Islamic authority to indict him, as in the previous manner, for the creditors have no right to do this without turning to the Islamic authority, just as the authority

has no right to do it without the creditors, unless he is one of the creditors, or if he is a guardian of one of them who is an orphan or insane and his debt – on its own – is too large for the debtor's assets to meet.

1163. If the authority orders the indictment of the bankrupt, the bankrupt will not be allowed – from that date – to dispose of his assets of all kinds, whether the disposal is an exchange such as selling or renting, or without exchange such as *waqf* and gifts; and all of them (his assets) are now connected to the creditors' rights in order to pay off some of the debt owed to them. However, his disposal of his assets before the indictment is valid and executable. That said, if after declaring bankruptcy and before his indictment the debtor takes his assets – all of them – out of his ownership through a mutual agreement (*σ≅olη≅*) or gift (*hibeh*) so that he escapes his creditors – especially if there is no hope in getting another asset to pay off his debts, in this case a ruling validating his disposal of his assets is not clear-cut.

1164. If an asset comes into the ownership of the bankrupt, after his indictment, through things like inheritance, gifts or possession, the ruling will be:

1- If he becomes able to pay off the creditors, in this case the indictment is invalidated and he must pay off his creditors in the manner we explained before.

2- If the assets he has, including the new ones, continue to be insufficient to pay off his debt, in this case the new asset will not be subject to the indictment order that was declared before possessing it. However, the creditors are allowed to request from the authority to include the new asset with the other indicted assets.

1165. All creditors are equal in that each one of them must take some of his debt according to the ratio of his share; so it is not allowed – after the indictment – for one of them to take the whole of his share, whether through *moqāσ≅σ≅eh* or with the acceptance of the debtor also, the debtor is not allowed to give him preference over the rest of creditors, without any distinction in this being drawn between the creditors of a living or dead bankrupt, and without distinction regarding the dead bankrupt's creditors, between whose asset was part of the estate and those whose asset was not.

1166. The right to claim from the existing assets is exclusive to his creditors when he is indicted, so they are not to be joined by those to whom the bankrupt admits – after the indictment – of a past debt or asset, despite this admitted debt or asset being suitable for claiming as far as he (the bankrupt) is concerned. However, if after dividing his assets, someone comes up who has the right to claim payment of another debt, the division is invalidated and the new creditor will share the bankrupt's assets with them according to the ratio of his share.

1167. The bankrupt is not relieved of his obligation towards what remains of the debts by his indictment and the division of his assets, but he is obliged to pay off the rest when he can, even if after a long time; even after the death of the bankrupt, his heirs must pay off his debts from his estate before distributing it according to the will and to his heirs.

1168. Excluded from the equal status of the creditors in the bankrupt's assets are these special cases:

1- If the existing asset is subject to a shar'i right of *zekāt* or *khoms*, in this case it is obligatory to take it out before dividing, unless this right is a debt owed by him and due from him in the past and without any connection with the existing assets, in which case it is to be included in the division like the rest of debts.

2- If some existing assets are mortgaged with one of the creditors, in this case this creditor has priority in them, so he takes from them the whole of value of his debt and returns the rest to the other creditors.

3- If in the assets of the bankrupt there exists an asset that he bought without paying for it, the seller [– after the buyer's bankruptcy – will have the choice of invalidating the sale and taking back the asset or of going through with the sale and joining the creditors in the division of the estate – this is the example of the bankruptcy choice (*khiyār at-Teflīs*) that we explained

before. The same applies to loans when the lender finds his exact asset among the bankrupt's assets; in this case he has the choice of backing down from the loan and taking the asset, or of going through with the loan and joining in the division.

1169. Bankruptcy choice is not conferred in a sale or a loan unless the debt was immediately due, even if before the division, and provided that the asset is not one of the debt exclusions, and that the asset does not change to something else, such as if the bankrupt had planted seeds or the chick had become a chicken and so forth.

1170. The immediate usage of the bankruptcy choice is not obligatory as long as the delay does not delay the division; but if it does delay it, the person making the choice must hasten to decide and choose one of the two options, and if he does not do so, the authority may call him and ask him to choose, and if he refuses, the authority will force him into the division and pay his share to him.

Section Five

Mortgage

Ar-Rehn

In scholars' terminology, *rehn* is: an agreement to make an asset a security for claiming back a debt when the debtor fails to pay it off, or a security for an asset that is in the possession of another person as a result of misappropriation (*ghaσ≅b*), borrowing or the like, when he refuses to return it, return a similar item, or pay the equivalent of its value when damaged. The debtor is called '*rāhin*' (mortgagee), the creditor '*mortehin*' (mortgagor), the asset serving as the security '*merhūn*' or '*rehn*' (mortgage security). The details of its rulings are as follows:

1171. The mortgage contract between the mortgagor and mortgagee is established using any wording that gives the meaning, including proposal from one of the parties and acceptance by the other. It can also be established using actions, writing or signs; it can even be established if made a condition within a binding contract, such as a loan, sale or the like, such as if the mortgagor says: 'I am lending you this hundred on the condition that this wrist watch is made a mortgage security for it' and so on.

1172. A mortgage is a binding contract on the mortgagee's side and flexible on the mortgagor's side, so the mortgagee has no right to retract from it and take the mortgaged asset as long as he still owes the debt, unless the mortgagor cancels his right in the asset and invalidates the mortgage contract.

1173. For the mortgage to be valid, it is not conditional that the mortgagor is handed over the mortgaged asset, but the mortgagor has the right to make it binding on the mortgagee to place the asset at his disposal or under his control.

1174. The conditions of the security are:

1- It must be a physically specific asset, so it is not valid if from the outset the mortgage contract is established using the asset's benefit, nor relates to a debt that is owed by the creditor, nor whatever it unspecified of a specific asset, such as making the security an unspecified copy of a specific book. That said, it is not conditional that it is specified in itself among a group of specific items, but it is valid if, for example, the security is a copy from this set of copies of a certain book, which is called 'unspecific item of a specific type of asset/thing' (*kollī fil-Moʿayyen*).

2- The asset must be allowable for the mortgagee to dispose of through buying or selling, even if within the mortgage framework; it is also conditional that the asset is not an alcoholic beverage or pig if both contracting parties or one of them is Muslim.

3- The asset must be specified, so it is not valid to mortgage an obscure thing, such as mortgaging either this car or this house. However, it is not conditional that it comes with a specific description of nature, type or amount provided that its value and financial significance are known.

4- The asset must be suitable for survival until the date of paying off the debt and the ability to receive it takes place.

1175. It is allowed to take security using something similar to a mortgage in situations where a mortgage is not valid, by making it conditional in a binding contract; so it is valid that the buyer makes it conditional on the seller to make something a document in the hand of the buyer so that he can take in exchange for the price that he paid if it is later discovered that the sold thing was due to be handed over to a third party; it is also valid to make a benefit or an unreceived debt a document for his debt by making it a condition in a binding contract, such as if the lender says: 'I am lending you this hundred for a year on the condition that you make the benefit of your so and so house a document on my debt.'

1176. If the debt became due and the mortgagee does not pay the debt to the mortgagor, the mortgagor – in the beginning – has no right to take the initiative himself to get his debt from the asset mortgaged with him unless he had made that a condition for himself, but he must turn to the mortgagee and claim his debt from him; then if he does that and he pays off his debt – even if by selling the mortgaged asset – then the matter is settled. But if he refuses, the mortgagor should then resort to the Islamic authority; the latter will order the mortgagee to

sell, and if he refuses, he will force him to do so; but if this is not possible, the authority will take the asset from him, sell it and pay off the debt to the mortgagorIf the Islamic authority exists but has no practised authority (*ghair mebσ≅ū τ≅ al-Yed*), the mortgagor will be allowed to sell the asset after obtaining the Islamic authority's permission, and claim his debt from it. It is also allowed to sell the asset upon the permission of the Islamic authority when it is not possible to obtain the permission of the mortgagee due to his absence, being in a coma or the like, but if the Islamic authority does not exist, it is allowed for the mortgagor to take the initiative of selling it and claiming his debt.

1177. If the mortgaged asset is one that the mortgagee needs for his living, such as the house in which he lives, his car or the tools of his profession, this does not prevent it from being sold to pay off the debt.

Section Six

Guarantee

Al-Kefāleh

According to the terminology, *kefāleh* is: when a person takes the responsibility (i.e. makes the promise) either to make someone who owes something pay to the rightful creditor what he is due to pay him, which is called a 'personal guarantee' (*kefālet an-Nafs*), or takes the responsibility (i.e. makes the promise) to pay the financial obligation that is due from that person to the rightful creditor when the former fails to pay it, which is called a 'financial guarantee' (*kefālet al-Māl*). The person making the promise is called the 'guarantor' (*kefīl*) and the person that the guarantor promised to make pay or on whose behalf he will pay is called 'guaranteed debtor' (*mekfūl*).

1178. The guarantee/bail is a contract that takes place between the guarantor and the rightful creditor, even if without the acceptance of the debtor; the conditions that must be met in the guarantor are all qualifying conditions required in other contracts, including no indictment for bankruptcy, except for personal guarantees when no financial payment is involved. The same applies to the creditor. However, since the debtor's acceptance is not conditional, nothing is conditional in the debtor.

1179. Just as a guarantee becomes established through a contract, it becomes established also through making it conditional in a binding contract, as for a mortgage.

1180. The guarantee is not valid unless the following conditions are met:

1- The thing for which a guarantee is given must be something that is acceptable under the Sharī'ah for the creditor to hold over the debtor, so if the reason for the guarantee is debt resulting from payment for alcoholic beverage or interest, for example, or its reason is to bring the debtor to an unjust ruler to imprison him or to give false witness, the guarantee is not valid.

2- The subject of the guarantee – in personal guarantees – must be one that calls for the presence of the one who owes it or his proxy, in order to pay it off to the rightful creditor.

3- The guarantor – in personal guarantees – must be capable of bringing the debtor, but it is sufficient in this not to know that he will not be able to bring him. But if the guarantor thought that he had the ability to bring him then discovers that he was in fact incapable of doing so in the outset, the guarantee becomes invalidated from the time of discovering this, not from when it was established.

1181. It is allowed that the guarantor is an organisation, including banks. It is also allowed that the guarantor takes something/money from the debtor for acting as his guarantor.

1182. It is allowed that the guarantor is guaranteed by a second person, and the second by a third, which is called '*terāmī al-Kefālāt*' (passing along the guarantees). It is also allowed that the guarantor guarantees more than one person.

1183. A guarantee is a binding contract that is not invalidated except by agreed relief from it (*iqāleh*), or by giving the choice to the guarantor, or by being cancelled by one of the following:

1- Carrying out the promise involved, which means bringing the debtor.

2- Freeing of the debtor of the debt due from him, either by paying it, or relieving him from it.

3- The transfer of the right from the creditor to someone else, through a sale, a mutual agreement, a transfer (*η≅ewāleh*) or others.

4- The death of the debtor or the cancellation of the ability to bring him to pay due to the loss of his sanity through insanity, being unconscious or the like. That said, if the guarantee was established on the condition that the guarantor must pay the debt when bringing the debtor is not possible, in this case it does not become invalidated.

5- The death of the guarantor, since his heirs do not take over the responsibility that the deceased took on during his life.

6- The creditor's cancellation of his right in the guarantee.

Section Seven

Security

A δ≅≅-Δ≅emān

In the Sharī‘ah, *δ≅≅emān* is: an agreement to transfer the debt from being owed by the debtor to being owed by the person offering security (*δ≅≅emān*), thus relieving the debtor from his obligation towards it. The main thing that distinguishes a *kefāleh* (guarantee) from *δ≅≅emān* (security) is that the *kefāleh* is a *δ≅≅emān* that is subject to the debtor's inability to pay, and the asset is not transferred to become owed by the guarantor, nor is the debtor relieved of his obligation, while in *δ≅≅emān* the debt does get transferred, , to become owed by the person putting up the security.

1184. The security is established through a contract that includes proposal from one of the parties and acceptance by the other, with any words or deeds that secure that.

1185. The conditions for the validity of the contract are the same as for other contracts, with the general conditions of sanity, free will, the Islamic legal age and reasonable conduct. However, not being indicted for bankruptcy is not conditional on the guarantor of the security, so a security given by a bankrupt is valid but the creditor (one for whom security is given) must not be one of his creditors (in the indictment). It is also not a condition for the debtor unless the transfer of the debt owed by him to become owed by the guarantor violates the right of the creditors to the assets of the debtor, such as if his debt was due immediately but he accepts to give security for it as a postponed debt.

1186. For the security to be valid, it must be actual, not dependant on something else, such as if the guarantor says: 'I give security for my father's debt if my father gives me permission' or 'I give security for my father's debt if he fails to pay what is due from him'; in such cases the debt will not be transferred to become owed by the person putting up the security. However, if he makes it pending the failure to pay it off – as in the second example above – it becomes a guarantee (*kefāleh*), as previously mentioned. In addition, the debt must be specified if the debtor has more than one debt.

1187. The acceptance of the debtor is not conditional, nor do any of the previously mentioned conditions apply to him. Also, his knowledge of the ability to pay of the person putting up the security is not conditional, not to mention if he he later becomes unable to pay.

1188. Security is a binding contract, so none of the parties can back down from it; it cannot be cancelled even by one party relieving the other (*iqāleh*) of it. Also, none of the choices can be implemented in it, unless the security comes with the acceptance of the debtor, in which case condition choice, choice relating to failure in the conditions, and choice relating to a failure of description are applicable if the condition and description were dependent upon the permission of the debtor; in this case it is allowed for the person who has the choice to invalidate the contract, taking the creditor – after the invalidation – back to the debtor, who now owes the debt again.

1189. If the security is established with all its conditions, the right is transferred from being owed by the debtor to being owed by the person putting up the security and the debtor is relieved of the debt obligation as a result of the contract only, even if the security does not pay the creditor after that. As a result of the establishment of the contract, all rulings regarding paying off debts and loans that were previously explained become applicable to the person putting up the security, especially forcing him if he refuses, giving him time if his financial state is not conducive, allowing *moqāσ≅σ≅eh* to be carried out and bankruptcy rulings.

1190. Although the acceptance of the debtor and his permission are not conditional for the validity of the security, if someone gives security for another debt with his permission, he is allowed to back down from this security even before paying it off, and he can even force him if he refuses. However, if he gave security for his debt without his permission, in this case the

debtor will be relieved from the debt obligation and the person putting up the security cannot claim compensation from him.

1191. If the person putting up the security had the right to turn to the debtor, in this case what is due from the debtor for the person putting up the security is only what the latter paid; so if the person putting up the security paid the whole debt, the whole debt becomes due, but if the creditor relieved him of some or all of the debt, the person putting up the security has no right to turn to the debtor to claim what he was relieved from by the creditor.

1192. It is allowed for the person putting up the security to take some asset/money for giving the security for the debtor's debt, which is an addition over the value of the debt that he will claim from the debtor if he so wishes.

1193. If the person putting up the security dies before the debt is paid off to the creditor, his heirs must pay from his estate, including if he offered the security during his final illness, with no distinction between the security being with the permission of the debtor or not.

1194. If the debtor asks someone to pay his debt and the other responds by paying it without establishing a security (agreement) between him and the creditor, in this case this person is allowed to turn to the debtor to claim what he paid on his behalf as long as he did not intend to do it voluntarily or for free, even if the debtor's hope in his request was that the person paying would do it for free.

1195. If someone asks another to damage the other's asset saying, for example: 'Throw your luggage in the sea', then if this act had no proper binding reason and he (the owner of the luggage) knew that such an act was wasteful, in this case there is no compensation due from the one who asked him to do this, even if at the time of his request or command, he said that he would pay compensation. If the damage was obligatory on the asset owner, or appropriate even if not to the extent of obligation, or was forbidden but the asset owner did not know that, in all these cases there is no compensation due from the person who ordered it, unless he said to the person he ordered that he would pay compensation. The same applies if he says to him: 'Give one pound as alms to this poor man' and the like.

Section Eight

Transfer

Al-H≅ewāleh

In the terminology, a *η≅ewāleh* is: an agreement in which the debtor transfers the debt he owes to another person and asks the creditor to turn to him. When it is established, the debtor becomes the 'transferor' (*moη≅īl*), the creditor the '(person whose debt has been) transferred' (*moη≅al*) and the third person is the middleman or the '(person to whom the debt has been) transferred' (*moη≅āl 'alayh*).

H≅ewāleh has another new meaning, which is: the request by the transferor (debtor) to the person whose debt has been transferred (creditor) to pay the asset to the transferred (creditor) without the middleman owing anything to the transferred (creditor).We shall explain the transfer (*η≅ewāleh*) in both of its meanings as follows:

1196. The transfer is established as in the first meaning through a contract that includes a proposal from the debtor and acceptance from the creditor using any words or acts that secure the meaning.

1197. It is not conditional in a transfer contract that the middleman issues an acceptance in addition to the acceptance of the creditor, except in the following cases:

a- If the middleman does not owe anything, i.e. does not owe the debtor anything; such a transfer is called a 'transfer to a non-owing person'.

b- If the debt used for the transfer to the debtor is of another type of the debt that he (the middleman) owes the creditor.

c- If the debt owed by the middleman is postponed while the debt being transferred is immediate, or postponed to a date that arrives earlier than the first one.

1198. All general conditions required in other contracts are to be met by the debtor, the creditor and the middleman, including the condition of not being indicted for bankruptcy in any situation in which the transfer will violate the rights of the (indictment) creditors. Also, in a transfer, the debt must be confirmed as owed by the transferor (debtor) for any reason of debts, and that the asset used for the transfer is specified, not obscure, nor unspecific and spread across two or more commodities or assets.

1199. It has become common in our time to use a type of transfer which is a sort of financial service that the middleman carries out – for a charge or free of charge – for the debtor without the transfer between them putting the middleman in the position of owing the creditor for asset owed by the debtor; it takes several forms:

First type: Bank transfer, which is making the bank a medium for the transfer, something which takes place in two ways:

First, the bank transfers funds to its client by issuing a cheque to its client at one of its branches – inside the country or abroad – so as to enable him take a certain amount of money – so the bank is a debtor, the client is a creditor and the branch is a middleman. The ruling for this follows two situations:

1- If the client who wants the transfer has an account in the bank, in this case the ruling is that the bank is allowed to take a commission for making this transfer.

2- If the client who wants the transfer has no account at the bank, in this case the bank is not allowed to take a commission for making the transfer to another branch, and taking it is a forbidden interest as a principle. That said, the bank can validate taking this commission by authorising the client to take the money from the branch as a loan, and since authorising the client will make things easier for him, the bank will, then, be allowed to request a commission from him for the authorisation not the lending; this is despite the fact that the client's authorisation is not necessary as the branch is an authorised agent of the bank's main branch (the debtor) and is capable itself of carrying out the lending to the creditor. However, if the middleman is another bank in which the lending bank has deposited its monies, not one of its branches, in this case the client's authorisation will be necessary.

Second, the debtor transfers money to his creditor through the bank by means of a cheque or the like, in which he asks the bank to transfer an amount of money to his creditor in another country, such as a merchant from whom he imported some goods. In this case, the bank is allowed to charge commission if the transfer was done upon a request from the debtor client, which is instead of the bank paying his debt abroad if the client had money in the bank; it is also allowed if he had no money in the bank, so the transfer will become a transfer to a non-owing party (which is the bank), when it is allowed for it to take an exchange for accepting the transfer to it and for paying off his debt yabroad. However, if the client has money in the bank and he transfers money to his creditor through it to get him paid in the bank's own country – i.e. without any transfer abroad – in this case the bank transferred to has no right to charge anything for paying his debt.

Second type: The creditor transfers his debtor with his debt to his agent/proxy, or to a treasurer, or to someone who has something kept as a trust for the creditor – who is called '*wede'ī*' (derived from *wedī'ah* = deposit)), or to a non-owing party – this type is allowed even if the creditor does not accept it, unless this will violate his right to be paid in type, time and place; the middleman, however, must accept it even if it means being bound by it due to a condition, vow or the like.

Third type: The transfer of someone whom he is going to owe, such as the transfer of the price of goods he intends to buy, a dowry of a woman he intends to marry, or similar things that do not fall in the category of the terminology of the transfer since it is not a confirmed, owed debt when the transfer is established – the ruling of this is like the second type.

Fourth type: Transfer of a non-debtor, such as transferring the individuals or organisations who want to donate money to a person or to an individual or organisation other than him – the transfer is valid in this way if the creditor and the middleman accept it.

Fifth type: Transfer based on a sale or a loan, which is when someone pays to another – individual or organisation such as a bank – money to take an exchange for it in another country. The ruling regarding this type is as follows:

1- If the money paid in exchange is of different type, such as if one party in Britain pays another one thousand pounds to take in France in its equivalent in Euros, such transfer is valid as a sale without any doubt; it is also valid as a loan but upon making it conditional to paying it with something of a different type if the value of the other type is equal to the value of the debt, otherwise it cannot be valid as a loan.

2- If the two are of the same type, here are two situations:

a- If they are equal in amount, in this case the transaction is valid as a loan without any doubt, but it is also valid as a sale upon observing the special rulings regarding the sale of things measured by weight or measure(ing vessel) or postponed sale and the like.

b- If they are of different amounts, in this case if the paid amount is less than the amount taken in exchange, such as if one party in Britain pays one thousand pounds to someone to receive in exchange one thousand one hundred in another country, the transfer is not valid as a loan. It is valid as a cash sale, but invalid as a postponed sale as an obligatory precaution. But if the paid amount is more than what is taken in exchange, then it is valid as a loan and valid as a sale as explained in (a).

Section Nine

Banking Transactions

A‘māl al-Me∝≅ārif/al-Bonūk

Banks today play an important role in man’s economic activities: they are the money depots, the loan operations axis, the guarantors and places of transfer, big partners in investments and speculations and agents or middlemen in a lot of transactions and deals; therefore, explaining the rulings regarding the operations they carry out is essential for the individuals who cannot operate without dealing with banks, working in them or alongside them.

(A) On the Islamic lawfulness of the banking transactions and services

1200. It is allowed to earn income through working in banking services in their different fields that are common in our time, if they conform to the Islamic rulings, especially regarding the establishment of non-interest (*ribā*) based financial instruments, with no distinction regarding whether they are owned by individuals, organisations or states. That which does not conform to the Sharī‘ah, however, is either forbidden or invalid, which is the status of a lot of the transactions carried out by banks and financial establishments based on interest; so a person’s profit from interest (regardless of the sin that results from the transaction) is not allowed unless with the satisfaction of the parties it is taken from; if they allow it and give permission to take it – despite knowing that it is not due for the party taking it – it is allowed to own interest and dispose of it; otherwise it is not allowed.

1201. It is allowed and valid to deal with any financial establishment, owned by a Muslim or a non-Muslim, private or governmental, interest-based or not, if all the transactions that conform to the Sharī‘ah and the money taken from them is allowed, including their gifts and rewards, despite the knowledge that their money includes some forbidden money, unless if a person knows that particular money given to him forms part of forbidden money, in which case it is not allowed to take it.

1202. It is allowed to work in all interest-based financial establishments if the work itself is allowed; so it is allowed to work in positions like: personnel administration, public relations, promotion, money counting and receiving the responsibility and keys of safes and depots, in addition to all ordinary services such as security, cleaning, lighting, transport and maintenance. Also allowed is renting buildings, transport vehicles and the like which banks need.

What is forbidden is involvement their interest-based contracts where the employee – whether manager or his subordinates – is involved in the interest-based contract established with the client, or is the writer of the contract, a witness to it or an accountant dealing with the interest given or taken. That said, since banks give heir clients interest with their satisfaction, even if the client refuses to take it, or did not request it, accountants are allowed to pay the interest given to clients, but are not allowed to receive the interest that clients give to the bank because they do not give it to them (the accountants) in any case.

It is also forbidden to work in banks in forbidden activities besides interest, such as investments in the manufacture and trade alcoholic beverage, financing forbidden singing and dancing activities, and so on when the worker/employee participates in them (these banking activities).

(B) Deposits

1203. The monies that their owners deposit in banks are subject to the loan rulings not rulings for deposit; this is because the depositor, here, puts his money in the bank to preserve it, to facilitatehis use of it in his transactions, and to invest it on his behalf, so it can appreciate and he can profit from it. However, since this money asset itself does not stay (i.e. not the same money that he deposited) – as any deposit does –these deposits are termed ‘debts’. Loan rulings apply to this relationship even if the client says that that money is a deposit or a trust, and that he allows the bank to dispose of it as it likes so that it becomes secured/guaranteed through it.

On the basis of this, it is not allowed to make any dealings between them – explicit or implicit – on an interest basis, in the manner detailed in the loan and debt section, which in our time is called '*fā'ideh*' (benefit), since it is a forbidden *ribā*. So, if the depositing is not based – even on the client's side – on taking the interest, but rather his concern was to deposit the money not to profit from it, he is allowed to deposit it and allowed also to take the interest on it even though he knew that the bank would give it to him; he is allowed to spend it on his affairs provided that he has secured the satisfaction of the party paying it.

1204. No distinction is made in prohibiting the taking or giving of interest on deposits, be it by government, private or joint-venture banks, nor by banks that belong to Muslims – states or individuals – or by banks that belong to non-Muslims, since it is an obligatory precaution to abstain from interest-based dealings with non-Muslims as well. Moreover, there is no distinction between interest on fixed deposits where the bank is not committed to pay it until after the elapse of the agreed-on duration (known as a 'savings account'), and the deposit that can be withdrawn immediately upon request (known as a 'current account').

(C) Lending

1205. It is not allowed for the bank to lend monies deposited with it, nor its own monies, to its clients at interest; individuals are not allowed to borrow from it – or from others – at interest, if the contract between them is based – explicitly or implicitly – on paying interest.
However, in allowing the borrowing it is sufficient if it is the intention of the borrower – when establishing the contract – not to pay the interest when due unless he is forced to do that; this is although the form of contract common in banks is based explicitly on paying interest and despite the fact that the two parties – when contracting – face this as an inescapable reality. However if the borrower is not committing himself – within himself – to the condition involving paying interest, he is allowed to borrow despite his knowledge that he will not be able to escape paying interest when due. In any case, it is better to limit interest-based borrowing (with the intention of not being committed to pay interest) to the situation where the borrower is compelled to do this to the extent that his living depends on it, or when not doing so would lead him into intense difficulty that he could not withstand.
And where interest-based borrowing is prohibited, no distinction in the prohibition is made between borrowing by someone who has money in the bank and needs to borrow an additional amount and someone who has no money. Also, there is no difference between someone who wants a loan for a business, such as a guarantee, opening an LC (letter of credit) or the like, and one who wants it for a personal matter, such as his son's marriage, buying a house etc.

(D) Opening a letter of credit (LC)

1206. It is allowed for the bank to open credit for its clients to facilitate their business transactions with exporters, and it is allowed for the bank to charge money for carrying out all services related to the client's business transactions. But the client is not allowed to borrow at interest from the bank an amount additional to his balance in order to fulfil payment for the merchandise, as it is not allowed for the bank to lend him this amount at interest, unless the contract between them is established on the basis of 'debt security', in which case the cover of the bank for what is left (needed addition) of the payment is a sort of security on the debt offered to the exporter, not a sort of borrowing, provided that the exporter returns to the bank what it paid to him, making it conditional on himself to pay a 'reward' (*ja'l*) – equal to the amount of the interest – for paying off his debt and offering security on it. (See no. 1192.)

(E) Acting as middleman (*wesāτ≅eh*) in business transactions

These are things that are dependent on the bank's activities and wishes. We discuss here the types that are known and common:

1- Investment:

1207. It is allowed for the bank to invest the monies deposited with it and utilise them in all allowed trading fields, either on the basis of being an agent of the depositor so that all profits are for the depositor and likewise the losses, with the bank being paid a fee for its agency, or on the basis that it carries out the investment as a speculator on behalf of the depositor, in which case the speculation rulings apply. In both situations, the money which the bank takes in exchange for this is allowed.

2- Selling commodities and shares:

1208. It is allowed that the bank handles allowable goods and advertises them by all allowable means of presentation and advertising; it is also allowed that it carries out the sale, purchase, storage, packing and freight of these goods for its clients. It is also allowed for the bank to charge for this within a hiring (*ijāreh*) contract, or to take a reward (*ja'l*) for its work within a *jo'āleh*.

1209. As it is allowed for the bank to act as a middleman in selling assets; it is also allowed for it to act as a middleman in selling the shares that stock companies announce for sale. Whenever it is allowed and valid to sell and buy such shares, the bank is allowed to act as a middleman in its transactions, as explained in the previous entry.

The bank is even allowed to act as a middleman in any transaction that meets all its conditions and in selling all what is valid to sell in terms of assets, benefits and rights, without any difference in this between it and other individuals or organisations.

3- Selling bonds (*senedāt*):

1210. Bonds are: documents issued by legally authorised bodies/organisations at a certain nominal value postponed to a certain date, then they sell them at less than their cash-nominated value on the condition that they will retain their specified value after a period, with the aim of borrowing from people and increasing their funds to cover the expenditure due, then returning the monies to their owners gradually at interest, so that it may be regarded – in fact – as a loan at interest in the framework of a sale; this is known in Lebanon as '*senedāt al-Khezīneh*' (interest-bearing bonds or government bonds). For example: the value of the bond is one hundred pounds, the state sells it for ninety pounds immediately on the condition (promise) that it will return it at the value of one hundred pounds after six months. Treasury bonds sold in this manner are based on forbidden interest, so it is forbidden to deal with them on the basis that they are loans; they are also forbidden, as an obligatory precaution, as a sale; therefore, it is not allowed for the bank to act as a middleman in selling or buying these bonds; also it is not allowed to charge commission on them.

4- Storage of goods:

1211. If the bank is acting as a middleman in some business transactions, it may be asked – or compelled – to store goods until they are handed over to the importer, with the charges met by the importer or the exporter according to a clear agreement between all parties. In this case, the bank is allowed to carry out such work and charge or take reward for carrying out the storage. But if this was not requested from the bank but it did it nonetheless, it has no right to charge money for doing so.

1212. If the goods' owner fails to receive the goods when due and fails also to pay the money due from him to the bank, it is allowed for the bank to sell the mentioned goods – as it is allowed for the others to buy them – if the bank has informed him of this act and warn him before carrying it out; this is because the bank – on the basis of the clear condition that is present in such situations – is acting as an agent for the goods' owners in selling them.

(F) Collecting IOU's and paying off debts

1213. It is allowed for the bank to handle the debts of its clients, by paying them off or collecting for them, as follows:

1- The creditor must present to the bank the documents for the debt that confirms his right to it, which is called an 'IOU'(literally 'I Owe You') (*kompiyāleh*), and ask the bank to collect

this debt from the debtor without the debt being transferred to it – i.e. the bank – for a certain commission. In this case, the bank is allowed to do this and make the charge or reward for mediating between the creditor and debtor to claim the former's right over the latter. However, it is not allowed for the bank to collect any interest – if such exists – nor to charge it, unless the bank knows that the debtor accepts paying it in any case.

2- The IOU is transferred to the bank to present it to the debtor who signed it, without any money changing hands with it (the bank), which is a sort of transfer to the non-owing party; in this case the bank is allowed to charge a commission on accepting the transfer (*ḥawāleh*) to it, and is also allowed to take a commission on paying it if using a currency other than the one used when the debt took place, as explained in the transfer ruling (entry no. 1199).

3- The IOU is transferred to the bank and its signatory has money in it, so it is like a transfer to the debtor (which is the bank); here as well, the bank is allowed to charge commission for this service as explained in the transfer rulings (entry no. 1199).

(G) Guarantee (*kefāleh*)

1214. Banks usually guarantee contractors who commit themselves to carry out different projects at high costs, such as hospitals and bridges, laying electric and telephone lines, etc. The contract between the parties is based on the bank providing a guarantee for the contractor to pay a certain amount of money on its client's behalf to the project owner if the project is not completed in the specified time; it is like the financial guarantee explained before (entry no. 1181), so all its rulings apply to it, including allowing the guarantor, which is the bank here, to charge a commission for this guarantee, which is a type of reward (*ja'l*).

Section Ten

Deposits

Al-Wedī'ah

1215. *Al-Wedī'ah* is a contract in which two parties mutually agree that the asset of one of them is to be kept in the care and trust of the other. This is established between the depositor (*mūdi'*) and the trustee (*mūda' 'indeh*) – called '*wede'ī*' – through a proposal from one of them and acceptance from the other using any words or deeds that secure it.

1216. All general conditions such as reaching the Islamic legal age, sanity and the like are conditional in both parties, in addition to the ability of the trustee to preserve the trust, so if he is incapable, he is not allowed to accept the deposit, unless the depositor knows that, in which case it is allowed and no compensation will be due from him. However, neither the depositor nor the trusteecan have been indicted for bankruptcy. Also, Islam is not a condition for the depositor, so a non-Muslim's deposit is acceptable if it is a Sharī'ah-acceptable asset, not something that is not such as alcoholic beverages and the like; the Muslim must uphold his commitment to him, as he does to Muslims.

1217. A deposit is a type of flexible contract, so it is allowed for both parties to invalidate it whenever they like, unless it was made conditional by one or both of them not to invalidate it for a certain period, in which case it must be observed. However, if one party violates the condition and invalidates the contract before the elapse of the period, he will have sinned and it is an obligatory precaution, then, to weigh the consequences of the invalidation or no invalidation and to reach an agreement that is acceptable to both on the consequences that will befall each one of them.

1218. If the trustee invalidates the contract, he must relinquish the deposit's obligation, either by taking the asset – immediately – to its owner or his proxy, such as a guardian or an agent, or to inform him about the invalidation so that the responsibility of taking the deposit will be the owner's, so leaving it with the trustee as a trust (*amāneh*) until he takes it; but if the trustee fails to do either of these two options, it will be regarded as a transgressing control of the asset and compensation will be due from him if it suffers loss or damage, even if not as a result of negligence.

1219. A deposit will be invalidated by the death of the owner, by his absolute insanity or by permanent unconsciousness; it is also invalidated by the death of the trustee, his absolute insanity or unconsciousness.

A deposit does not become invalidated in the cases of insanity or unconsciousness that strike a person only in phases, for both the depositor and the trustee.

1220. If the deposit contract is established with all its conditions, the trustee is obliged to preserve the deposit from damage due to natural or human causes, from loss or burglary, or from becoming defective by a loss, weakness, illness or the like, doing this with all measures that achieve it, such as putting it in a place in which it is safe from the causes of damage or defect, under his permanent care and maintenance, etc.

1221. It is not allowed for the trustee to violate the conditions that the depositor sets to preserve the deposit, whether the place or the method, unless he knows putting the deposit in the specified place in the specified way will lead to its damage, in which case he is allowed to violate the depositor's instructions and to act in the way that preserves the deposit.

1222. The trustee is not allowed to dispose of the deposit with any manner of disposal, even if the deposit in question is little and common, unless the owner gives him permission to dispose of it in a certain way, or however he chooses, in this case it is allowed.

1223. Compensation becoming due or not due from the trustee for what is deposited with him may be imagined in two situations:
First: The trustee is the one who damaged the deposit – wholly or partially – so compensation is due for what he has damaged, even if his responsibility for the damage was simply allowing it to happen – i.e. indirect.

Second: The trustee is not the damaging party. Here are two possbilities:

a- He – throughout the depositing period – has not violated the owner's instructions in how to preserve the deposit and has not disposed of it outside the limits drawn by the owner and all the deposit rulings; in this case compensation is not due on the trustee for the damage that befalls the deposit, whether the damage was due to natural causes or the act of others, even if unintentional.

b- He did violate the requirements of the deposit rulings, in this case compensation is due for any damage to the deposit, regardless of its source; compensation is also due from him for loss of any of its benefits in the way that we will explain in misappropriation (*ghaσ≅b*) rulings.

Section Eleven

Things Lost and Found

Al-Loqτ≅eh

Loqτ≅eh is: a lost asset – animals or things, which are not under the care of anyone; the term includes homeless children who have no one to care for them, unless someone finds them and takes them in.
A lost thing is called '*da'ī*"; a lost animal is called '*δ≅≅ālleh*'; if they are found, they are called '*loqτ≅eh'*; a child found is called '*leqītτ≅*' (foundling).

(A) Rulings for foundlings (*leqītτ≅*)

1224. A child – found by someone – is not regarded as a foundling (*leqītτ≅*) unless two things are in place:

1- The child is unable to be independent in his affairs, so that he cannot carry out what is in his interest or stop what harms or destroys him, even if he has passed the first stage of childhood and become aware of sexual things (*momayyiz*).

2- The child must be homeless, with no knowncarer, nor a sponsor, guardian or guardian appointed by a will-, whether he has been abandoned and deserted by his parents or not known to be likewise but is only lost or has no parents.

1225. If the lost person is an adult that cannot be independent, such as an insane person, he is not regarded as *leqītτ≅* as neither the term nor its rulings apply to him, but the Islamic authority will determine his affairs, although whoever finds him is obliged to protect him and care for him if harm is feared; in fact it is recommended even without fear of such things, until the Islamic authority is consulted in his matter.

1226. The *loqτ≅eh* rulings do not apply if the person who found the child is not a sane adult, and is not a Muslim if the foundling is regarded as a Muslim, such as if he is found in Muslim countries and his religion is not known, or in a non-Muslim country where Muslims reside and it is probable that he might have been born to them. In this case, it is allowed for the one who meets the conditions of Islamic legal age, sanity and Islam, to take the foundling from the person who found him if the latter lacks any of the conditions, in fact it may be obligatory to take him if the person who found him is not a Muslim. If the person who finds him is a child and his guardian fosters him, the guardian becomes himself the finder and the foundling rulings will apply to that finder.

1227. It is an obligation under the conditions of sufficiency (*wojūb kifā'ī*) to take the foundling or the abandoned child into care if protecting his body, soul or religion from the dangers that one fears might hurt him depend on taking him.If he is safe from such dangers, but his living under the care a sponsor is better than leaving him alone to fend for himself, in this case taking him in is recommended and whoever takes him will have the reward equal to that of sponsoring an orphan, if not more.

1228. If the *iltiqāτ≅* (taking the *leqītτ≅* as a *loqτ≅eh*) is complete with its conditions, the person taking in the foundling will have greater rights over the foundling, so it is not allowed for anyone to take him from him.

1229. It is obligatory on the person taking in the foundling to observe two things in their dealings with the latter:

1- To try to find his parents until one abandons all hope of finding them; this is if it is not known that he has been abandoned by them and contacting them is possible.

2- To carry out his duties of custody, the person who found the foundling has to take care of him in his sleeping, clothing, food and drink, medical treatment and preventing harm to him, in addition to caring for the matters of his manners, religion, behaviour and guidance, in the minimum level, whether the finder does that himself or through other individuals or care organisations. Regarding the foundling's other affairs that form part of the matters relating to the guardianship over him – such as expenses disbursed from his assets, preserving his assets and investing them, and the transactions that these matters involve, and so on – all these have to be controlled by the Islamic

authority or the foundling's authorised representative, but if none of these is available, or they cannot undertake the matter, the person who found him must turn to the unjust among the believers, and if he is one of them, he may dispose of these matters himself.

1230. The expenses of the foundling may be met in different ways:

1- They may be donated by a donor, or the Islamic authority meets his expenses from the Islamic treasury (*bayt al-Mal*) or the religion-based money obligations (*hoqūq shar'iyyeh*) – if applicable.

2- The foundling may have money, or things that he does not need; in this case it is allowed for the person who found him to spend it on him with the permission of the Islamic authority or his authorised representative where possible, or – failing that – the permission of the unjust believers if he is not one of them.

3- The foundling has no money, nor is a donor available; in this case, it becomes obligatory on the person who found him to pay for his expenses from his own funds. However, he is allowed in this case to claim from the foundling what he has spent on him after he reaches the Islamic legal age and becomes financially capable and after he has stated his intention to claim it, but if he has not made this intention clear, he is not allowed to claim from him even if he becomes financially capable.

1231. It is not allowed for the finder to adopt the foundling by giving him his name as if he was his son – and if he does this, he has sinned; the consequences of ancestry and its rulings – such as guardianship, ancestry and inheritance – will not apply. However, adoption in the sense of sponsorship, care and living with his family is valid, indeed this is one of the best of deeds; however, the foundling must be treated as a stranger regarding the veil and so on (i.e. in relations with the other sex), unless he becomes one of the sponsor's unmarriageable kinship with matters like breastfeeding and the like.

(B) Animal *loqτ≅eh*

1232. It is not allowed to take in a lost animal in any place where it is safe from wild animals, whether it is in built-up areas or elsewhere, especially if it is strong enough, big enough or fast enough to protect itself from wild animals and is – in addition to that – safe from harm through illness, hunger, falling in a well or from a high place. But if it is not like that, taking it in is allowed but it is recommended to abstain from this unless the animal is vulnerable to harm so that leaving it is regarded as wasting assets, in which case it must be taken in.

1233. The following are obligatory on the person taking in a lost anima:

1- **Protecting** it from injury and harm from all that could lead to this.

2- **Trying to find its owner**, here:

a- If taking the lost animal in is not allowed for him, but he does take it in anyway, trying to find its owners must then be undertaken in the places where it is hoped the owner might be found, until the finder loses hope of finding them; in this case he pays for it as alms on its owner's behalf – it is an obligatory precaution that this is done with the permission of the Islamic authority. The same ruling applies if taking it in becomes obligatory out of fear of harm.

b- If taking it in is allowed – such as if taking a sheep or the like in the wilderness and the animal does not resist– the finder must try to find the owner in the area where he found the animal if there are people out there, and if he cannot find the owner, it is then allowed for him to own it and dispose of it by eating, sale or the like, and equally it is allowed for him to keep it as a trust until he discovers its owner, for as long as it takes before his loses hope of finding him.

3- **Compensation** for the animal, if taking it in is not allowed is due on its benefits as will be explained in the misappropriation (*ghaσ≅b*) rulings; compensation is absolutely due for any injury and harm. However, if taking it in is allowed or obligatory on the finder, no compensation will be due if it comes to any harm when in his control, as long as no

transgression or negligence is involved; but if the person who found the animal is the one who did the harm, in this case he must pay to its owner the sum equivalent to its value on the day that he found it.

1234. If an animal enters man's house or similar protected places, he would not be regarded as having taken it and placed it under his control; in this case no compensation is due from him, and he has the right to evict the animal from the place; indeed, it is obligatory to evict it if it is probable that it has not been lost by its owner. However, if the finder knows that it has been lost, he must try to find its owners in the area around him – if he finds him, he must give the animal back to him, otherwise he must pay its value as alms, and it is an obligatory precaution to secure the permission of the Islamic authority before doing so.

(C) The asset *loqτ≅eh*

This has two parts:

Part one: Determining a *loqτ≅eh*

1235. An asset is not regarded a *loqτ≅eh* unless two points are satisfied:

1- The loss of the asset by its owner and the knowledge of the person who finds it that it is a lost asset, through circumstances in which it is shown to be a lost asset. So, an asset taken from someone who has misappropriated it (such as a burglar) is not a *loqτ≅eh*, nor does the status of *loqτ≅eh* apply to a borrowed asset where the borrower has forgotten who its owner is, nor in other situations in which the asset is not lost for good (*da'ī*) but has simply been temporarilymislaid by its owner (*mefqūd*).

2- The action taken by the person who found it is regarded as taking it in and *iltiqāt* (i.e. the taking-in discussed in this section), even if he does not intend by his action to conform to the meaning of a *loqτ≅eh*; so the *loqτ≅eh* rulings will be applicable to a person who has taken an asset under the false belief that it was his then he finds out later that it is something owned by someone else and lost, and other similar situations. In other words: it is not sufficient for a *loqτ≅eh* to be regarded as such through the mere finding of it and seeing it as a lost asset, but it must be taken in as *iltiqāτ≅*.

1236. The rulings of *loqτ≅eh* do not apply unless the person who found the item has reached the Islamic legal age and is sane. However, if a child or an insane person found it, the guardian will be obliged to keep it and apply all the consequences of it.

1237. Any owned asset that is not lost in the manner described above, if its owner is not known but no one has control over it, cannot simply be taken in by anyone; so if someone does take it in, he is regarded as an misappropriator and compensation will be due from him, unless it is vulnerable to damage, in which case it is obligatory on him to take it in so as to protect it; in this case it is a trust and compensation will not, then, be due unless transgression and negligence is involved.

Part two: Trying to find the owner

1238. The situations regarding trying to find the owner of a *loqτ≅eh* are:

First: The asset taken in has features that distinguish it from things of the similar type, so that if the person who found it describes some of its features the owner will be able to list the rest of them which means that he knows it and (so) it is his. Trying to find the owner of such a *loqτ≅eh* must continue for one year; however, the obligation of trying to find the owner, in this case, is conditional upon three things:

a- The value of the *loqτ≅eh* must be one *shar'ī* dirhem or more, which is estimated by some specialists of our time to be around 2.5gm of silver – the criterion of its value depends on the time and place of when it is taken in. If it is less than this value, then it is not obligatory to try to find the owner, but the finder must give it as alms, as a precaution.

b- The person who found it believes that the benefit of trying to find the owner is worthwhile, so if he becomes satisfied that there is no possible benefit in this – such as in the cases of

loqτ≅eh in a deserted wilderness, or on public roads used by travellers from different towns or countries, or in travel termini such as airports and the like where one can ascertain that the owner of the found asset has travelled to an unknown destination where the news of his lost asset will not reach him even if the person who found it tried –in these cases the obligation of trying to find the owner is cancelled but he must, as an obligatory precaution, keep it until he loses hope of contacting the owner, especially if the item is valuable; then he must give it as alms on behalf of its owner. If its owner then appears after the finder has given it as alms and refuses to accept the disposal – i.e. as alms – compensation will be due to him from the person who found it.

c- The finder should be in a situation in which he is safe from the danger of being accused of stealing, so if he fears there is a danger of being accused of stealing and this could lead to damage to his reputation or even imprisonment, the obligation to try to find the owner cancels and the ruling will be the same as in (b).

Second: The asset taken in does not have features that distinguish it from its similar items, such as most manufactured goods produced by modern factories which make distinguishing individual items of the same type from each other difficult; in this case – if distinguishing the item is not possible – the person who found it is allowed to own it regardless if its value is more than the dirhem; although it is better to give it as alms on behalf of its owner, and better still that the alms-giving is done with the permission of the Islamic authority.

1239. In the obligatory endeavour to find the owner it is advisable to describe the asset in terms of its type or kind including some of its features, but leaving some of them unclear and obscure, so that if the owner hears this description, he will think that there is a good chance that the asset is his, and then if he can list the rest of its features, this will prove that he is the owner, and thus the item can be returned to him.

1240. If the finder hopes to find the owner, the period for trying to find him is one full year; it is precautionary to observe continuity so that he does not count one full year over several years, such as if he tries to find the owner for three months in every year.

1241. Trying to find the owner must start from the time of finding the asset, otherwise he has sinned if he has no excuse. In any case, whether he is disobedient or excused in failing to hasten to do this, the duty of trying to find the owner will not be cancelled and he must hasten to carry it out starting from the moment of his repentance or the removal of the excuse, unless a long time has stripped the endeavour of trying to find the owner of any benefit in finding him, in which case the obligation is cancelled and he must give the asset as alms with the obligatory precaution of seeking the permission of the Islamic authority.

1242. There is no specified method for finding the owner; the important thing is that the method chosen must be effective to an appreciable degree in its potential to reach the owner and give him the opportunity to prove his ownership, whether regarding the place in which the finder tries, the number of times he tries, or the method he uses, such as by writing, asking, placing advertisements in the media etc. That said, trying to find the owner must be done in a place that enhances the possibility of its news reaching the owner, which is not necessarily the place where the item was found.

1243. No payment is due from the owner for the effort made by the person who found the asset to try to find the owner, unless this required the outlay of additional money, such as advertising costs, and there was no donor for this, and the *loqτ≅eh* had no appreciated value that could be invested. It would be an obligatory precaution to seek the Islamic authority's permission to invest any such appreciated value, or to sellsome of it in order to spend the income on trying to find the owner; failing all that, it becomes obligatory on the finder to spend his own money to try to find the owner, and he is allowed to claim it from the owner if it is his intention to do so at the outset.

1244. If the finder tries to find the owner for a year in the proper manner and cannot find the owner, there are two possible situations:

1- The *loqτ≅eh* is in Mecca and the sacred area around it (the *η≅arām*), in this case it is an obligatory precaution to pay it as alms on behalf of its owner.

2- If the *loqτ≅eh* is somewhere else other than the *η≅arām*, in this case the finder has three options:

a- If he takes possession of it, but if its owner appears later, he must return it to him if the same asset still exists, or return an alternative – in kind or value – if it has been damaged (or is non-existent).

b- If he gives it as alms on behalf of its owner without the permission of the Islamic authority, here if its owner appears later and he accepts the alms-giving, this would be his reward, otherwise the finder is obliged to give to the owner a similar asset or its value, and the owner has no right to claim anything from the person who was paid the alms.

c- He may keep the found asset with him as a trust if he likes, and if its owner appears, he returns it to him, without any compensation due from him unless it has been harmed by his transgression or negligence; he may retract from this and turn to any of the two above options whenever he likes.

1245. A *loqτ≅eh* is held in trust by the person who found it, so no compensation is due from him if it becomes damaged unless it is through his transgression or negligence. Examples of situations of transgression or negligence are: if he returns the lost asset to the place where he found it, or if he fails in properly trying to find the owner, or if he owned it or paid it as alms after trying to find its owners – as explained above.

Moreover, it is not allowed to dispose of the asset and benefit from it, even if with the intention of keeping the revenues of these benefits for the owner, otherwise the finder will be a transgressor, unless the Islamic authority has given his permission in his capacity as the guardian of the absent owner, in which case the disposal of the found asset will be valid and compensation will be due from him to the owner, especially if it is found that the owner of the *loqτ≅eh* is a child or an insane person.

Section Twelve

Misappropriation

Al-Ghaσ≅b

The scholars call the situation where one's owned asset is with someone else '*taη≅ta yedih*' (lit. under his hand) for a lawful reason and the acceptance of the owner as '*yed al-Amāneh*' (lit. the hand of trust, i.e. entrusted), while unlawful control of someone else's assets is the opposite to this and is called '*yed al-'Odwān*' (lit. the hand of aggression). The explanation of this is as follows:

1- *Yed al-Amāneh* is taking control lawfully of the asset alone or with the benefit, which can be of two types:

a- Owner-based trust (*amāneh malikiyyeh*), where the control is a result of entrustment by the owner and has his permission.

b- Sharī'ah-based trust (*amāneh shar'iyyeh*), where the control of the asset is without the knowledge of the owner but is based on the permission and acceptance of the Sharī'ah.

2- *Yed al-'Odwān* is taking control of someone else's assets without the permission of the owner or the Sharī'ah, which can also be of two types:

a- Misappropriation (*yed al-Ghaσ≅b*), which is taking control of the asset or right of others intentionally but with the knowledge (of the person doing the taking) of its unlawfulness, through injustice and tyranny, which is quite clear.

b- Taking through lack of awareness (*yed al-Ghefleh*), which is taking the asset or right of others out of the mistaken belief that it is lawful, or a mistaken belief that it is his – which is what is taken as a result of an invalid exchange contract, such as when a thing sold remains with the buyer or the payment remains with the seller –or a mistaken belief that it is his out of misunderstanding and error, such as if a person puts on another person's shoes or clothes thinking they are his. However, things taken as the result of an invalid non-exchange contract, such as a gift, will or the like, have a special ruling which will be explained later (no. 1251).

And since we have discussed the rulings of the '*yed*' (being in control of assets) in both its types in the sections on sales, deposits and *loqτ≅eh*, and in others as well, we have allocated this section to the 'hand'of misappropriation (*yed al-Ghaσ≅b*) which is: seizing, out of aggression, the asset or a right of Muslims or non-Muslims, which takes place in:

1- The misappropriation (*ghaσ≅b*) of assets, which takes place with an asset with the benefit (such as the misappropriation of an asset the benefit of which has not been stripped away through rental, gifts or the like), or of an asset on its own without its benefit, such as the seizure of an rented asset by someone other than the renting person (tenants etc).

2- The misappropriation of (essential) benefits, which are called 'man's benefits', such as the owner seizing the rented asset from the renting person – during the duration of the contract – or preventing the person from putting his effort into earn his living by doing things like imprisoning him or tying him in chains,.

3- The misappropriation of rights, such as the right of jurisdiction/authority, the right of exclusion on a wasteland, the right of a mortgagor to the mortgaged asset, the rights of custody, the rights of alimony/maintenance of the wife and relatives, etc.
Misappropriation is one of the grand sins regardless of how small the misappropriated asset or seized right is. The details of its rulings are as follows:

(A) Returning misappropriated assets

1246. It is obligatory on the misappropriator to return any misappropriated asset to its owner, and it is obligatory on a non-misappropriator to return it to the owner if it came under his control out of ignorance of the misappropriation, then he later came to know about it, or was forced then this forcing activity stopped, whether the asset is good or defective, separate or part of another thing, such as a wooden plank in the ceiling of a building, in which case the

misappropriated thing must be returned to its owner by extracting it, even if this results in harming the thing it is extracted from, as long as it (the misappropriated thing) has a value, even if this is less than its past value, unless the owner accepts an exchange, in which case the misappropriatedasset becomes, through this exchange, owned by the misappropriator.

1247. If the misappropriator mixes the asset with others, or if it becomes mixed without his wishing it, then there are many situations:

1- The asset becomes mixed with things that may be distinguished and separated from: in this case it must be separated and returned to its owner.

2- The mixture becomes one thing, any part of which cannot be distinguished from the other, i.e. the mixed thing is of the same type and of the same quality, such as the mixing of oil with oil: in this case they must divide it in the ratio of each of them. The consequences of this are:

a- No compensation is due on the misappropriator to the owner for the same misappropriated amount or its value.

b- Neither of them is allowed to dispose of the joint asset on his own unless the other gives his permission, or to divide it between them if one of them requests a division.

3- The same situation in (2), but the mixing was with something of a better or worse quality: here the person whose asset was misappropriated has the choice of claiming an alternative or to divide it between them as in (2). However, if he chooses to divide it and there was loss/reduction in the value of the misappropriated asset as a result of the mixing, in this case compensation is due from the misappropriator for that loss/reduction.

4- The misappropriated asset is mixed with something of another type, so that the mixture is regarded damaged, such as mixing rose water with fuel: in this case it is obligatory on the misappropriator to pay for an exchange according to the security (*δ≅≅emān*) basis.

5- As in (4) above, but the mixture retains a value and financial merit, such as mixing wheat flour with barley flour: in this case the ruling is as that of (3) above.

(B) Compensating benefits

1248. Compensated benefits on the misappropriator are threefold:

1- **Benefits owned** with things like rent, loans etc, whether the misappropriation was with the renting person or the borrower (the owner of the benefit) benefiting from it or not, so that the matter at hand here is the benefit misappropriated from its owner whatever it is, not the benefit that is lost as a result of misappropriating the asset: the ruling for these is that the rental of a similar item to the misappropriated asset for the duration of the misappropriation is to be estimated and this must be paid as compensation by the misappropriator, whether it is more or less than the agreed-on rent for the person whose benefit was misappropriated, and whether the misappropriatedbenefit was common (such as using a house for living or a car for travelling in) or not common (such as using a house as an art gallery and the car a demonstration tool to teach how it is built/manufactured, or the like.

2- **Benefits lost as a result of the misappropriation** of the asset, which are two in number:

a- Lost benefit, which is one for which money is given, regardless of being common or not: here compensation is due from the misappropriator for the common benefit only. For example, with a house used for several kinds of benefit for which money is given, the compensation due from the misappropriator relates only to using it for living, since it is the common usage.

b- Missed benefit, which is the benefit for which money is not given, such as benefiting from the shadow under the tree, reading in a book and so on: for these no compensation is due from the misappropriator, unless he reaped them from the asset and used them himself or through others.

3- Man's benefit, which is the benefit the misappropriation of which is done by detaining an earning worker and preventing him from putting his effort into the money-making profession that he knows; here:

a- If the detained was working for himself (self-employed), compensation is due from the misappropriator for the income of the work that he is prevented from doing.

b- If he was employed by someone, in this case compensation is due from the misappropriator to the employer/hiring person equal to what he lost out of the employee/hired person's benefit.

c- If the misappropriator forces someone to work for him, and if this was in the kind of work that he knows, compensation is due based on the wages for similar work, but if it is in a kind of work that he does not know, compensation will be due on the work that he carried out plus the wages for the work which he knows.

(C) Security of rights

1249. It is obligatory on the misappropriator of any right whatever it is to return it to its owner and leave it with him; however, compensation will only be due from the misappropriator for misappropriatedrights that have an ownership-like nature, so that its owner will lose – by its misappropriation – something that belongs to him such as exclusion (*ta η≅jīr*) rights, since if the property suffers, while under the control of the misappropriator, and this leads to its damage and inability to benefit from it, such as if he floods it with water, the compensation due from the misappropriator will be its value under this exclusion, if this has a common value.

However, this does not apply to things of no ownership-like nature, such as the right of the mortgagor where the mortgagor is prevented from taking his debt back from the mortgagee, so if the asset gets damaged, the mortgagor does not pay compensation for the damage, while the mortgagee still owes him the debt.

Additional rulings

1250. The 'hand' (control) of the misappropriator on the misappropriated asset is a 'hand'of aggression, so if the asset gets damaged while under his control, compensation will be due from him, paid with something similar if it was a similar-type asset (see 1259–60 below), and with its value if it was a value-type asset, regardless of the reason for the damage; compensation is also due from him for all its lost benefits, whether he reaped benefit from them or not, and its missed benefits, whether he reaped benefit from them or not – and all this until the time that the asset got damaged. In addition, compensation is due from the misappropriator for all the loss/reduction that takes place in the asset, even compensating also for any features added to the misappropriated asset that raise its value if they disappear after their addition and before the damage of the asset. However, compensation is not due on the benefits lost in the period between the damage and paying compensation to its owner, even if this is long.

1251. Included under things subject to misappropriation are those things that can be categorised under the 'hand of unawareness', which we mentioned before. The ruling regarding this is as follows:

1- The asset received as a result of an invalid exchange transaction or similar contracts and declarations, such as marriage and divorce in which the asset is transferred from one party to the other – for example: the sold item and the payment in a sale, a dowry in an invalid marriage, the *khol'* compensation in a *khol'* divorce –, the ruling for all these is that it is obligatory to return the asset to its owner after it becomes known that the transaction was invalid. In addition, compensation is due from the person who has taken control of the asset for all the lost benefits of the asset, reaped or otherwise, and the missed benefits that have been reaped, even during the period when he did not know that he was not its owner; compensation is also due for the asset – even with his ignorance of the situation – if the asset gets damaged while with him, even if as a result of a natural cause and without his transgression or negligence.

2- The asset received in invalid non-exchange transactions, such as an asset given as a gift in an invalid gift transaction, assets in an invalid will and the like; the person who took the asset

– after become aware of the invalidity of the transaction – must hasten to return the asset to the giver even if the gift was non-exchange type, or to the testator of the will, but compensation is not due from him for its benefits, nor is it payable with a similar asset or its value if it became damaged during the time of his ignorance; if he comes to know of the invalidity of the transaction but does not hasten to return it, his hand will be regarded as a 'hand of aggression' and compensation will be due on its benefits, also compensation with a similar asset or value if it has been damaged.

3- Assets that came under one's control out of ignorance and false belief, such as if someone thinks that a book is his and so he takes it, and the like; the ruling of this is like in (1) above.

Section Thirteen

Compensation for Damage

Δ≅emān At-Tālif

In some of the previous sections the term 'damage' and some of the situations that make compensation obligatory were mentioned; here we shall explain this term more clearly, discussing some more situations where compensation becomes obligatory. We shall also explain how to pay compensation according to the types of things compensated for.

(A) Damage that makes compensation obligatory

1252. Damage is: the occurrence that leads to the asset stopping, in its substance and form, to be suitable for use in appreciable benefiting ways, which is different in its manifestation depending on the nature of things and the forms in which they are made, since damage to a chair is different to damage to wheat, a book, a dress, oil other countless things.

1253. Damage should be divided – as far as the damaging effect is concerned – into two types:

First: Natural d damage (*telef*), which takes place to the thing due to natural causes without man's intervention, such as an animal dying naturally, fruits beoming spoiled or a dress becoming worn out over time, burning, drowning, falling from a high place, being eaten by a wild beast, bitten by poisonous insects and other almost countless things.

Second: Human damage (*itlāf*), which occurs when a human cause effects the damage, through doing something, either directly or indirectly, by effecting something which leads to damage. This may be deliberate, caused with full awareness, intention and free will, such as damage caused by a sane, aware, adult making this choice; or it may come about through coercion, or lack of awareness and attention, such as damage caused by a child, a sleeping person, an absolutely insane person, someone walking in darkness and the like. Human damaging takes one of two forms:

1- Direct damage, which is: the person himself doing the damaging, such as slaughtering a sheep, tearing up a dress, erasing words from a book, demolishing a house using demolition equipment, and the like.

2- Providing the cause of damage, which is: the person does things that lead to causes of damage, such as wetting wheat with water which leads to spoiling, splashing the road with water which leads to pedestrians sliding and falling, and the like.

1254. The responsibility lies with the person under whose control the asset was when it was damaged – or if he damaged it when it was under his control – as follows:

First: Compensation is due from the person under whose control the asset was – for any cause – when the damage occurred to it, and in any situation in which control over the asset is unlawful, such as through misappropriation, invalid exchange transactions or out of a lack of awareness or ignorance, which is the control called '*yed al-'Odwān*' (lit. hand of aggression) and similar situations in which no 'aggression' is involved.

Second: Any damage caused by natural causes that occurs to the asset under the lawful control of someone is not to be compensated for; this is called '*yed al-Amāneh*' (lit. hand of trust), which also covers the situation in which the asset came into his control through proxy, mortgage, loan or deposit, or a valid exchange transaction if invalidated through *iqāleh* (relieving from the obligation) or choice as a result of which the asset must be returned to its owner, or an invalid non-exchange transaction.

Third: Compensation is due from anyone who damages others' assets, whether intentionally or otherwise, whether the asset was under his control or not, a 'hand of aggression' or 'hand of trust', or directly or through facilitating the cause.

1255. When an animal under the control of someone – the owner or others such as those renting or borrowing it – transgresses on another's assets(crops or other things) and damages it, then if the person whose control the animal is under is with it, riding it, driving it, leading it or accompanying it, he is liable to pay compensation for what it damages, but if he is not with it, such as if it went

out of the barn and wandered around and damaged the asset of someone else, in this case the person will not be obliged to compensate for the damage unless two things are present:

First: The person whose control the animal is under failed to secure it in a manner suitable for animals of its type.

Second: The damaged thing must be in a place or at a time in which its owner is not regarded as negligent in leaving it there. So if the owner failed to do that, such as if he left his things in the road then the animal whose owner failed to tie it came and damaged it, no compensation is due from the animal's owner.

If the animal is a bird and its cage door was opened, it flew out and broke a container spilling what was in it, the person who opened the door will have to pay compensation for whatever was spoiled, even if this took place as a result of the small size of the cage and the disturbance of the birdwhen it escaped.

1256. If a person informs against another person to an unjust ruler, or if he complains to him rightfully or not, causing the unjust ruler to take from him an asset without the right to do so, compensation is not due from the informer or the complainer, but on the asset-taker. The informer or the complainer have committed a sin if they did not have the right, and even sinned if they had the right but if the right could have been claimed through resorting to other authorities besides the unjust ruler.

1257. If someone disposes of his ownership lawfully, but causes damage to someone else's asset, no compensation is due from the first person unless his disposal was liable to harm the other if accompanied by negligence and failure to take careful measures, such as in the following cases:

a- Someone places a flower pot or water jug on his wall and is liable to fall, but he ignores this and it falls on another person's animal or his belongings and damages it.

b- Someone lights a fire within his property where it is liable to spread to another's crops, but he does not take measures to prevent its spread and it does spread to the crops and burns them.

c- Someone opens a water tap within his property and the water is liable to flow into his neighbour's property and harm it, but nonetheless he does not take measures to prevent that and it flows into it and damages it.

However, if the jug was not liable to fall, nor was the fire or the water liable to spread or flow, but by accident it harms another person, no compensation for the damage is due from the owner of the jug or property.

1258. Compensation is due from the person who harms the road by the damage which he causes in others' asset, such as if he opens the water tap or fuel pump and a car slides and is damaged, or if he digs a ditch without taking the necessary measures to prevent others from falling into it, or similar acts that violate the rights of pedestrians.

(B) How to pay compensation

It has become clear that compensating for something that has been damaged can be effected by replacing it with a similar thing if it was a similar-type (*mithlī*) asset, or by its value if it was a value-type (*qīmī*) asset, the explanation of which is as follows:

First: Compensating with something similar

1259. According to the scholars, a 'similar-type' asset is: something belonging to a large group of similar things, but which have features that are different according to the different desires of people; or it is: something that is sought after for its kind (*naw'*) and type (*σ≅inf*, i.e. sub-kind), not an individual item. So when there are a lot of individual items but are similar in their fundamental features, these things are of a 'similar-type', such as wheat or lentils or other grains, goods manufactured in modern factories – tools, medicines, material, jewellery, watches, canned food etc to which the above definition applies.

When the kind is the same but the types (sub-groups) are different, such as wheat which has different species that are used differently according to people's tastes, the compensation must be with a similar in type. So a person who has damaged an amount of a certain type of wheat is not relieved of his responsibility unless he pays the same amount of the same type of wheat, not of another type. The same applies to grapes and raisins, and dates and unripe dates, for grapes will not be a valid compensation for raisins, nor type A of grapes for type B, and so on in similar examples.

1260. Value is not a valid replacement for paying with a similar item for a similar-type asset unless the person being compensated accepts this. The person paying the compensation must hasten to pay it without unnecessary delay, and if he does not have a similar item, it is obligatory on him to find one even by buying it at a price that is more than the price of the original, unless the excess in price is commonly regarded as too much to meet, in which case paying with similar item will no longer be obligatory and he may pay its value as compensation.

1261. If the similar item loses its financial value, such as if the damaged good is a currency that was later withdrawn from circulation, in this case the person who has done the damage is not relieved of his obligation by paying similar items that have no financial value any longer if the person being compensated does not accept this. Also, if the person who has done the damage refuses to wait until the value of the similar item goes up, which will mean that he will have to pay when the value is higher, he is allowed to pay the value at which it stood before cancellation if its value did not change during that period, otherwise it is sufficient for him to pay its value when the currency is no longer available.

Second: Compensating the value

1262. According to the scholars, a 'value-type' asset is: something this is unique and has no parallels that are similar to it in its fundamental features; or it is what is sought after as an individual item, not as a kind or type; this includes things like animals, certain foods, hand-made items such as craft-made paints and textiles, etc.

1263. Paying with a similar item is not a valid replacement for the value in value-type assets unless the person receiving the compensation accepts any individual item of the damaged kind. The person paying the compensation must hasten to pay the value without unnecessary delay; so if the market value throughout the period between misappropriating (*ghaσ≅b*) or damaging it and paying the compensation is the same, no problem; but if the market value changes – according to the different trends and changes in the supply and demand – he is obliged, then, to pay its value on the day of paying the compensation not the day that the damage was done. However, if the difference in value was due to the difference in place, such as if its value in the place where it was misappropriated was ten, and in the place where it was damaged five, and in the place where compensation is going to be paid is seven, compensation must be set at its value in the place of where it was damaged.

Section Fourteen

Power of Attorney

1264. A *wekāleh* is: a contract in which a person empowers another to act in his place in contracts, declarations or work in which it is valid that others carry it out. It must include proposal and acceptance using any words or acts that secure it.

1245. The power of attorney is a flexible/open type of contract between the two parties, so the authorised person (*wekīl*) has the right to relieve himself from the power of attorney's responsibility whenever he likes, whether the authorising person (*mowekkil*) is presentand/or knows or not; it is also the right of the authorising person to relieve the person with power of attorney in the same manner; however the actual activation of this release done by the authorising person is conditional upon the knowledge of the person with power of attorney. However, if one of them made it conditional on the other not to invalidate the *wekāleh* ever or for a certain period, it becomes obligatory to observe the condition, so if one of them violates what the condition implies, he has sinned, (but) it is an obligatory precaution on the two parties to observe the consequences of the relieving the other party or oneself of the power of attorney.

1266. The power of attorney is invalidated and cancelled – in addition to the situation of choosing to invalidate it by one of the two parties – by one of the following:

1- The death of the authorised person or the authorising person.

2- The permanent loss of sanity of one of them due to insanity or losing consciousness.

3- The finite change of circumstances of the subject of the transaction he is authorised to act on, such as if one party authorises the other to marry him to a woman but she dies or gets married.

4- The disposal of the authorising person that contradicts the given special power of attorney, such as being authorised by someone to sell his house for him, then the authorising person makes it as *waqf* or *hibeh*, or the authorising person accomplishes what he authorised him to do, such as authorising him to sell his house then he sells it before the authorised person does.

1267. The conditions of the two contracting parties are sanity, intention and free will, also the guardian's permission if the authorising person is a *momayyiz* child (one who has become aware of sexual things), and not being indicted for unreasonable conduct if the power of attorney involves financial matters; however a person indicted for bankruptcy is allowed to give power of attorney over his indicted assets, but the authorised person's disposal of the assetscannot go through during the period of indictment.
It is also valid if the *momayyiz* child is authorised (given power of attorney) without his guardian's permission.
The authorised person must be capable of attending to what he has been authorised to.

1268. The ability to fulfil the task is not conditional in the power of attorney, but it is allowed to make it pending something else, such as the contract making someone an authorized person if Moη≅ammed returns from his travel, or when the beginning of the month arrives; not to mention allowing it to be pending something that relates to the subject of the *wekāleh*, such as someone authorising another person to sell his house for him if its price rises, or in a certain given time, in which case he is not regarded as an authorised person, nor can his actions go through, until after the pending matter takes place.

1269. It is obligatory on the authorised person to limit his disposal to what the power of attorney covers explicitly or through wording or situation indicators, or what the contract implicitly implies.

1270. If the authorised person, in his work, violates what the authorising person has appointed him to do, the ruling shall be as follows:

1- **If his disposal contradicts what the power of attorney implies**, such as if it authorises him to sell a house but he rented it out or gave it away as a gift, in this case:

a- If this can be carried out as a *fo*δ≅≅*ūlī* (an inquisitive person who acts on behalf of another but without the latter's orders) act, such as in contracts, in this case its validity depends on the approval of the authorising person – if he approves it, it is valid, otherwise it is not valid.

b- If this cannot be carried out as a *fo*δ≅≅*ūlī* act, such as relieving a debtor from a debt or divorcing a wife, here his disposal is principally invalid and the acceptance of the authorising person cannot validate it.

2- **If his disposal does not contradict what the power of attorney implies**, but does so in some of its particularities specific to the task/transaction, such as if he was asked to sell something for cash but he sold it on the basis of a postponed payment, or to sell with a choice but he sold it without it, here also the validity of the transaction depends on the approval of the person authorising it.

1271. It is not allowed for the authorised person to benefit from the asset which he is authorised to sell, rent or dispose of under other transactions, in a way that does not match what the power of attorney implies without the permission of the authorising person, such as living in the house or wearing the clothes in question; if he does that, he has sinned but his power of attorney is not invalidated and his actions to carry out what he was authorised to do and executing them are valid. However, if he benefited in a way that contradicts what the power of attorney implies, in this case – as mentioned previously – the power of attorney gets invalidated and cancelled.

1272. The authorised person is entrusted with the authorising person's assets that are under his control, so compensation will not be due from him if some of it gets damaged when under his control, provided that this was not as a result of his negligence in preserving it nor violation of the limits which the authorising person had given him.

1273. It is allowed for he authorised person to take money for doing what he is authorised to, according to what he agrees on with the authorising person.

Addendum on the law profession

Since part of the law profession is that the lawyer/solicitor is authorised to carry out transactions and case presentations/defense in the courts, it is suitable to include here some of the relevant rulings relating to the power of attorney and other matters.

1274. There is no objection in the Sharī'ah to specialising in the law profession, through studying the man-legislated laws, even if they contradict the rulings of the Islamic Sharī'ah; however, there are, in practising the profession, some forbidden things as follows:

1- It is not allowed to offer legal advice to any Muslim who wants to do something that violates the Islamic Sharī'ah, nor to anyone who wants to usurp the right of another and inflict injustice on him, whether a Muslim or non-Muslim; this is also not allowed for anyone who wants to violate any of the laws enforced to protect public order, whether in an Islamic state or any other, such as the laws for preserving the environment, public safety and the like.

2- It is not allowed for the lawyer to be an authorised by a Muslim nor others to carry out transactions that are forbidden for Muslims, such as selling alcoholic beverages, pork or *ribā* (interest), or other things mentioned in the forbidden acts (nos. 844-862).

3- It is not allowed that the lawyer takes on lawsuits which the authorising person has no right to pursue according to the Sharī'ah, and even lawsuits which he does have the right to pursue if the case is to be set before an unjust judge, unless his right cannot be obtained by resorting to judge other than the unjust one.

4- It is not allowed for the lawyer to use means prohibited by the Sharī'ah in order to win a rightful case for his client, such as lying, forging, false witness, bribes etc, even if obtaining justice depended on these. It is also not allowed for him to do these things to prevent harm

coming to his client or to rescue him from the unjust ruler unless a greater evil is the alternative and the oppressed fails to defend himself.

Section Fifteen

Admission

Al-Iqrār

1275. *Iqrār* is: the person's admitting of the right of others over him, such as debt, or a connection in which – often – a right is due from him to others, such as admitting his marriage to a particular woman, so meeting her maintenance becomes his due, or abnegating a right that he

has over another, such as admitting that Moη≅ammed does not owe him anything, in a way in which no contradictory claim is heard from him, and this is given precedence over all evidence including (solid) proof (*bayyineh*).

1276. An admission does not depend on being involved in a dispute or when presenting a case in a court, and it is valid even if not declared in front the Islamic authority.

1277. Decisiveness is conditional for the admission to be valid, so if it involves doubt or possibilities, such as saying: 'I think or I think it probable that you have this right over me', then it is not admission.

1278. If someone admitted something for someone, it is sufficient for it to go through if it is not denied by the other person, not to mention if he confirms his truthfulness; but if he denies it, the two declarations cancel each other, in which case the matter must be solved by resorting to other proofs if available, unless the other person (to whom the admission was directed) retracts from his denial in situations where retractions are acceptable, which apply in cases of shortcomings in the conditions of the admission , such as being forced, compelled, mistaken or similar things for which the person making the admission may be excused.

1279. Conditions for the person making the admission are sanity, and reasonable conduct (*roshd*) if the matter involves giving out assets; also conditional is intention and free will, in addition to not being indicted for bankruptcy if the matter relates to the assets on which the person in question was indicted; so his admission can go through for what the indictment does not cover, as can an admission of debt, or things that require payment of money such as (admitting) stealing; however to claim his asset, the person to whom the admission is directed should not be included among the creditors. The person to whom the admission is directed needs no qualifying conditions; in fact it is valid to make an admission to non-human things, such as the mosque or other things on which assets are spent.

1280. Reaching the Islamic legal age (being *bāligh*) is not conditional in the person making the admission, so the admission of a *momayyiz* child is valid, if he shows reasonable conduct in all things which the *bāligh*'s admission is valid; also it is not conditional that he is not suffering a terminal illness, so the admission of an sick person on his deathbed is valid.

1281. Two conditions must be met in the thing about which the admission is made:
1- It must be something that can be owned or done by both parties so that it can be binding; so it does not cover what a Muslim cannot own such as alcoholic beverages, unless the two parties are non-Muslims who regard it as allowable; also it does not cover any act that is forbidden.

2- It must be something which, in giving, involves hardship to the person making the admission and its consequence must hurt him, such as an admission relating to an asset or the right of someone over him, or renouncing his rights over others, or admitting things that result in punishment, such as adultery or stealing; but admission of any of such things that involves benefit to others is not accepted, such as admitting that Moη≅ammed owes 'Alī one thousand pounds, or admitting something the benefit of which is for him if the other party does not confirm it, such as admitting his marriage to a woman, making his admission binding on her to allow him sexual intercourse with her unless she does not confirm his admission , although he is bound to meet her expenses on the basis of his admission .

1282. If he admits the kinship of someone else to himself – a son, brother, uncle or the like – his admission goes through if his truthfulness is probable, with all the consequences that this admission has to the person to whom the admission is directed – maintenance, forbidding marriage, joining him in any inheritance he receives if the other person has a right to it; however, confirmation of the kinship, or otherwise, is explained later (no. 1424).

Section Sixteen

Oaths, Covenants and Vows

Al-Yemīn, Al-‘*Ahd* and An-Nathr

(A) Oaths

Making an oath is swearing by Allah, the Most High, on a certain thing; it takes two forms:

First: An oath relating to acts (*yemīn al-Inshā'*), which is swearing to do something or to abstain from doing something.

Second: An oath relating to information (*yemīn al-Ikhbār*), which is swearing that something happened or did not happen in the past or is happening or not happening in the present, so that to emphasise the truthfulness of the person providing this information.

An oath, of both types, is not done without words, so the intention alone is not sufficient. What is meant by words is swearing – using (the Arabic letters) '*bā*" or '*tā*" or others – by the name of God 'Allah' or another of His exalted names that are exclusive to Him, such as '*ar-Ra*η≅*mān*', '*al-Khāliq*', '*ar-Rāziq*' etc, or by the names that are not exclusive to Him but it is understood that it is He who is meant when used, such as '*wel-Lethī nefsī biyedih*' (by the One in whose Hand is my soul), '*rabb al-Arbāb*' (Lord of the lords) and the like. However, oaths using sacred entities other than Allah, such as the Prophet (sawa), his pure progeny (as), the Holy Qur'an, the sacred Ka'beh and others, do not secure a binding oath.

Each of the two types has specific rulings:

Part 1: Oaths relating to acts

1283. Conditions for the person taking the oath are:

1- The intention of doing the act or abstaining from the act mentioned in the oath.

2- Free will, so no oath is valid if forced.

3- He must be a *mokellef* (a person who is obliged to perform his religious duties) and hence must pass the usual conditions of sanity and having reached the Islamic legal age, so there is no validity in the oath of a child or the insane.

1284. The conditions of the act that is the subject of the oath are:

First: It must be preferable/positive in itself, such as taking an oath to do a duty or a recommended thing, or to abstain from a forbidden act or an act that it is recommended to abstain from (*mekrūh*), or any worldly act that is preferable/positive in itself. However, acts that are neutral in their nature, so that there is no preference (nothing essentially positive) in them, cannot be the subject of an oath, not to mention negative acts, such as if a person swears to verbally abuse or abandon someone or the like.

Second: The oath must relate to the person taking the oath, so if it relates to another, it has no effect, nor is it binding on the other person, such as if someone makes an oath that another person should eat his food, which is called '*yemīn al-Monāshedeh*' (the oath of asking).

Third: The person must be capable of carrying out the act, and that is at the time of the act, so if he swears to do something or to abstain from it which is possible then it becomes not possible at the time of carrying it out, the oath is invalidated.

Fourth: If the father does not object to the son's oath, or the husband to the wife's, the oath is valid; so if the father objects to his son's taking an oath or a husband his wife's taking an oath, the oath is invalidated.

Fifth: It must not be made subject to God's will as part of the intention, such as if someone swears then says '*Inshā' Allāh*' (God-willing); but if his intention was just for blessings, the oath is valid and binding.

1285. It is forbidden for the person to disobey the oath; disobedience occurs if he abstains from what he swore to do or by doing what he swore to abstain from doing, which is called '*η≅inth al- Yemīn* (breaking his promised oath). In this case, – in addition to the sin – atonement (*kaffāreh*) is due, which is: freeing a slave, or feeding ten *miskīn*s (a *miskīn* is someone who is leading a harder life than the poor) or clothing them, and if he cannot do that, he must fast for three consecutive days.

Part 2: Oaths relating to information

1286. It is not allowed to swear giving false information, such as if a person says that something did take place when it did not, or the reverse. Whoever does this is committing two sins: the first is lying and the second is that he made Allah a false witness.

1287. It is not allowed to take an oath unless with knowledge, so thinking (*dhenn*) (not being certain) that something is true is not sufficient.

1288. It is allowed to make a false oath (commit a perjury) if obtaining a more important interest or preventing a more important evil depend on it, such as if stopping injustice from being inflicted on a Muslim, or his assets or honour even if he was able to resort to deliberate ambiguity (*tawriyeh*).

(B) Vows

1289. A vow is: establishing a commitment to do something or abstain from doing it for Allah, the Most High. It is not established unless using the wording that declares it, such as saying: '*Li-Llāh 'alayyeh nathron an ātī bi-Σ≅alāt al-Layl*' (I vow to Allah that I shall pray the night prayers) or '*Li-Llāh 'alayyeh nathron an atrok al-Mekrūh al-Folānī*' (I vow to Allah that I shall abstain from the *mekrūh* so and so) or the like; so if the vow form does not contain the word 'Allah' or a word similar to it, the vow is not established, such as if a person only says: '*Nathron 'alayyeh an af'ala kethā*' (I vow to do so and so).
The conditions of the person establishing the vow and the subject of the vow – including the atonement – are the same as for the oath and its atonement. There are two differences however:

First: The husband's permission is not conditional in the wife's vow unless if it violates his rights and the vow was established when married; but if the vow was established before marriage, the husband has no right to stop his wife from fulfilling the vow even if it is violating his rights.

Second: The father's permission is not conditional for the validity of the son's vow; that said, if he forbids him from carrying out the vow that would result in the father fearing for his son, such as travelling to dangerous places, in this case the vow is invalidated.

(C) Covenants

1290. A covenant is: when a person establishes a covenant (promise) to Allah, the Most High, to do something or to abstain from doing it. This is not established unless carried out using the wording that declares it, such as saying: '*'Ahedto-Llāh an af'ala kethā ...*' (I have declared a covenant to Allah to do so and so …) or '*O'āhido-Llāh ...*' (I declare a covenant to Allah …) and the like.

1291. The subject of the covenant must be preferable/positive, so it is not valid if it is neutral without any positive aspect, as in oaths.

1292. Covenants differ to oaths in two things:

First: There is no right for the father or the husband to invalidate the covenant.

Second: The atonement for breaking the covenant is feeding sixty *miskīn*s, freeing a slave or fasting for two consecutive months.

1293. As a covenant is valid on something that is done and actual, such as establishing a covenant to Allah to offer a certain prayer in any case; it is also valid to make a covenant pending a particular matter, such as saying: '*'Ahedto-Llāh te'ālā 'alā an oσ≅ellī 'ishrīna rak'aten in shofīto min meredī*' (I am declaring a covenant to Allah the Most High that I shall pray twenty *rak'ah*s if I am cured of my illness.)

Section Seventeen

Atonements

Al-Kaffārāt

A *kaffāreh* (atonement) in the Sharī‘ah is the name for the means by which a person who has committed a sin or an error offers repentance, such as alms, fasting or the like. Its rulings are as follows:

1294. Atonement is obligatory on a *mokellef* (a person who is obliged to perform his religious duties) when he does the following:

1- **Breaking the fast in the daytime during an obligatory fasting** – here there are two situations:

a- Intentionally breaking the fast – even if with a forbidden act – in the daytime in Ramadan without an excuse; its atonement is freeing a slave, or fasting for two consecutive months or feeding sixty *miskīn*s, but if the person in question is unable to do any of these, he has the choice of fasting for eighteen days or giving whatever alms he can, and if he is unable even to do this, he should ask forgiveness from Allah, the Most High.

b- Intentionally breaking the fast after *zewāl* (the moment the sun starts moving towards sunset at the time that is exactly in the middle between sunrise and sunset) during the day of an obligatory *qeδ≅≅ā'* fasting (i.e. outside the time set for the act) for what one failed to fast during Ramadan; its atonement is feeding ten *miskīns*, but if he is unable to do this, he must fast for three days, and if he is unable to do even this, he should ask forgiveness from Allah.

2- **Killing a sacred soul** – here there are two cases:

a- Intentional killing, the atonement for which is combining all the three: freeing a slave, fasting for two consecutive months and feeding sixty *miskīn*s, but if he is unable to carry out some of them, he should ask God for forgiveness instead and carry out the rest, but if he is unable even to carry out any of those, asking forgiveness once is sufficient for all.

b- Unlawful killing without malice aforethought (manslaughter), which may be similar to intentional killing, the atonement for which is freeing a slave, but if he is unable to do so, he must fast for two consecutive months, and if he is unable to do that, he must feed sixty *miskīn*s, and if he is unable to do that, he must fast for eighteen days in addition to asking forgiveness, but if he is unable to fast, asking forgiveness will be sufficient.

Atonement is obligatory in intentional killing even if the person killed had a (Sharī‘ah) execution ruling against him, if he kills him without the permission of the Islamic authority. Moreover, atonement is obligatory on every individual of a group if they all participated in killing him intentionally or unlawfully by manslaughter.

3- **Invalidating *i‘tikāf* (staying in a state of worship exclusively, usually in a mosque, for a given period) through sexual intercourse during the night** – here it is an obligatory precaution to arrange its atonement like that for a wrongful killing; that is, he must first free a slave, but if cannot he must fast for two consecutive months, and if he cannot do that he must feed sixty *miskīns*, and if he cannot do that he must combine fasting for eighteen days and asking Allah's forgiveness, but if he is unable to fast in this case asking forgiveness is sufficient.

4- ***Modhāhereh* of the wife** (i.e. declaring one's wife as one's mother, so abstaining from any sexual act with her, which is forbidden); the atonement for this is the same as for unlawful killing. In addition to that, if he is unable to feed *miskīns*, he must fast for eighteen days, but if he cannot he should ask Allah forgiveness instead.

5- **Breaking an oath or the like** – here the *kaffāreh* is different as follows:

a- Breaking an oath (*yemīn*), part of which is *īlā'* (which is swearing to abstain from sexual intercourse with the wife) and breaking a vow (*nathr*) (which includes breaking a vow to fast on a certain day); the atonement here is: freeing a slave or feeding ten *miskīn*s or clothing them, but if he is unable to do this he must fast for three days, but if he cannot do that, asking Allah's forgiveness is sufficient.

b- Breaking a covenant, the atonement for which is like that of breaking the fast of one day of Ramadan, including the ruling regarding being unable to do it.

6- **Being unable to carry out a fast for which one has made a vow**; here it is an obligatory precaution for its atonement to give as alms (*σ≅edekeh*) one *modd* (three quarters of a kilogram) of food every day to a *miskīn*, or to give two *modd*s (i.e. one and a half kilograms) to fast on his behalf if the *miskīn* accepts.

7- Committing some acts that are forbidden for a person in *iη≅rām* (a state of abstention from many normally allowed things, when performing certain rituals, on certain days of pilgrimage) in pilgrimage or *'omreh*, or committing what is forbidden to be done within the *η≅arām* (the area delineated by specific borders within Mecca) even by a person not in *iη≅rām*, which are several things listed and explained in the book Menāsik al-H≅ajj (The Pilgrimage Rituals).

1295. Atonement is obligatory in the different situations – except killing – only if the act calling for it was carried out by a person with his full knowledge, intention and free will, so it is not obligatory if carried out through lack of awareness or attention, or under force or duress, or out of ignorance of the prohibition. For killing, however, atonement is obligatory in both intentional and manslaughter cases as mentioned previously. It is also obligatory – as a precaution – when being unable to carry out a vowed fast even though one has an excuse.

1296. It is not obligatory to hasten to carry out the atonement in all mentioned cases, except for intentional killing – to harden its *kaffāreh* – where one has the ability to carry out even some of it. That said, it is not allowed to delay what is not obligatory to hasten to carry out to a time when one is regarded as negligent about carrying out the duty, in which case – if the person in question delays in this way – he has sinned and he must hasten to carry it out.

1297. The atonement choice of freeing a slave played an important role in freeing the slaves, thus wiping out that phenomenon gradually, but it is not available in this time; therefore it is cancelled in the situations where it is obligatory and the person needs to ask Allah for forgiveness instead. However, if it was a choice or comes in an ordered list of the atonement choices, in this case (the ruling is certainly that) he should choose another or to move to another when unable to perform it.

1298. In fasting for two months, consecutiveness is obligatory, and sufficient to achieve that is fasting for the days of the first month and the first day of the second month, not the rest of its days which he may fast on separately, except in the case of the atonement of intentional killing in which the consecutiveness must run right through the full sixty days. It is also an obligatory precaution to fast on three consecutive days for the obligatory three days of the atonement resorted to when unable to carry out the atonement of *qeδ≅≅ā'* fasting and the atonement for breaking an oath or a vow. However, fasting for eighteen days need not be consecutive.

1299. The two months of atonement fasting are lunar months, whether complete or incomplete], so if a person starts fasting from the first day of the month, he should continue until the end of the (lunar) month and regard it as a full month even if it was incomplete. However, if he started fasting during the month, in this case it is not sufficient to regard it as full when it ends up as incomplete , but he must observe it (i.e. fast) for thirty days.

1300. When offering atonement by feeding, it must feed sixty *miskīn*s, that is: it is a must to divide each atonement over sixty shares to give one share to every *miskīn*; it is not allowed to make one (complete) atonement for less than sixty *miskīn*s.

1301. There is no distinction between the young and adult in being regarded as poor (*miskīn*) if the feeding is done by handing the food over, so a young person is to be given one *modd* like an adult; however, if the feeding is done so as to satisfy hunger, in this case one should count each two young people as one adult if all the invited people are young, and this is an obligatory precaution if they are both young people and adults. Also, inviting a young person to feed does not require the permission of his guardian unless inviting him violates the rights of the guardian.

1302. The clothing that may be given as atonement instead of the feeding must be commonly regarded as clothes, the minimum of which must cover what is commonly covered in a man's body and a woman's body even when she is at home. It must also be free of holes and raggedness, even if not new, and must be sewn or the like, such as matted or woven; but it is allowed – here – to hand over to the person the material and to pay the tailoring charge to whomsoever he is certain will carry out the tailoring. It is also conditional that the clothing should be suitable for the sex and age of the poor (*miskīn*).

1303. There is no specific form for asking God forgiveness, but it is sufficient to say '*asteghfirol-Llāh*' (I ask Allah forgiveness); and the better the asking, the better is his forgiveness.

1304. In each choice of atonement, the intention of *qorbeh* to God (nearness to God by compliance to his commands) is obligatory; so is the intention that the act is atonement. However, when resorting to an alternative atonement, there intention that this is an alternative is not obligatory.

Section Eighteen

Food and Drink

Al-Aτ≅ʻimeh and *Al-Ashribeh*

Included in this section is what is eaten or drunk through the mouth as well as what goes into the interior of the body through the nose or throat in exceptional cases, and it covers what is inhaled and smoked and enters into the vessels of the body, which are all included under the terms ‘taking’or 'ingesting’. In the sections regarding possession of the allowed things, it was mentioned what is forbidden to be eaten from animals, but there remain certain matters that we shall explain here.

1305. It is forbidden to ingest the following:

1- **Inherently-impure things**, whether solid or liquid, except in compelling cases – this was mentioned in the purity section. It is also forbidden to take allowed pure things that have become impure before purifying them – this was detailed in the purity section.

2- **Substances causing drunkenness or affecting the mental powers**, whether **liquid** , such as alcoholic beverages and beer and other chemical or natural fluids that cause drunkenness, such as ‘ industrial alcohol’ (fluids used in wound-cleaning, building work etc, but used by some instead of alcoholic beverages), however small the amount drunk, or **solid**, such as drugs.

It is also forbidden – as an obligatory precaution – to ingest grape juice if it was boiled over fire without two thirds of it having been evaporated off, but if two thirds of it has been evaporated off, it becomes allowed to eat and drink it. And if it, or any other fruit juice, has been boiled, or prepared for boiling, by any means other than by fire so that it becomes alcoholic beverage, in this case it will be definitely forbidden to drink and shall not be allowed unless it changes into vinegar.

3- **Whatever leads to harm** to the soul or body to an extent appreciable to any sane person who would strive to stop it befalling them, even if it was not considerable, such as taking preparations that lead to the embryo abortion, or to a loss in a bodily function, such as blindness and paralysis and all ailments that are less dangerous than that, such as losing one eye, limping, kidney failure and the like. Also forbidden is any cause of harm which the sane people strive not to fall into, such as tobacco, whether by smoking it or chewing it, in the light of what has been established by the specialists in terms of the many harmful effects that result from it. This is in addition to the prohibition of taking anything that leads to annihilation and death, such as poisons and the like.

There is no difference, regarding the prohibition of ingesting a harmful substance to the extent described above, between things in which harm is known and certain and those in which harm is thought possible, even if probable to an extent appreciable to the sane so that it causes fear. There is also no difference between the case where the effected harm is quick and direct and the case where the body is liable to harm after some time. Also, there is no difference in taking a large or small quantity if – in both cases – it leads to harm, but if a small quantity poses no danger of harm, then it is not forbidden to take it.

4- **The soil mixed with water** called ‘mud’, even pure soil and pure sand as an obligatory precaution, regardless of it being harmful or not. It is also forbidden to take the pure residues of animals even if they are ruled as pure, including camel’s urine as an obligatory precaution, also blood that is ruled pure, such as that left from the slaughtered animal, even blood which exists in the vessels found in the meat pieces – if it is in an appreciable quantity – after it comes out as a result of the cutting, but not if the quantity is small where the meat pieces are only slightly stained by it.

5- **Substances owned by others**: it is forbidden to eat or drink them without their acceptance.

1306. It is allowed to ingest what the Sharī‘ah has prohibited to avoid something that causes fear of harm or calls for medical treatment to takes place, according to the following situations:

1- Protecting one’s self from death from hunger or thirst.

2- Protecting one's self from falling into weakness that prevents one from meeting one's normal needs, something which leads to intense difficulty that cannot normally be withstood.

3- Protecting one's self from the causes of illness to the extent that it is not allowed to expose one's self to them as described previously, or for fear of the existing illness worsening, becoming more complicated or the treatment becoming longer or harder.

4- Substances on which treatment from illness depends if the harm resulting from it (the illness) is something which sane people strive to protect themselves from, so this does not include simple passing pain that is not difficult to withstood, such as occasional headache, occasional itch/rash, stomach pain and the like which people have become used to in their lives one way or another. In addition, allowing forbidden substances in the four above situations is not limited to fear for one's self, but it is also allowed to take a forbidden substance in cases where one fears for a sacred soul who is dependant on one, such as the fear of a pregnant woman for her embryo and the breastfeeding woman for her baby.

5- Whatever safety from what he fears depends on, in both situations of being forced and dangerous, for himself, his honour or appreciable assets, or for a sacred soul who is important to him, such as his wife and children where abstaining from protecting them causes very intense difficulty that cannot be withstood; the same goes for the rest of believers if his obligation to protect them is more important – or of the same importance – as taking the forbidden substance.

1307. It is not allowed to commit a forbidden thing in the situations 1, 2 and 3 of the previous entry (no. 1306), which can go under the title of 'state of being compelled', unless this state is forced on him, so if out of his free will he placed himself in the way of what he fears, these forbidden things will not be allowed for him unless after his repentance and firm decision not to fall into similar acts. Also, it is not allowed to commit these forbidden things for anyone who has openly rebelled against the infallible Imam (as) or his special or general appointed representative/deputy, nor to bandits who transgress on Muslims' streets and their public security, until after their repentance.
Also, in every case where the danger, evil or intense difficulty can be stopped through allowed things, it is not allowed for the person to commit a forbidden thing at all.
It is also not allowed to commit a forbidden act for treatment from illness unless the medicine or treatment is limited to this option alone, except for drinking the urine of the three animals: camels, cows and sheep/goats in all their kinds, for medical treatment.

1308. It is allowed for the ill to seek treatment by things that cause harm if this is to prevent what is more harmful, such as amputating a limb to stop the spread of a disease that leads to death, and so on.

1309. Where it is allowed, when compelled to do so, to take other people's assets without their permission, it is obligatory to pay compensation for what one takes, as explained in the section on compensating for damage (section 13).

SUB-PART THREE

Marriage and Family

Section One

The Marital Relationship

Prelude
The Man-Woman Relationship

Marriage is one of the things which the Holy Qur'an and the exalted Sonneh have encouraged owing to its importance in the happiness of the individual and the survival of the human race; Allah, Most High, said: '**Another of His signs is that He created spouses from among yourselves for you to live with in tranquillity and He ordained love and kindness between you; there truly are signs in this for those who reflect**' 30:21. It was narrated that the Prophet Moη≅ammed (sawa) said: '**Marriage is part of my Sonneh (way), so whoever abstains from my Sonneh is not of (does not belong to) me**'; and: '**He who gets married has secured half of his religion, so let him be God-fearing regarding the other half**.'
We wished, before commencing the explanations of the rulings of marriage, to explain what is allowed and what is forbidden in the sexual relationship between man and woman, as follows:

First: What is forbidden for men with men

1310. Sexual intercourse (*loāτ≅*) between men is forbidden; this takes place when the member (penis) or part of it enters in the anus of another male, whether the latter is an adult or not, alive or dead, sane or insane, married (*mohσ≅in*) or not, and whether they are both Muslims or one a Muslim and the other a non-Muslim. Punishment – which is death – is to be carried out on both men when the necessary conditions are met.

1311. *Tefkhīth* ('thighing'; intercrural sex) is forbidden, which is a man seeking pleasure with another man by inserting his penis between the other's thighs without entering his anus, whether with ejaculation or without. It is not *loāτ≅*, but it is forbidden, and the punishment for both men is *jeld* (beating) with one hundred lashes, whether both of them were Muslims or not (only one of them is a Muslim), married or not. No distinction is made if the *mofakhkhathth* (the one whose thighs are the subject of this act) is an adult or not, sane or insane, alive or dead.

1312. It is forbidden for the man to sleep with another man under one cover without a partition between them if they are naked, unless this is unavoidable, whether for pleasure or not; *ta'zīr* (disciplinary punishment) is due on them according to the opinion of the Islamic authority.

1313. It is forbidden for the man to look at any organ of another man or to touch it with pleasure and desire with any of his organs, such as by kissing, caressing and the like, whether the organ is a private part (*'awreh*) or another; whoever kisses a non adult with desire is to be punished by one hundred lashes if the offender is in a state of *iη≅rām* (abstention from many allowed things in certain days during pilgrimage) for pilgrimage or *'omreh*, but if not in *iη≅rām* then according to what the Islamic authority sees as appropriate. If without pleasure, however, it is not forbidden to look at or to touch anything except the *'awreh*, from outside or under the clothes.

1314. What is meant by the term '*teleththoth* (with pleasure) *wa shehweh* (desire)' – as mentioned in the last entry and as will appear frequently in the following entries – is: touching or looking in a manner that causes the arousal of the sexual instinct and its movement inside one's self, especially if it is manifested by things like an erection in the male

or similar physical responses in the female. However, the mere admiration of what a person sees is not considered a look of desire.

Second: What is forbidden for women with women

1315. *Soŋ≅āq* is forbidden for women, which is rubbing her sexual organ with that of another woman, whether the other woman is adult or not, sane or insane, whether they are both Muslims or not (only one of them is a Muslim), both married or not. The two offenders deserve, when conditions are met, the punishment for *soŋ≅āq*, which is either *jeld* or death.

1316. It is forbidden for the woman to sleep with another woman under one cover if they are naked and with no partition between them; *ta'zīr* will be due on them according to the Islamic authority, whether their offence was with or without pleasure, with or without looking.

1317. It is forbidden for the woman to look at or touch with any of her organs any organ of another woman if it is with pleasure and desire, with things such as kissing, touching and looking, whether the organ is a private part (*'awreh*) or another. If without pleasure, however, none of these are forbidden except touching the private parts (*'awreh*), whether from outside the clothes or without them. In addition to looking at the *'awreh*, it is not allowed to touch it in normal situations, as was mentioned in the purification rulings.

Third: What is forbidden for men and women with each other

1318. Sexual intercourse is forbidden between a man and a woman without a marriage contract that shows their mutual agreement/consent and makes their marriage legitimate; without this, adultery is regarded as having taken place if the man's member (penis) or part of it enters the woman's vagina or anus with intention and awareness. Punishment for the unmarried offender is *jeld* with one hundred lashes, and for the married offender it is *rejm* (hurling stones) until death, and no distinction is made in this if both are Muslims or one a Muslim and one non-Muslim; if they are both non-Muslims, the Islamic authority has the choice of either punishing them or handing them over to the people of their religion to punish them as appropriate in their law.
There are many adultery rulings that relates to adultery committed by the elderly, with unmarriageable relatives (*meŋ≅ārim*), a woman under duress etc, which shall be detailed in the sections on punishments.

1319. If a man and a woman who are not married are found naked under one cover without partition between them, they deserve a *jeld* punishment according to the judgement of the Islamic authority.
And if a man slipped into the bed of a woman he is not married to while she is in that bed, he must receive disciplinary punishment (*ta'zīr*) according to what the Islamic authority sees as suitable, even if he was not naked when he did it.

1320. It is forbidden for both of the man and the woman – unless they are married or unmarriageable relatives – to touch any organ of the other with any of their organs with intention and awareness even if it is without desire if the touching occurs directly without the partition provided by clothes or the like; while it is allowed for the unmarriageable relative – man or woman – to touch the body of the other of their unmarriageable relatives without desire except the private parts (*'awreh*). It is also allowed for the man and woman who are unmarried to each other to touch, from outside the clothes, as is common in some countries, such as some women putting their hands on men's shoulders when greeting them, or the like, on the condition that this is done without pleasure or desire.
It is allowed for the husband to touch with any of his organs any of his wife's organs – which is something readily known.
There is no difference, in forbidding touching as mentioned above, if the other person is a Muslim or not, a young person or very old.

1321. Excepted from prohibitted forms of touching mentioned above are two situations:

First: Compelling cases that allows touching the body of a non-unmarriageable person including the *'awreh*, such in cases of medical treatment, rescuing from drowning, being

forced or exposed to harm and other similar situations in which one cannot avoid touching. What is meant by 'harm' here is: all health dangers that sane people strive to avoid, even if the pain can be withstood, not to mention if it leads to death or dangers that are similar to death, such as losing vital organs and dangerous diseases. What is meant by 'being forced' here is: whatever involves threatening with death or similar or with less than that in terms of bodily or psychological pain on the person's body, honour or the body or honour of individuals with whom he is concerned; in these situations, it is sufficient to experience the mere fear that the threatening person is going to implement his threat, not to mention if the threatened person is certain that harm is going to befall them.

Second: Situations of intense difficulty that the person cannot withstand, such as where one fears shame and scandal, or where the believer will be subject to humiliation that is going to harm his sanctity among people.

In the first group of situations, no distinction is made in allowing the touching between the private'awreh and the rest of the body. However, in the situations when one is compelled to allow touching of the *'awreh*, one has to give preference to the kinship over the others, when possible. The second group of situations is limited to the situations that involve intense difficulty, such as shaking hands and the like.

1322. It is allowed for the woman to look at the body, except the *'awreh*, of a man who is not her husband, without pleasure and desire, whether the man is an unmarriageable relative or not. That said, it is better for her to limit her looking to the non-unmarriageable and at what men normally show of their bodies, which is: the head, neck, part of the chest, the two arms to the upper arm, the two feet and some of the legs, and the like according to what is normal in every society even if it is more than this. However, it is not allowed for her to look at the *'awreh*, neither in the unmarriageable man nor others, except in the compelling situations mentioned in the previous entry.

1323. It is not allowed for the man to look at any part other than the face, hands and feet of the non-unmarriageable woman who abides by the cover obligatory on her if that shows more than these when she is unaware due to strong wind or the like, whether it is a question of the *'awreh* or other parts, and whether the looking is with desire or not. The same rulings applies to the non-Muslim woman in what she observes in covering her body, also the unveiled Muslim woman who does not respond positively if she is enjoined to abandon her unveiled state or is ordered to cover herself; for both of these women, it is not allowed for the man to look – even if without desire – at the areas of their bodies that they cover in normal circumstances, although they may uncover them at certain times, such as when playing sports or swimming. However, what the non-Muslim woman – and the unveiled Muslim woman – are used to uncover of their body, including what they actually uncover at certain times, it is allowed to look at without desire.

It is also allowed for someone who is not giving medical treatment to look at what the adherent woman uncovers of her body for the necessity of treatment to the extent needed for that necessity for the rest of people other than the person carrying out the treatment, although it is better for the believer not to look, and especially not to keep looking. This is the ruling regarding the non-unmarriageable women; however, it is allowed for a man to look at an unmarriageable woman, such as his mother, sister, daughter and the rest of them, and to look at the whole of their bodies except the *'awreh* without pleasure and desire, although it is better to abstain from looking at the area between the navel and the knees.

1324. We mentioned in the purification rulings the rulings about looking at the *'awreh* of a man or a woman, and especially what is meant by *'awreh*, the ruling regarding the *'awreh* of the child and the insane, the ruling regarding looking at pictures of the *'awreh*, the rulings in the situations where looking is allowed, in addition to other connected matters, so as to explain the rulings which relate to the person purifying from *η≅adeth*. All that we mentioned there is useful here and we encourage you/the reader go back to it so as to check what we do not find necessary to repeat here (see nos. 91-95.)

1325. An exception to the prohibition of looking at what the woman covers of her body is permissible if the man wants to marry a particular woman; in this case he is allowed to see her following parts (*me η≅āsin*), which are: the face, hair, neck, forearms and legs. It is not conditional that this takes place with her permission, and the status of it being allowed will not be affected if his desire is stirred as a result of this looking, as long as it is unintentional; it is also allowed to repeat the looking until the aim is fulfilled. As the man is allowed to look at her in this way, she is allowed to enable him to do so and to show these parts of her in front of him.

1326. It is allowed for the woman to be present where a man is, in all fields that people should be present for their affairs and needs, whether this relates to their worldly matters, such as medicine, education, industry, public services and other fields of life that can involve both men and women and that need the presence of both of them, or whether this relates to their hereafter in the different acts of worship, such as their presence in mosques, the tombs of the exalted, places of the pilgrimage ritual and so on, where obligatory or recommended acts are performed. However, Islamic rulings and manners must be observed to secure for that mixing of genders the required chasteness and respectfulness.

Fourth: What is forbidden for the person with himself

1327. It is forbidden for a man to do anything to himself that causes the release of semen in what is called '*istimnā*" (masturbation), whether by pressing or rubbing his penis, reading or saying dissolute words or seeing or imagining sexual activities, or otherwise, unless if for health needs, such as if he is compelled to drive semen out when suffering from illness the treatment of which depends on examining it, and masturbation by the wife's hand is not possible, or a wife was not available. However, if this is for treatment of impotence and to try to achieve a pregnancy, masturbation for that is not allowed, unless the impotence is caused by a certain disease and he wants to treat the disease to try for a pregnancy, then he is allowed as long as there is a disease to treat. That said, if abstaining from treating the impotence causes intense difficulty, as is often the case, then it is allowed to masturbate, even if there is no disease involved to treat.

Regarding sexual acts that are less than that, such as doing, imagining or saying what leads to an erection, or such as if he touches or looks at his body with desire, then, although it is allowed when he is certain that no ejaculation will takes place as a result, it is something that one should abstain from due to its unfavourable effects on the believer's spirituality.

Chapter One

Characteristics of the Spouses/Husband and Wife

(A) Suitability (*kefā'ah*) in religion

1328. It is not allowed for the Muslim woman to marry a non-Muslim, even if they are still young, whether the man is from the People of the Book or not, or a *mortedd* (apostate/deserter) who is either *'an fi*τ≅*reh* (a born-Muslim deserting Islam after *bolūgh*) or *'an milleh* (a born-non-Muslim deserting Islam after embracing it after *bolūgh*), and whether the marriage is a permanent marriage or a term marriage. In the case where a Muslim woman who is still a Muslim marries a non-Muslim, she is regarded – in the Sharī'ah – as an adulterer and her children are illegitimate, but if she insists on staying with him – in spite of that – she is not regarded as a *mortedd* unless she believes in non-Muslim beliefs and embraces them as her religion.

1329. It is not allowed for the Muslim man to marry an atheist woman, nor a *mortedd* from Islam to other religions – including if her *irtidād* (becoming a *mortedd*) was to Judaism or Christianity – whether her *irtidad* was either *'an fi*τ≅*reh* (a born-Muslim deserting Islam after *bolūgh*) or *'an milleh* (a born-non-Muslim deserting Islam after embracing it after *bolūgh*); even the Zoroastrian (*Mejūsī*) woman as an obligatory precaution. With the woman from the People of the Book – Jews and Christians –however, marrying her in a term (*mot'ah*) marriage is allowed, but marrying her in a permanent marriage is allowed only as long as it is not in the presence of a Muslim second wife, in which case the man must get the permission of the Muslim wife; although it is better to abstain from marrying a woman from the People of the Book in both cases (on her own or upon the permission of the Muslim second wife), since it might affect the religious and spiritual stability of the family.

1330. Just as atheism prevents marriage when it (atheism) exists at the start, its occurrence during marriage invalidates the marriage in general as will be explained.

1331. There is no objection that the man or woman marries another who follows a different school of thought if they are not *nā*σ≅*ibī* (a person who is an enemy of the progeny of the Prophet (sawa) who are Fāτ≅imah (as) and the twelve Imams (as)) or *moghālī* (a person who has false beliefs (exaggerates in his belief) that the twelve Imams (as) have some divine attributes or powers) and it is not feared that marriage would affect the adherence to the truth in which they believe.

1332. It is more appropriate for each of the man and woman to choose for their marriage someone who has belief and good morals, and to abstain from marrying from amongst non-believers, especially if he is bad mannered and drinks alcohol. It was narrated that the Prophet (sawa) said: **'If (it is) someone whose piety and manners meet your satisfaction, then accept his marriage proposal; and if you do not do that a *fitneh* (= test of unfavourable consequences) and great corruption will take place,'** and he said: **'Whoever drinks alcohol after Allah prohibited it through ''my tongue'' (i.e. my commands) is not worthy of marrying (the woman) when he proposes.'** It was also narrated that he (sawa) said: **'Beware of *khe*δ≅≅*ra' ad-Diman*!' So, they asked him: 'What is *khe*δ≅≅*ra' ad-Diman*?' He said: 'The beautiful woman who was brought up in a bad environment.'**

(B) Relatives whom it is forbidden to marry

This is to explain the rulings relating to marriage with relatives, some of whom are related through ancestry and kinship (*neseb*, i.e. cousins etc), some through breastfeeding and some through marriage (*σ≅ihr* or *mo*σ≅*āhereh*, i.e. in-laws).

Part 1: Who is forbidden due to ancestry and kinship (*neseb*)

1333. It is forbidden for seven types of women to marry seven types of men:

1- The mother, who is, in addition to the immediate mother –: every female from which the two parents have been born, and so on upwards through the line of ancestry, so this covers a

man's grandmother from his father's side and grandmother from his mother's side and his great-grandmother from his father's side and great-grandmother from his mother's side, and so on. Also forbidden to marry her are all males to whom she gave birth and males who are the children of her male or female children and so on downwards in the line of ancestry through her grandsons and granddaughters, such as her immediate son, her grandson from her son's side, her grandson from her daughter's side, her great-grandson from her son's side and her great-grandson from her daughter's side, and so on.

2- The daughter, who is: the immediate female born to the man and all grandchildren who were born to his sons or daughters, so forbidden for the father is his immediate daughter, also forbidden for him is whoever to whom he is her grandfather from the father's side and grandfather from the mother's side – and so on upwards through the line of ancestry – i.e. the daughter of his son and the daughter of his daughter, the daughter of the son of his son, the daughter of the son of his daughter, the daughter of the daughter of his son, the daughter of the daughter of his daughter, and so on down the connected ancestry in both male and female or mixed lines; so whenever there is a female that has been born in his ancestry, she is regarded as a daughter to him and unmarriageable.

3- The sister, who is forbidden to her brother from her two parents, or from her mother only (i.e. half-brother) or her father only (i.e. half-brother).

4- The niece (on the brother's side), who is: every female that belongs by birth to the immediate family of his brother from both of his parents, from his father only or his mother only, or by birth from his nephews and their children however the line of ancestry continues, whether all those in the line are male, all are female or mixed, such as the daughter of his brother's son, the daughter of his brother's daughter, and the like; so a woman is forbidden to her uncle (father's side – *'amm* in Arabic), her father's uncle (father's side), her mother's uncle (on her father's side), her grandfather's uncle (father's side) or her grandmother's uncle (father's side), and so on wherever the ancestry of this brotherhood from her parents and grandparents into which she was born continues upwards.

5- The niece (on the sister's side), who is: every female that belongs by birth to immediate or more distant family of his sister from both of his parents, from his father only or his mother only. So a woman is forbidden to her uncle (mother's side), her father's uncle (on his mother's side – *khāl* in Arabic), her mother's uncle (mother's side) and her grandfather's uncle (mother's side), as detailed regarding the niece from the brother's side.

6- The aunt (on the father's side – *'ammeh* in Arabic), who is: every female that is a sister to the person's immediate father or a sister to one of his father's fathers or mother's fathers, and so on upwards through the line of ancestry, whether she is his sister from both his parents or from one of them only. So, a woman is forbidden to her nephew (brother's side), the son of her nephew (brother's side) and the son of her niece (brother's side). In other words: it is forbidden for the man to marry his aunt (father's side), his father's aunt (father's side), his mother's aunt (on her father's side), his father-side and mother-side grandfather's aunt (father's side), his father-side and mother-side grandmother's aunt (father's side), and so on wherever the line of ancestry of the fathers from his father's or mother's side continues upwards.

7- The aunt (on the mother's side – *khāleh* in Arabic), who is: every female that is a sister to his immediate mother or to one of his mother's father's or mother's mothers and so on upwards through the mother's line of ancestry, as detailed in the aunt (father's side).

1334. A brother's sister or a sister's sister is not always unmarriageable: if you have a brother or a sister from your father from a wife other than your mother, and his wife has a daughter from a man other than your father, in this case this daughter is your brother's sister from his mother, but not your sister neither from your father nor mother, so she is not an unmarriageable woman. Apart from this situation, your brother's sister and your sister's sister is always your sister provided that she is related to you from your father's side, mother's side or both of them.

1335. In most cases, your aunt's aunts, from both your father's side and mother's side, are your aunts; however, this is not always the case. An example of the aunt (on the father's side) is: if a woman is a sister to your father from his mother only, she is definitely your aunt, and since the father of this aunt of yours is not your grandfather, therefore his (the grandfather's) sister is an aunt (father's side) of your aunt, but she is not your aunt as long as her father is not a grandfather of yours. An example of the aunt (on mother's side) is: if a woman is a sister to your mother from her father only, she is definitely your aunt, and since the mother of this aunt of yours is not your grandmother, therefore her (the grandmother's) sister is an aunt (mother's side) of your aunt, but not your aunt as long as her mother is not a grandmother of yours.
Although such matters contain difficulty, they become clear after reflection and thinking; we mention them here only because they face people regarding the intermingling of relations and kinship.

1336. The matter in ancestry and kinship (*neseb*) is not different when it is the result of valid marriage as opposed to adultery or intercourse of dubious legality (*wa τ≅' shobheh*), which we are going to discuss later in this section (no. 1419).

Part 2 : Who is forbidden due to breastfeeding (*reδ≅≅ā'*)
If a baby was breastfed the milk of a woman who did not give birth to him in a way that is subject to conditions which will be mentioned later, then because of this breastfeeding, a kinship takes place between this breastfed baby (*reδī'*) and a number of men and women that makes it forbidden for them to marry each other; since this must be observed when choosing a spouse, it is essential to know in detail who is forbidden through breastfeeding so that the rulings can be followed. (See no. 1435 and after for the conditions of breastfeeding.)
So if breastfeeding that meets the condition is established, the so-called 'milk owner' (*σ≅ā η≅ib al-Leben*) – who is the husband of the breastfeeding woman, whose milk resulted from her pregnancy from him – is a father to the breastfed baby and the breastfeeding woman a mother, and a relationship results which we discuss as follows:

First: Who is forbidden from the side of the milk owner and the breastfeeding woman

1337. Forbidden to the **breastfed male** are several women:

1- The breastfeeding woman, since she is his mother through breastfeeding.

2- The breastfeeding woman's mother and so on upwards through the line of ancestry, whether biological or through breastfeeding, since a woman can be his grandmother through breastfeeding.

3- The biological daughters of the breastfeeding woman, because they are his sisters through breastfeeding; however, her daughters through breastfeeding whom she breastfed using the milk 'owned' by a man other than the one whose milk he was breastfed on are not forbidden to him; this is based on the condition – that will be discussed – that the milk owner must be the same for the prohibition of marriage between two breastfed persons.

4- The biological and breastfeeding daughters of the children of the biological children – males and females – of the breastfeeding woman, since the breastfed person will either be their uncle (father's side, i.e. *'amm*) or uncle (mother's side, i.e. *khāl*) through breastfeeding.

5- The breastfeeding woman's sisters, even if through breastfeeding, since they are the breastfed person's aunts (mother's side, i.e. *khalat*).

6- The breastfeeding woman's aunts (mother's and father's sides) and the aunts (mother's and father's sides) of her fathers and mothers, biological or through breastfeeding, since they are aunts (father's side, i.e. *'ammāt*) or aunts (mother's side, i.e. *khālāt*) of the breastfed person through breastfeeding.

7- The daughters, biological or through breastfeeding, of the milk owner, within or outside his immediate family, because the breastfed person will either be their brother, or uncle (father's side or mother's side) through breastfeeding.

8- The mothers, biological or through breastfeeding, of the milk owner, because they are the breastfed person's grandmothers through breastfeeding.

9- The sisters, biological or through breastfeeding, of the milk owner, because they are the breastfed person's aunts (father's side) through breastfeeding.

10- The aunts (father's side and mother's side) of the milk owner and the aunts (father's side and mother's side) of his father and mother, biological or through breastfeeding, because they are the breastfed person's aunts (father's side or mother's side) through breastfeeding.

1338. Forbidden to the **breastfed female** are several men:

1- The milk owner, since he is her father through breastfeeding.

2- The milk owner's fathers, biological or through breastfeeding, since they are her grandfathers through breastfeeding.

3- Sons, biological or through breastfeeding, of the milk owner wherever the line of ancestry continues downwards, because she is their sister or aunt (father's side or mother's side) through breastfeeding.

4- The biological and breastfeeding brothers of the milk owner; since they are the breastfed person's uncles (father's side) through breastfeeding.

5- The milk owner's uncles (mother's and father's sides) and the uncles (mother's and father's sides) of his fathers and mothers, biological or through breastfeeding, since they are uncles (father's side, i.e. *a'mām*) or uncles (mother's side, i.e. *akhwāl*) of the breastfed person through breastfeeding.

6- The breastfeeding woman's brothers, biological or through breastfeeding, since they are the breastfed person's uncles (mother's side, i.e. *akhwāl*).

7- The fathers, biological or through breastfeeding, of the breastfeeding woman, because they are her grandfathers through breastfeeding.

8- The biological sons of the breastfeeding woman, because they are the breastfed person's brothers through breastfeeding.

However, the breastfeeding woman's sons through breastfeeding whom she breastfed using the milk of a man other than the one whose milk the breastfed person was breastfed from are not forbidden to her on the basis of the condition cited in 1337 paragraph 3.

9- The sons, biological or through breastfeeding, of the children of the biological children, males and females, of the breastfeeding woman, because the breastfed person will be their aunt (father's side) or aunt (mother's side) through breastfeeding.

10- The uncles (father's side and mother's side) of the breastfeeding woman and the uncles (father's side and mother's side) of her fathers and mothers, biological or through breastfeeding, because they are the breastfed person's uncles (father's side or mother's side) through breastfeeding.

Second: Who is forbidden from the side of the breastfed person

1339. A number of the relatives, men and women, of the breastfed person – male or female – are forbidden to the breastfeeding woman and the milk owner and to some of their relatives, as follows:

1- The breastfeeding woman is forbidden to the sons of the breastfed male or female, since she is their grandmother through breastfeeding.

2- The daughters of the breastfed person, male or female, are forbidden to the milk owner, since he is their grandfather through breastfeeding.

3- Forbidden to the father of the breastfed person, male or female, are the breastfeeding woman's biological daughters; however, the breastfeeding woman's daughters through breastfeeding are not forbidden to the father of the breastfed person, male or female, except in the case of 'milk unity' which occurs when both her daughters and this breastfed male are fedby her breastfeeding, in which case it goes to no. (4) below, in which the father of the breastfed male is not forbidden to the children of the milk owner except from the angle of precaution that must be observed. 4- According to the traditional ruling, the daughters,

biological or through breastfeeding, of the milk owner are forbiddento the father of the male or female breastfed person; (but) it seems that this in fact is not forbidden, although abstaining from this is more suitable as a precaution.

5- The milk owner's mother, his grandmothers, the breastfeeding woman's mother and her grandmothers are forbidden to the sons of the male or female breastfed person, because they are their grandmothers through breastfeeding.

6- The male or female breastfed person's daughters are forbidden to the fathers of the milk owner and the fathers of the breastfeeding woman, because they are their grandfathers through breastfeeding.

7- The sisters of the milk owner and the sisters of the breastfeeding woman, their aunts (father's side), their aunts (mother's side), aunts (father's side and mother's side) of their fathers and mothers are forbidden to the sons of the male or female breastfed person, because they are their aunts (father's side or mother's side) through breastfeeding.

8- The daughters of the male or female breastfed person are forbidden to the brothers of the milk owner and of the breastfeeding woman, their uncles (father's side), uncles (mother's side), uncles (father's side and mother's side) of their fathers and mothers, because they are their uncles (father's side or mother's side) through breastfeeding.

9- The daughters, biological and through breastfeeding, of the milk owner are forbidden to the sons of the male or female breastfed person, since to them they are nephews (brother's side or sister's side) through breastfeeding.

10- The biological daughters of the breastfeeding woman are forbidden to the sons of the male or female breastfed person, since to them they are nephews (brother's side or sister's side) through breastfeeding.

11- The daughters of the male or female breastfed person are forbidden to the sons, biological or through breastfeeding, of the milk owner, since to them they are nieces (brother's side and sister's side) through breastfeeding.

12- The daughters of the male or female breastfed person are forbidden to the biological sons of the breastfeeding woman, because to them they are nieces (brother's side or sister's side) through breastfeeding.

1340. It has been explained – in the previous entry – who is forbidden among the relatives of the breastfed person to his two parents through breastfeeding and their relatives, but it is appropriate – to clarify more – to list who are not forbidden to them, as follows:

1- The breastfeeding woman is not forbidden to the father of the male or female breastfed person, nor to their brothers, grandfathers, uncles (father's and mother's sides) or the uncles (father's and mother's sides) of their fathers and mothers.

2- The mother of the male or female breastfed person is not forbidden to the milk owner, nor their sisters, grandmothers, aunts (father's and mother's sides) and the aunts (father's and mother's sides) of their fathers and mothers.

3- The mother of the male or female breastfed person and their grandmothers are not forbidden to the fathers of the milk owner, nor his brothers, uncles (father's and mother's sides) or the uncles (father's and mother's sides) of his fathers and mothers.

4- The milk owner's mother, his sisters, aunts (father's and mother's sides) and the aunts (father's and mother's sides) of his fathers and mothers are not forbidden to the father of the male or female breastfed person or their grandfathers.

5- The mother of the male or female breastfed person and their grandmothers are not forbidden to the breastfeeding woman's fathers, brothers, uncles (father's and mother's sides) or the uncles (father's and mother's sides) of her fathers and mothers.

6- The breastfeeding woman's mothers, sisters, aunts (father's and mother's sides) and the aunts (father's and mother's sides) of his fathers and mothers are not forbidden to the father of the male or female breastfed person or their grandfathers.

7- The sisters of the male or female breastfed person, aunts (father's and mother's sides) and the aunts (father's and mother's sides) of their fathers and mothers are not forbidden to the

milk owner's father, grandfathers, brothers, uncles (father's and mother's sides) or the uncles (father's and mother's sides) of their fathers and mothers.

8- The milk owner's mothers, sisters, aunts (father's and mother's sides) and aunts (father's and mother's sides) of their fathers and mothers are not forbidden to the brothers of the male or female breastfed person, nor their uncles (father's and mother's sides) or the uncles (father's and mother's sides) of their fathers and mothers.

9- The sisters of the male or female breastfed person, aunts (father's and mother's sides) and the aunts (father's and mother's sides) of their fathers and mothers are not forbidden to the breastfeeding woman's father, grandfathers, brothers, uncles (father's and mother's sides) or the uncles (father's and mother's sides) of their fathers and mothers.

10- The breastfeeding woman's mothers, sisters, aunts (father's and mother's sides) and aunts (father's and mother's sides) of their fathers and mothers are not forbidden to the brothers of the male or female breastfed person, nor their uncles (father's and mother's sides) or the uncles (father's and mother's sides) of their fathers and mothers.

11- The sisters of the male or female breastfed person are not forbidden to the sons and grandsons of the milk owner nor the sons and grandsons of the breastfeeding woman.

12- The daughters and granddaughters of the milk owner and the daughters and granddaughters of the breastfeeding woman are not forbidden to the brothers of the male or female breastfed person.

13- If a breastfed female becomes forbidden to a breastfed male as a result of being fed milk that relates to one man; this does not lead to forbidding the sisters of any of them on the brothers of the other.

It has been mentioned earlier that forbidding the children of the milk owner to the father of the male or female breastfed person is a precaution that should not be overlooked (i.e. must be observed).

1341. As is mentioned earlier, allowing the marriage of the brothers of the male or female breastfed person to the children of both the breastfeeding woman and the milk owner is limited to the situation where there is no obstacle – biological/ancestral or otherwise (e.g. marriage) – to such marriage; otherwise it is not allowed, such as if the male or female breastfed person's brothers are children of the milk owner's daughter, in which case they are nephews (sister's side) to the children of the milk owner and the breastfeeding woman.

1342. In terms of the status of being forbidden due to breastfeeding, no distinction is madebetween the breastfeeding taking place before the contract or after it.

1343. If a man accepts that a non-unmarriageable woman is forbidden to him due to breastfeeding, and it is possible that this is the truth, he is not allowed to marry her. And if he claims that she is forbidden after his contract to her, and the woman believes him, the contract becomes invalid and a dowry of a similar contract (*mahr al-Mithl*) is due to her if he has already married (had intercourse with) her and she was not aware of forbidden status then; however, if he has not had intercourse with her, or if he has had intercourse with her knowledge of the forbidden status, in this case no dowry is due to her.

The same ruling applies if a woman accepts the forbidden status of a man to her, with the same details.

Part 3: Who is forbidden due to marriage (*mosāhereh*)

These are the rulings regarding kinship formed when one person marries another, and which makes marriage to certain individuals permanently forbidden, while to the others temporarily forbidden, depending on the continuity of the marriage of the first person; the terms given to these are '*al-H≅ormeh jem'an*' (collective prohibition) as opposed to '*al-H≅ormeh 'aynen*' (particular prohibition). All this is explained as follows:

First: Who it is permanently forbidden to be married to (particular prohibition)

1344. It is forbidden for a son to marry his step-mother, and also wives of his grandfathers (father's side and mother's side) and so on upwards through the line of ancestry, whether he is

a biological son or son through breastfeeding, and whether the marriage of the father or grandfather to the woman in question was permanent or term, and whether the wife has had sexual intercourse with the husband or not. However, if the man married her when he was on his deathbed, then died before having sexual intercourse with her, in this case she is not forbidden to marry his sons.

1345. It is forbidden for the father to marry his son's wife; it is also forbidden for the grandfather – father's or mother's side – to marry the wife of his grandson and so on downwards through the line of ancestry, whether his status of fatherhood is biological or through breastfeeding, and whether the marriage is permanent or term, and whether the son has had sexual intercourse with his wife or not.

1346. It is forbidden for the husband to marry his wife's mother, also her grandmother – father's and mother's side – and so on upwards through the line of ancestry, whether their motherhood is biological or through breastfeeding, and whether his marriage to the daughter is permanent or term, whether the wife is young or adult, and whether she has had sexual intercourse with him or not.

1347. It is forbidden for the husband to marry the daughter of his wife who has had sexual intercourse with him; this is a permanent particular prohibition; also forbidden are the daughters of her daughter and daughters of her son and so on downwards through the line of ancestry. Also forbidden to him is the daughter of his wife even if he has not had sexual intercourse with her mother, as long as the mother is still his wife; but if the mother dies or is divorced before he has had sexual intercourse with her, he is allowed to marry the daughter. But for the husband's son or father, the daughter is not forbidden to them at all, whether the husband has had sexual intercourse with the mother or not.

1348. In forbidding the marriage of the daughter of the wife who has had sexual intercourse with her husband (to that husband), there is no difference between the daughter who existed during the time of the mother's marriage and the daughter who was born after the mother's marriage to the first husband ended; so if she marries someone else and gives birth to a daughter from the other husband, this daughter would be forbidden to the first husband. Also, regarding the daughter who exists during the time of her mother's marriage, there is no difference between the one who lives under the care of her mother's husband and the one who lives away from him.
On the pertinence of sexual intercourse, there is also no difference between the case where this is with his intention and free will and the case where he is forced to do so or unaware when it happened, nor between sexual intercourse in the vagina or in the anus. However, penetration must take place even if partial, so it is not sufficient to have ejaculation on the outside of the vagina even if the woman gets pregnant as a result.

Second: Who it is temporarily forbidden to be married to (collective prohibition)
What is meant by this involves an explanation of the individuals to whom it is forbidden to marry through a collective prohibition, which is one in which the prohibition is temporary and depends on the continuity of the marriage of the first person, but if they separate, the person is allowed to marry someone else who was previously under prohibition, or that allowing the marriage to go ahead is subject to the permission of one of them.

1349. It is not allowed for the man to marry his wife's sister as long as her sister is still his wife, whether her sister is biological or through breastfeeding, and whether his marriage to the first or second sister is permanent or term, and whether he has had sexual intercourse with the first or not. So if he establishes a contract with the second sister after a contract with the first, he has sinned and the contract with the second is invalid; and if he establishes a contract – himself or through his proxy – with both of them at the same time, both contracts are invalid. In all cases, his contract with the second does not lead to her permanent prohibition, and the contract with her is valid after he separates from her sister.

1350. Just as a contract with the sister is forbidden during her sister's marriage to him, it is also forbidden for him to enter a contract with her if her sister is going through her revocable

divorce 'marriage-abstention period' (*'iddet τ≅elāq raj'ī*), because she is still regarded as a wife until her marriage-abstention period elapses, while a contract with the sister during her sister's irrevocable divorce 'marriage-abstention period' (*'iddet τ≅elāq bā'in*) is valid. This also applies to the marriage-abstention period after a term marriage where it is allowed to marry the sister before the end of the marriage-abstention period of her term-married sister.

1351. It is not valid that a man enters into a contract with his wife's niece (brother's side, i.e. *bint akh*) when he is married to her aunt (father's side), nor his wife's niece (sister's side, i.e. *bint okht*) when he is married to her aunt (mother's side), unless the aunt (father's side) or the aunt (mother's side) gives permission and acceptance. Here, no distinction is made as to whether the two marriages are permanent, term or mixed (i.e. one permanent and one term), nor between the aunt's knowledge or ignorance about the matter when the contract is being made, nor between being informed about it or not informed at all, so if he marries them without their permission, the validity will depend on their permission: if they grant permission, it is validated, otherwise it is invalidated.

There is no difference in the aunts (father's and mother's sides) being related biologically or through breastfeeding, nor being immediate family or more distant amongst the aunts (father's and mother's sides) of the fathers and mothers of the nieces (brother's and sister's sides).

1352. It has become clear from the previous entry that the situation of the ruling is that if the contract with the aunt (father's or mother's side) is concluded before the contract with the niece (brother's or sister's side) – or if the situation is opposite so that his contract with the aunt (father's or mother's side) is concluded after his marriage to her niece (brother's or sister's side) – the validity of the marriage of the niece will not depend on the satisfaction of the aunt (father's or mother's side); also, the validity of the marriage of the aunt (father's or mother's side) will not depend on the satisfaction of the niece (brother's and sister's sides), but the contract will be valid and goes through.

1353. The ruling of the obligation to obtain the permission of the aunt (father's or mother's side) is not limited to the situation that they are actual wives, but it also covers the situation if they were divorced during the marriage-abstention period of a revocable divorce, even during the marriage-abstention period of a *mot'ah* (term marriage) as an obligatory precaution. However, obtaining their permission is not obligatory if they are during the marriage-abstention period of an irrevocable divorce.

(C) Who it is forbidden to be married to for reasons other than kinship

Who it is forbidden to be married to due to an illegitimate contract or sexual intercourse

We mean by this who becomes forbidden to the other either: because of an actual sexual relationship between that person and another which (the relationship) is forbidden at the outset (such as adultery with some unmarriageable individuals, a married woman, a divorcee in her marriage-abstention period or homosexuals); or because of an act that is regarded as a prerequisite -for a sexual relationship with them, such as a contract with a married woman or a divorcee in her marriage-abstention period, or a contract while in *iη≅rām* in pilgrimage. This is detailed as follows:

First: The ruling regarding contracts with married women or adultery with them

1354. A contract with a married woman is forbidden as long as she is still married to her husband; the ruling regarding such contract is:

1- If a man enters into that contract with her knowing that she was married, he has sinned, the contract is invalid, and he will be permanently forbidden from marrying her if she separates from her husband, even if the contracting person has not had sexual intercourse with her.

2- If he enters into the contract not knowing that a contract with a married woman is forbidden, or not knowing that she is married, he has not sinned; his contract with her is invalid in any case, but she will not permanently forbidden to him, even if he has had sexual

intercourse with her, although it is better to abstain from marrying her if he has had sexual intercourse with her.
There is no consequence to the knowledge of the woman about the forbidden ruling of entering a contract with her, but it is the knowledge or ignorance of the contracting man that is relied on. That said, she is a sinner and an adulterer if she knows. Also, there is no difference, for the implementation of this ruling, between the married woman being young or old, a Muslim or from the People of the Book, if she has had sexual intercourse with her husband or not, if her first marriage was term or permanent, or whether her second contract is term or permanent.

1355. It is sufficient for permitting the contract if the woman did not know that she was married, and if he has doubts, he is not obliged to check the situation; and if he knows that she was married and she tells him that she has become free, he should believe her, provided that she is not accused of dishonest conduct, otherwise, it is an obligatory precaution to abstain from marrying her until he is certain of her truthfulness.

1356. If a man commits adultery with a married woman, it is more probable that a permanent prohibition between her and the adulterer is not confirmed at all, so the adulterous man is allowed to marry her after her divorce and the elapse of her marriage-abstention period, although it is better for the adulterous male to abstain from marrying her, especially if she went along with him (when they committed the sin).

The wife does not become forbidden to her husband if she commits adultery, even if she goes along with the adultery; her dowry is not cancelled by the adultery.

Second: The ruling regarding the contract with a woman during her marriage-abstention period, or with a woman with whom he committed adultery

1357. It is forbidden to enter a contract with a woman during her marriage-abstention period. The ruling regarding such an act is the same as that of a contract with a married woman; however the knowledge or ignorance of the woman during her marriage-abstention period – in addition to the man's knowledge or ignorance – will result in permanent prohibition or not; so if a woman during her marriage-abstention period knows that a contract with her is forbidden and the man does not know this, the permanent prohibition will be implemented from her side if she has sexual intercourse with him, not to mention the sin. And, regarding the woman in her marriage-abstention period, no distinction is made between the case in which the marriage-abstention period is after a revocable divorce, a irrevocable divorce or the husband's death.

1358. What we mentioned regarding the prohibition of the contract with a married woman is specific to the man other than her husband after divorce from whom she is spending her marriage-abstention period; her husband away from whom she is spending her marriage-abstention period, however, it is allowed to enter a contract with her during her marriage-abstention period after an irrevocable divorce without the need for her marriage-abstention period to finish; she can also enter a contract with him again if she was married to him by a term marriage (*mot'ah*) and the term has finished, or he released her from the rest of the term; the woman who is in her marriage-abstention period after a revocable divorce, however, is still regarded as a wife, so her husband can have her back, in the appropriate way, without a new contract.

1359. The ruling of adultery with a woman in her marriage-abstention period is not different to the ruling of adultery with a married woman in anything mentioned above; however the state of regarding it better for the adulterous man to abstain from marrying her is specific to the woman in her marriage-abstention period after a revocable divorce.

1360. It is not allowed to enter a contract with a woman whose husband has died during the period between the actual death and the arrival of the news of his death from which she begins her marriage-abstention period. So, if a man enters a contract with her – whether he knows of the situation or not –, then her husband's death came to be known during the contracting, the contract is invalidated; but she will not be forbidden to him even with

knowledge and sexual intercourse, although it is better to abstain from marrying her in the case of knowledge. However, if he committed adultery with her during that period, she will not be forbidden from him at all.

Third: The ruling regarding adultery with some unmarriageable individuals and others

1361. If a man commits adultery with his aunt (father's and mother's sides) – in the vagina or the anus – before making a contract with her daughter, her daughter will be forbidden to him as an obligatory precaution, but not if he commits adultery after the contract, and not if the intercourse was of dubious legality; the ruling is also not applicable if the act is less serious than intercourse, such as kissing, touching and the like.

1362. If he commits adultery with a woman – married or free – he will not be forbidden to marry her daughter later, although it is better to abstain from this. Also, the adulterous woman will not be forbidden to the adulterous man's father and so on upwards through the line of ancestry, nor to his son and so on downwards through the line of ancestry, although it is better to abstain from it here is as well.
However, if the adulterer himself marries her, if she was free from marriage to another man when he committed the adultery, there is no objection to that, provided that she repents and if she is not one who is 'famous' for adultery; otherwise it is an obligatory precaution to abstain from marrying her until she offers repentance for her adultery with him or for the profession of prostitution if she was 'famous'.

1363. There is no objection if a man other than the adulterous one marries the non-'famous' adulterer before her repentance, or even the 'famous' adulterer if she repents; otherwise it is an obligatory precaution to abstain from marrying her as well.

1364. It is an obligatory precaution on the man who wants to marry an adulterer not to enter a contract with her until the menses arrives if she is not pregnant, which is called '*istibrā*", whether he was the adulterer or someone else; and if she is pregnant, marrying her is allowed before she gives birth, even for the man who was not the adulterer.

Fourth: The consequence of homosexual intercourse (*loāτ≅*)

1365. If an adult male had sexual intercourse with a boy who has not reached the Islamic legal age, with his penis, even if partially, penetrating the anus, then it is an obligatory precaution that the adult is forbidden from marrying the boy's mother or her mother, and so on upwards through the line of ancestry, or (later) the boy's daughter and so on downwards through the line of ancestry, or his sister, as a permanent prohibition, without this being applicable to his other female relatives, on the condition that the homosexual intercourse took place before any contract with them, otherwise they will not be forbidden to him.

1366. The permanent prohibition is not applicable unless there is absolute certainty about the penetration, so if a man is doubtful about this, or only thought that he had penetrated, no consequence will ensue and he is allowed to marry the above-mentioned females.

Fifth: The consequence of *iη≅rām* on pilgrimage or *'omreh*

1367. It is forbidden for a man and a woman to enter a contract with each other, a permanent or term marriage, while in the state of *iη≅rām* on pilgrimage or *'omreh*, even if the other person is not in *iη≅rām*, or whether the person doing the contract is the person himself or his proxy, or whether the proxy is in a state of *iη≅rām* or not, or whether he authorized him before the *iη≅rām* or after it, or whether he is on an obligatory or recommended pilgrimage or *'omreh*, or performing pilgrimage for himself or on behalf of another person. So, if he carries out the contract in this situation, the contract is absolutely invalid; in addition it is a sin and, in the case of knowledge about the ruling and even if there is no sexual intercourse, the permanent prohibition of the other person will result.. That said, if it is discovered that the contract is invalid because it did not meet some conditions, then the man would have sinned but she would not be permanently forbidden to him.

1368. There is no objection if a man returns to his wife whom he divorced with a revocable divorce, when one or both of them is in the state of *iη≅rām*; there is no objection also to authorising someone who is not in *iη≅rām* or one who is in *iη≅rām* to carry out the contract after whichever of them was in *iη≅rām* leaves it.

Sixth: The number of wives

1369. It is not valid for a man to have more than four wives at the same time in permanent marriage; so if someone who has four wives enters a contract with a fifth wife, the contract is invalid, but she is not permanently forbidden to him. However, in a *mot'ah* (term) marriage, he is allowed to have more than four women over and above his four wives.

1370. If he divorces one of his four wives with a revocable divorce, he is not allowed to enter a contract with another until the elapse of her marriage-abstention period and until he is released of his marital bonds, but if he divorces her with an irrevocable divorce, he is allowed to do so.

Seventh: On marrying a divorcee for three times or nine times

1371. If a man divorces his wife three times, and twice she comes back to him, then he is forbidden to marry her after the third divorce unless in the meantime she marries someone else (with sexual intercourse), and the second husband separates from her with a divorce or otherwise, and her marriage-abstention period after this has elapsed.
Then if he marries her after the three divorces and he divorces her three more times, then someone else marries her and he then marries her again after him, then he did the same for a third time, resulting in a total of nine divorces, she will be permanently forbidden to him after that; we shall explain this in detail in the section on divorce (no. 1479).

Chapter Two

The Contract and the Contract Parties

(A) Form and conditions

1372. Marriage is established – in proposal (*Ījāb*) and acceptance (*qobūl*) – using any wording that people have been used to using to show the acceptance of the marriage, whether using Arabic or other languages, classical or slang Arabic, perfect or error-laden classical Arabic, by those who have command of Arabic or not; however, it is absolutely better and more perfect, for establishing the contract, to use correct classical Arabic, even if through authorising a proxy to do this on the behalf of one or both of the couple. What is meant by proposal (*Ījāb*) is that one of the two persons offers himself/herself for marriage to the other, while acceptance (*qobūl*) is the acceptance and satisfaction of the other of that offer. The most perfect form of the permanent marriage contract is as follows:

1- If the two are themselves establishing the contract, in this case the woman says to the man: '*Zewwejto nefsī bi-mahrin qedrohū kethā*' (I am marrying off myself (to you) at a dowry of so and so), then the man says after her immediately: '*Qebilt*' (I accept.)

2- If those establishing the contract are the authorised proxies, the form is as follows: the woman's proxy says first: '*Zewwejto moekkiletī folāneh moekkileka folānen bi-mahrin miqdārohū kethā*' (I am marrying off my authorising person so and so to your authorising person so and so at a dowry of so and so), then the man's proxy says after him immediately: '*Qebilto 'an moekkilī*' (I accept this on behalf of my authorising person.)

3- If one of them is the proxy while the other is the second party himself/herself, and often the proxy is for the woman, so the woman's proxy says: '*Zewwejtoka moekkiletī folāneh bil-Mahr al-Ma'lūm'* (I am marrying off my authorising person at the known dowry), then the man says: '*Qebilt*' (I accept.)

1373. It is not conditional in marriage contracts that the proposal precedes the acceptance, nor is it conditional that the proposal comes from the woman and the acceptance from the man; so if the woman says to the man: '*Innenī arδ≅≅ā bika zewjen lī*' (I accept you as a husband for me), then the man says: '*Zewwejtoki nefsī*' (I am marrying off myself to you) the marriage is established and valid. That said, it is better if the proposal precedes the acceptance and that the proposal is from the woman and the acceptance from the man.

1374. Permanent marriage is valid without mentioning the dowry, intentionally or out of lack of awareness, then once the man has sexual intercourse with his wife, a dowry of a similar woman will be due to her from him, but if no sexual intercourse takes place, nothing is due to her from him until he separates from her; then when if he separates from her through divorce without sexual intercourse, she will have money due from him, which is called '*mot'ah*' (lit. pleasure), which is a non-specified amount of money that both the rich and the poor pay, each according to his ability. However, if he separates from her through a means other than divorce, such as invalidation of the contract before sexual intercourse, or after the death of one of them before the other, nothing will be due to her from him.
If she cancels the dowry and gives it up, nothing is due from him.

1375. It is not obligatory on someone who is unable to speak to appoint someone who is able to do so as the authorised person in order to establish the contract; if he is able to write, this must be preferred over signs that show what is wanted will be sufficient.

1376. A marriage contract between a man and a woman can never be established in the manner known as '*mo'ā τ≅āt*' (handling/pursing upon a request); it must, rather, be carried out through a word-based contract (or the equivalent) that shows the acceptance of each one of them to marry the other – using their ability of speech, or using writing, or signs that can replace speech for someone who is unable to speak, as mentioned above.

1377. Conditions of the marriage contract are:

1- **Actuality and fulfilment**, so it is not valid to establish it pending the occurrence of something which is not certain to happen, such as the return of a traveller, nor something which will definitely happen, such as the birth of the new moon.

2- **Succession** (*mowālāt*) of the proposal and acceptance; what is the norm is sufficient in this.

3- **Specifying the two spouses** in a way that each of them is distinguished from any other by name, description or pointing to them; thus the contract is not valid when the two parties of the contract are not properly identified.

1378. It is not conditional that the contract, i.e. the proposal and acceptance, is done in one place, but it is valid to do it with distant parties – upon meeting the above conditions – in the way which each one of them hears the other, even if by telephone.

1379. It is not conditional, for the validity of the contract to have witnesses to the contract. However, it is recommended (*mostaη≅abb*).

1380. It is not conditional for the validity of the contract regarding the male who has reached the Islamic legal age (*bāligh*) and who is of reasonable conduct (*rāshid*) to have the permission of the father or the grandfather, on the father's side, nor similarly regarding the female who is *bāligheh* and *rāshideh/rashīd* if she is non-virgin (*thayyib* – divorcee or widow), also if she is virgin since the father's or grandfather's guardianship on her is cancelled by her *bolūgh* and *roshd*; however, it is better for the virgin to obtain the permission of her father or grandfather, on her father's side, and to abstain from marriage without his permission and acceptance; in fact, she should strive to obtain his permission and do her best in consulting experienced individuals so that she is not fooled (into the wrong choice).

1381. It is allowed for the two contracting persons to put in the marriage contract any reasonable and allowable conditions, except the condition of the choice of invalidation for one or both of them. So it is allowed for the woman to make it conditional on the man to continue her education, or to be a proxy for him to divorce herself from him, absolutely or in some situations, or that he does not marry another woman; or for the man to make it conditional on her to serve him, or to make him a partner with her in assets or business, etc. When the contract is established with all its conditions, it becomes obligatory to meet the conditions, and the person who does not has sinned but the contract does not become invalidated. The person who has set a condition is allowed to make the other meet their commitment to the condition with all legitimate means.

1382. If the marriage contract is established with all its conditions, it becomes binding, so it cannot be invalidated unless there is a defect; if that is the case, it is allowed for the other party to invalidate the contract, if discovered, or if something happens that invalidates the marriage, such as deserting the religion (*irtidād*), or one of them becoming permanently forbidden to the other by something like breastfeeding, or other things which we shall detail later.

1383. The conditions that should be observed in the contracting persons in the marriage contract are no different to the conditions of all other contracts and transactions – *bolūgh*, sanity, intention and free will.

1384. The father or the grandfather, on the father's side, has guardianship over the young male and young female who shows signs of insanity when young, and also over the young male and young female whose unreasonable conduct (*sefeh*) started when young. If unreasonable conduct affects all their affairs; the marriage of these young people may take place as follows:

1- It is allowed for the father and the grandfather, on the father's side, to marry off the young or the insane when there is an advantage or necessity for them to do so. The criterion for this is what sane people regard as an advantage or necessity, not the opinion of the guardian on his own; the knowledge of the guardian as a whole of the norm and trends is sufficient to gauge the opinions of sane people, since he is one of them. If after the marriage, it is discovered that

there is no advantage, the contract is invalidated, unless this discovery takes place after the young have reached the Islamic legal age or the insane becomes sane, in which case they may choose between continuing with the contract or invalidating it.

2- It is an obligatory precaution on the person with unreasonable conduct (*sefīh*) to obtain the permission of his father or grandfather, on the father's side, when he wants to get married, whether there is an advantage for the *sefīh* or not, or whether the marriage is necessary for him or not.

1385. A contract issued by someone who is not permitted to establish it, called a *fo*δ≅≅ *ūlī* contract (someone else established the contract without her knowledge), depends for its implementation over the person who is the subject of the contract on their permission, or the permission of whoever is acting on their behalf, such as their guardian. If it is assumed that one of the two parties of the contract is the original person and the other is the *fo*δ≅≅ *ūlī*, the original person will have the choice of invalidation in the period of waiting that precedes the acceptance of the contract by the other person for whom the contract was established in the *fo*δ≅≅ *ūlī* manner: if that person accepts it, the permission goes through and the contract becomes binding, whether it was preceded by a rejection or not.

1386. The implicit acceptance (i.e. without words or acts) is not sufficient for a contract from the *fo*δ≅≅ *ūlī*, but words or acts must take place to demonstrate the permission of the person for whom the contract was established in a *fo*δ≅≅ *ūlī* manner. It is not conditional for his accepting it that they do that immediately, but it goes through even if they delay it for any reason, however long the period, not to mention if the delay is for consultation and thinking about the matter.

(B) Invalidation (*bo*τ≅*dān*) and revocation (*feskh*)

Part 1: What leads to obligatory invalidation

First: *Irtidād*, which is the *bāligh* Muslim embracing a religion other than Islam, or his denial of one of the three fundamental principles of Islam (Oneness of God, the Prophethood and Day of Judgement), or his denial of some of the necessary beliefs that entails rejection of the words of the Prophet (sawa). The effect of *irtidād* on the marital relationship falls into two categories:

1387.

1- If the *irtidād* is *'an fi*τ≅*reh* (a born-Muslim deserting Islam after *bolūgh*), here the marriage is invalidated and the woman must observe a death marriage-abstention period (*'iddeh*), which means that they cannot return to each other even if he repents – or even if she repents if she deserted Islam with him – unless with new contract.

2- If his *irtidād* is *'an milleh* (a born-non-Muslim deserting Islam after embracing it after *bolūgh*), and the woman has not had sexual intercourse with him, or is young, or has reached menopause, in this case the marriage is invalid and she separates from him without a marriage-abstention period, and if they wish to return to each other after repentance, they must enter into a new contract. However, if she has had sexual intercourse, or is not young or has reached menopause, she must separate from him and observe a marriage-abstention period; then if he repents – and she repents with him if she also deserted the religion – during the marriage-abstention period, they are compelled to stay married; but if the marriage-abstention period elapses before repentance, the marriage invalidation will be regarded from the moment of *irtidād*, she separates from him completely and she is free to choose what to do after the marriage-abstention period; then if they want to return to each other, they need a new contract.

1388. If the *irtidād* befalls the wife not the husband, whether *'an fi*τ≅*reh* (a born-Muslim deserting Islam after *bolūgh*) or *'an milleh* (a born-non-Muslim deserting Islam after embracing it after *bolūgh*), here are two scenarios:

1- If she has not had sexual intercourse or has reached menopause, in this case her marriage is invalidated from the moment of *irtidād*, without the need for a marriage-abstention period. He must enter a new contract with her if she repents after this.

2- If she has had sexual intercourse and has not reached menopause, here her husband must separate from her for a divorce marriage-abstention period; then if she repents during that marriage-abstention period, they are compelled to stay married; but if she does not repent until after the period has elapsed, he is no longer allowed to marry her if her *irtidād* was to aetheism or idolism, even if to one of the People of the Book's religions as an obligatory precaution.

1389. If two non-Muslim spouses embrace Islam at the same time, their marriage stays as it is unless it is invalid due to other reasons; but if one of them embraces Islam after the other, the ruling regarding this is as follows:

a- If the husband who is from the People of the Book or an aestheist embraces Islam while the wife stays with her religion, here:

1- If she is from the People of the Book, their marriage remains valid.

2- If she is an atheist or idolater and he has not had sexual intercourse with her, the contract becomes invalid.

3- If she is an atheist or idolater and has had sexual intercourse with her, he must separate from her and wait the elapse of a divorce marriage-abstention period, then if she embraces Islam during that period they remain in their marriage, otherwise she separates from him.

b- The wife embraces Islam and her husband stays with his religion, here:

1- If she embraces Islam before she has had sexual intercourse with him, her marriage is invalidated.

2- If she embracesIslam after she has had sexual intercourse with him, she must separate from him for a divorce marriage-abstention period, then if he embraces Islam during it, they remain in their marriage; otherwise the invalidity of her marriage is regarded as taking place from the moment that she embraced Islam.

Second: Forbidden breastfeeding relationships, if they create a situation between the husband and his wife which prevents the marriage between them, such as the wife becoming a mother to the husband, a sister or the like. Such a situation is not often suffered except in some circumstances as follows:

1390. If the wife's biological mother breastfed one of the children of her daughter's husband, it is better to observe the precaution of separating the daughter from her husband, whether the breastfed baby was a child of her daughter or her husband's second wife, and whether she breastfed him from the milk of the father of this particular married daughter or the milk of a husband of the mother other than her father. (See note below.)

1391. If a man's wife breastfed with his milk the son or daughter of the husband of his daughter, biological or through breastfeeding, then it is better to observe the precaution of separating the daughter from her husband.

It must be noted, in this entry and the previous one, that this precaution entails also that she does not marry another man until after she is divorced from him and the elapse of her marriage-abstention period, regardless as to whether the baby was that of the daughter of the husband of the breastfeeding woman or his second wife.

1392. If a woman breastfed one of the children, male or female, of her son, in this case there is no prohibition between the son's wife and him, although his child will be his brother and some of the kinship consequences come into force.

Third: In terminal illness

1393. If someone who is ill establishes his marriage contract during his terminal illness, the contract will be valid and go through with all its consequences if he has sexual intercourse with her before his death; but if he dies before sexual intercourse, the contract becomes

invalidated and it is regarded as non-existent, so there is no dowry for the woman, nor inheritance, nor death marriage-abstention period, not even kinship through marriage, which affects the prohibition of marriage of his children after him etc. It also becomes invalid if the woman dies during his illness – even if she is not ill – before he has had sexual intercourse with her, if her husband dies from his illness after her, she does not get any dowry, nor would he inherit from her.

That said, if the husband is not ill and he marries a sick woman, then she dies before sexual intercourse, in this case the contract is valid with all its consequences.

Fourth: *Al-Li'ān* and similar matters

This will be detailed later.

Part 2: Causes of revocation

1394. The wife will have the choice of revorevoking the marriage contract if the husband suffers from one of the following defects:

1- Insanity, even if it comes in bouts, which is the psychological disease that causes the derangement of the mental faculty, but does not include the diseases of the brain and the nervous system, such as epilepsy and the like. The choice of revocation on the basis of insanity is conferred even if the insanity takes place after the contract, even if after sexual intercourse with the wife.

2- Penis amputation (*jebb*) which is the cutting off of the penis partially or wholly so that nothing is left with which sexual intercourse is possible, whether this takes place before the contract or after it, even if after sexual intercourse.

3- Impotence (*'anen*), which is the disease preventing the erection of the male organ so that the man is not able to penetrate for a long time or for any time at all; in this case the choice (of revocation) will be for her if this problem started before the contract, also if it reappears again after the contract but before sexual intercourse; if he manages to have sexual intercourse after the contract then impotence takes place, it is more probable that she would also have the choice, although precaution should be observed in adding divorce to the revocation in this last case. However, if the impotence is temporary and of a nature that may happen to men like him, then she will have no choice. The impotence which gives her the choice of revocation is his inability to get an erection when he wants to penetrate, so the conferment of the choice is not stopped by his erectile ability at times other than the time of penetration.

4- *Khiσ≅ā'* (being castrated) and *wijā'*, which are two defects of the testicles that cause infertility and impotence; the choice is conferred on the wife in these cases.

5, 6, 7- Leprosy (*jothām*), albinism (*beraσ≅*) and blindness. Leprosy is a disease in which there is disfigurement and wasting of affected parts, while albinism is a skin condition that comes out as whiteness that spreads across the skin. In all these three, the revocation choice is conferred whether they happened before the contract or happen after it, with knowledge of both of them. It is probable that the choice is conferred when any infectious disease occurs which makes the wife fear catching it herself, such as T.B. or AIDS and the like, although precaution should be observed to include divorce with the revocation in these circumstances.

1395. The choice of revocation of the contract will be conferred on the husband if the wife suffers from one of the following defects:

1- Insanity, in the way described above.

2- Blindness.

3- Disability due to paralysis or diseases that cause this; even limping, even if is not to the extent of disability, if it is obvious.

4- The *qern*, which is a piece of additional flesh or bone in the vagina – called (also) '*al-'afl*'; the criterion is that it should be interfering with the normal sexual relationship, even if not stopping it completely or preventing pregnancy.

5- *Ifδ≅≅ā'*, which is a deformation in the woman's vagina resulting from the urine or stool passage forming one passage with the menses passage, or the three forming one passage.

6- Leprosy, albinism, even any infectious disease, as previously mentioned, including the precaution of combining both the revocation and divorce with infectious diseases other than leprosy and albinism.
In conferring the revocation choice for the husband, no distinction is made as to whether the wife's defect existed before the contract or after it, nor whether it occurred before sexual intercourse or after it. However, it is better to include divorce in revocation in defects reappearing after the contract.

1396. The choice of revocation for cheating is conferred on the husband as in other contracts; this takes place in marriage when the defect of one of the two spouses, other than those that entail a choice of revocation, is deliberately concealed, whether this concealment is of something that is regarded as a defect because it is a deficiency in the body, such as being one-eyed, or an abnormal addition, such as a beard on the woman. Cheating has also taken place if the man wishing to get married is fooled that certain features that he is after are present in the woman, while in fact they are not, such as social status, wealth, virginity etc. Such concealment will have taken place when the description showed that the person was free from defects, or possessed the desired features, when the person doing the describing knew the presence of these defects or the absence of the desired features, so that the description became the basis for fooling of the person seeking marriage. However, if the description was not for marriage, or if it was for marriage but the description was given to someone other than the person seeking marriage, in this case it is not regarded as cheating and he or she is not responsible for cheating, although this is a forbidden form of lying. Cheating will have also taken place by not mentioning the defects in the situation where the other understands from it that the person is free from defects, leading him to go ahead as a result of this understanding, if the contract then takes place based on what the cheated person understood – explicitly or implicitly –, in this case he will have the choice of revocation.

1397. The choice of revocation due to cheating is conferred only when the marriage contract is based on freedom from defects, or on the presence of certain good features, either through declaring them as a condition, or through the agreement between those concerned at the time of the engagement, so that it was in their minds; then if something is discovered , the absence of which was agreed as a condition, or something is found missing, the presence of which was agreed as a condition, in this case the person who set the condition has the choice of either revoking the contract or accepting it as it is.

1398. If the person with the right to the choice relating to defects wants revocation, he must hasten – as is commonly accepted – to use it. But in the case of impotence, it is not valid for the woman to hasten to revoke the contract; instead she must turn to the Islamic authority so that he can give him one year starting from the time of her request; then if the husband manages to have sexual intercourse with her, her rightto revocation over this matter will be cancelled; otherwise she can exercise her choice after the elapse of the year.

1399. The permission of the Islamic authority is not conditional for revocation relating to defect, including if the defect is impotence. The woman may turn to the Islamic authority in the case of impotence only to set the date, then if a year elapses she is allowed to revoke the contract on her own, without turning to the Islamic authority.

1400. If the man revokes the contract – in an appropriate situation – because of one of the woman's defects, here there are two scenarios:

1- If the revocation takes place before sexual intercourse, then no dowry is due, nor a marriage-abstention period.

2- If the revocation takes place after sexual intercourse, then the full dowry is due to her and she must observe a marriage-abstention period, unless she is young (not *bāligheh*) or has reached the menopause.
This is if there is no cheating; but if there is cheating involved and the situation is uncovered by the man after sexual intercourse, then if the woman herself is the cheating person and she chooses revocation, no dowry is due to her and the man has the right to claim it back if he has

already paid it to her; but if he chooses to stay, then a full dowry will be due to her from him, unless the cheating concerned virginity and he discovered that she was not virgin. In this latter case, the man may deduct from the dowry the difference between the dowries of similar virgin and non-virgin women. However, if the cheating person is not the wife, in this case the agreed dowry will continue to be due from the husband as long as he had sexual intercourse with her; but he has the right after paying it to her to claim it back from the cheating person.

Chapter 3

The Consequences of Marriage

First: The dowry

1401. A dowry is not conditional for the validity of a permanent marriage contract, intentionally or out of lack of awareness; even if the husband intended not to pay it to her, this will not stop the validity of the marriage. The dowry should have a financial value as custom dictates, something which a Muslim is allowed to own, and the work – if the dowry is in the form of work to be done – must be allowed; the contents of dowry must be neither unclear nor unspecific (to be selected from among two or more things).

1402. The agreed dowry is due to the woman and she owns it as a result of the contract on its own; however her ownership of the whole of it will not be permanently confirmed unless with sexual intercourse – in the vagina or the anus – or whatever is similar, such as if he removes her hymen (defloration) by a method other than intercourse, even without her acceptance. However, if the man divorces his wife before sexual intercourse, half of the agreed dowry will be cancelled, leaving the other half of it for her.

Second: Maintenance (*nefeqeh*) and having pleasure (*istimtā'*)

1403. Two things are conferred as rights on the woman by her husband within valid permanent marriage:

1- That he meets the expenses of what she needs in her new life, including her food and drink, clothing, housing, make-up etc, cleaning and the needs of her visitors, who will be her relatives, and the like; also the needs of providing her with servants and equipment, the furniture she needs for her sleeping, sitting and the rest of her activities, and the rest of things which women in her society and country are accustomed to have in her situation, according to age, education and social status.

2- Sexual right, in which the husband is obliged to respond to her needs, if they are similar to what women like her normally need, regardless as to whether she is capable of refraining from sex and abstaining from forbidden acts when she is left sexually unsatisfied. **1404.** It is not obligatory for the husband to live with his permanent wife, nor to spend the night at her house, not to mention the term (*mot'ah*) wife. Also, if he has more than one permanent wife, it is not obligatory for him – in the beginning– to spend the night at their houses; but if he does spend the night at the house of one of them, he is obliged to spend the next night with the second, then the following night with the third, and so on, then on the fourth night he is not obliged to spend the night at the house of any of them, and is allowed to choose any one of them over the others.

1405. Sexual right is conferred on the husband by his wife, which is to make herself available for him and enable him to have pleasure with her in the way he likes with the scope of normal pleasure practices, except intercourse in the anus, which is an obligatory precaution to abstain from, evenduring her menses or *nifās* or otherwise. In this regard, he has the right over her that she does not leave his house except upon his permission if that contradicts his right to have pleasure sexually or just to have her company; so if her going out does not contradict this right, then it is not forbidden for her to go out without his permission, such as if he is out of the house for work, travel or the like.

1406. It is not obligatory for the wife to meet her obligation towards her husband in his right of having pleasure with her in the following situations:

1- If she has made it conditional not to let him indulge in any or some forms of pleasure, whether explicitly or implicitly, such as not letting him do this during the period between the contract and the wedding and her moving into the marital home, which in some countries is called the engagement period.

2- When ill, during which she has the right to refuse to the extent which the illness prevents it.

3- If the husband is not able to meet her expenses, or able but refuses to do that.

4- If what he wants are abnormal types of pleasure, even if they do not hurt. In all this, their relationship should be based on good company, love and observing the other's desires and tastes.

1407. It is not allowed for the husband in a permanent marriage to ejaculate semen outside the vagina except upon the permission of his wife; this is called '*'azl*' (lit. isolation/separation). Also she has no right to make it binding on him to do this, since it contradicts with his right to having pleasure – although she is not bound to pregnancy – unless she makes *'azl* conditional within a binding contract, in which case she can make it binding on him.

1408. For the establishment of a valid permanent marriage that meets all conditions between them, it is conditional to make it obligatory on the man to meet his wife's expenses; but he is not obliged to meet the expenses of a term wife, even if he lives with her and has children by her and their marriage continues for a long time, unless she has made this conditional in their term marriage contract.

Meeting the expenses of the woman – when all conditions are met – is due from the moment the contract is established and the marital bond is formed, even if he has not taken her as a bride to his house, unless he has made it conditional not to meet her expenses before her wedding, as will be explained. And if the woman was married off in the *fo*δ≅≅*ūlī* manner (someone else established the contract without her knowledge) then she accepted her marriage contract after a period of time, her maintenance will be counted from the moment of the contract, not the moment when she later accepted it.

1409. For the maintenance to be due to the wife, she must meet her obligation regarding the husband's rights – as explained earlier – without rebelling (*noshūz*) against him, so if she carries out her duties regarding these two rights without rebellion, her maintenance becomes obligatory; but if she rebels against him and refuses him one of these two rights – not to mention both of them – no maintenance is then due to her until she repents and returns to obedience and good company.

1410. The woman's maintenance is due during the period between establishing the contract and the wedding, which is a period that might last for a long time, despite the fact that she is not living with the husband and despite the fact that the husband might not get the whole of his right to pleasure. However, if he had made it conditional on her not to pay any maintenance – explicitly or implicitly, even if outside of the norm that is clear, known and recognisable when making the contract – in this case maintenance will not be due from him.

1411. It is obligatory for the husband to meet the expenses of the woman in the different areas of her life, including food and drink, clothing, housing, make-up, cleaning and the hospitality needs of her relatives and similar visitors; he also needs to provide her with servants and equipment, in addition to the furniture that she needs for her sleeping, sitting and the rest of her needs and activities. The criterion of a thing being a need for her, and also its type and amount, is what the people in her society and country are accustomed to expect for women of her status. What is meant by 'status' is: her situation regarding age, education and social status, which are the things that dictate the difference in the type and amount of what meets her needs in these things that we mentioned. A country girl, for instance, might consider a modest type of housing and furniture sufficient, while a girl who has been raised in the city might not be content with that, and so on in similar things in the various areas that differ a great deal according to people and places. What is regarded as obligatory maintenance are the expenses of childbirth and treatment of the various illnesses, whether common illnesses or difficult ones that require a lot of money for treatment, unless this is intensely difficult for the husband, in which case he spends whatever does not cause intense difficulty to treat her in the case of severe illnesses. This, also, has to be in a manner that conforms to her status regarding the type, place and method of treatment.

1412. Since the criterion in what must be spent as maintenance is its being a living need, it is then not obligatory on the husband to pay off the debts of his wife, nor the costs of her learning in any branch of knowledge or profession, nor what may become obligatory on her

regarding the maintenance of her parents or children from another husband, nor what she must spend to carry out a duty such as a *fidyeh* (exchange for days that she cannot fast), *keffāreh* (atonement), *arsh* (compensation) for an offence or an obligatory pilgrimage, not to mention the expenses of recommended acts of worship, such as visiting the sacred tombs and the like.

1413. If the wife does not get all – or some – of the obligatory maintenance in type or amount, either due to the husband's inability or refusal, the amount which he must pay to her is not cancelled and it stays as a debt owed by him that must be paid to her (whenever he can while she remains alive, then if he dies, his heirs are obliged to pay it from his original estate like his other debts; if she dies, the debt is transferred to her heirs with the rest of her estate, whether she was still claiming the maintenance from him at the time or not, and whether she turned to the Islamic authority to estimated it for her and give a ruling for her or not, and whether or not she lived in difficult circumstances or spent money on herself or others volunteered to spend money on her. If someone else spent money on her in place of her husband, or as a debt owed by him upon the permission of the Islamic authority, in this case nothing is owed by the husband to her, but rather her husband will owe the person who had spent on her as a debt.

Third: Rebellion (*noshūz*)

1414. If the husband refuses to meet his obligation towards his wife regarding her rights or maintenance or having pleasure, he has sinned and disobeyed if he was able to perform these tasks, and this is regarded as rebellion (*noshūz*) on his side; in this case, to deal with this situation, she is allowed to resort, , to the following solutions:

1- To solve the matter in the best way using moral methods.

2- To encourage him towards what is good and forbid him what is evil through her appreciation of how much he may respond to the successful manner that serve her goal.

3- To turn to the Islamic authority, who would summon him and order him to be just and to her and give her her right; if he does not change, the Islamic authority has no right of disciplinary punishment using beating or imprisonment to force him to be just to her, but the wife has the choice either to be patient with him or to ask for a divorce; then if she asks for divorce and the husband refuses to divorce her, the Islamic authority will carry out the divorce for her and the dowry will be due to her.

1415. If the wife refuses to meet her obligations towards the right of her husband in having pleasure, she is regarded as rebellious (*nāshiz*), and has sinned and disobeyed, and the husband may deal with this situation in the following ways:

1- To solve the matter in the best way using moral methods

2- To advise her and try to make her fear sinning and order her to be God-fearing; he must repeat this in diverse ways.

3- To abandon her by sleeping in a room other than her room, for example, as psychological pressure to deter or restrain her.

4- To use force, and this is a non-binding choice; it is not allowed for him to resort to this until after the advice and abandoning the bed and when it is obvious to him that she insists on rebelling and has no excuse, especially when he has good morals and is meeting his obligations towards her rights, in addition to showing hope of a positive response from her and that she might abandon the sin, and that this use of force is for correction not revenge. Finally it should be limited to the extent which is probably going to be effective without, in any case, causing any harm.

5- Stopping her maintenance when her rights have been cancelled due to her rebellion.

Addendum on *īlā'*

1416. *Īlā'* is when the man swears to abandon sexual intercourse with his permanent wife with whom hehas had intercourse for a period of more than four months or for good, with the aim of hurting her, and although the aim is not reasonably acceptable, it is established as an oath (*yemīn*). However he must break it, but without sinning (when doing so), and he has to give *keffāreh* (atonement).
The *īlā'* does not become established except when using the name of Allah, the Most High, or a name that is specific to Him or a name which, if unspecified, is understood that it is Him who is being sworn by, in the same way as the oath.
In addition, for the *īlā'* to be valid, the following elements must be present:

1- The wife must be a permanent wife.

2- She must have had sexual intercourse with him – even if in the anus.

3- The thing that he is swearing to do is to abandon sexual intercourse with her in the vagina, so it is not established if he simply abandons sexual intercourse with her in the anus.

4- The smallest period of abandonment is four months.

5- The aim must be to hurt her.

1417. The conditions of *īlā'* is that the man is of the Islamic legal age, has sanity, free will and intention, so it is not established if sworn by the young, the insane, someone forced to do it, as a joke, the drunk or someone from whom anger is so intense that it takes away his intention, neither is it established if sworn by someone who is not capable of sexual intercourse for *jebb* (see no.1394) or impotence so that he cannot achieve sexual intercourse when he is given he choice between it and divorce, as will be explained below.

1418. If the *īlā'* is established in the manner we described, the husband is allowed to stay true to his oath and continue in his abandonment up to four months; if she requests her sexual right before then, he is allowed to meet his obligation towards her and break his oath, in which case he must pay atonement on breaking the oath, without having sinned for this oath breaking, which is: freeing a slave, or feeding ten *miskīns* or clothing them, but if he cannot do either of these two he must fast for three days. The same applies if he had sworn to abandon sexual intercourse for good or absolutely, but did have sexual intercourse after that.
This is if he retracts from his oath; however if he keeps to his refusal and does not want to divorce her and she cannot stay like this, she is allowed to turn to the Islamic authority who will summon him and encourage him to respond to her, advising him that he would be a sinner if he does not give her her right, but if this does not succeed and he keeps to his refusal, the Islamic authority allows him four months starting from the date when *īlā'* was established, then if he retracts before the elapse of the period and has sexual intercourse with her, the matter is solved and he has to pay the atonement for breaking the oath. But if he does not retract before the four months have elapsed, the Islamic authority will force him to choose between going back to her or divorcing her if the wife has asked for it; then if he does one of these, the matter is solved, otherwise the Islamic authority may imprison him and pressurise him, without forcing him towards a particular choice of the two, through his food and drink until he chooses one of the options ; but if he continues to refuse to do either of the two, the Islamic authority can carry out the divorce for her; the divorce is a revocable one if he has had sexual intercourse with her, and if she has not reached menopause, otherwise the divorce will be irrevocable.
Whatever the result of the case proceedings (at the Islamic authority), if he returns to his wife and has sexual intercourse with her within the period which he has sworn to abstain from sexual intercourse, in this case atonement for oath-breaking will be due on him, whether he returns within the waiting period which the Islamic authority specified, before it or after it. However, if he returns to her after the elapse of the period during which he had sworn to abstain from sexual intercourse, in this case no atonement will be due because no oath was broken, even if she had turned her case to the Islamic authority and her husband continued to refuse to respond until the *īlā'* period elapsed.

Chapter Four

Ancestry, Pregnancy and Custody

(A) Ancestry

1419. It is known that the blood ties of the child to his mother are not concealed after he or she has been born to her, while doubt may arise – in some cases – over the blood ties of the child to his or her father, therefore to confirm the relationship of the child to his or her father, the following points must be met:

1- Confirmation that the semen of this man did enter the vagina of the woman, by any means.

2- That a period of time elapses between the entry of the semen and giving birth of not less than six months and not more than one year.

If these points are established, the child is ruled to be the man's child and is to be biologically linked to him regardless to whether the relationship of the father with his or her mother is legitimate or adulterous.

1420. If a man commits adultery with a woman then he marries her after that, if the pregnancy by him appears after the contract with her and it is not known that the baby is from the forbidden or the allowed sexual intercourse, it is ruled that he or she is from the allowed intercourse and is regarded as a legitimate child. But if it is known that the child is the result of the adultery, the child will be regarded as a son of adultery (*ibn zinā*) even if the adulterer married his mother after she became pregnant with him or her.

1421. The stigma of adultery does not continue in the sons and grandsons, so someone whose father is the son of adultery, and who has been born to a legitimate marriage, is not considered to be the son of adultery; the same goes for his sons and grandsons.

1422. The principle standpoint in connecting the child to his father is the fact that he was created from his sperm, just as the principle standpoint in connecting the child to his mother is that fact that he was created from her egg; so if the woman placed in her womb another woman's egg, the mother is the owner of that egg not the woman that went through pregnancy to bear it.

1423. Blood relationships can be established through what is called 'artificial insemination' – in which the sperm and the egg are joined outside the womb (in-vitro) – between the child and the owners of the egg and the sperm, even if they had not entered into a marriage contract.

1424. There are two dependable ways to confirm the ancestry of a child – in general – which are:

1- **An acceptance or admission by someone who is qualified**; it will be accepted – provided that his truthfulness is probable – in all matters in which the consequences of loss and payment are involved; but the confirmation of ancestry by acceptance has different rulings depending on two situations:

a- If a man accepts that a young child is his son and that the son's fate is in his hands, and if his truthfulness is probable in this acceptance, when judged by normal standards and according to the Sharī'ah, and there is no other person claiming fatherhood, paternity is confirmed by the father's acceptance and all the consequences come in force, although precaution should be observed in this regarding all of the consequences of ancestry.

b- If a man accepts that an adult is his son or his father or brother or other similar relationship, the blood tie is not confirmed except with the acceptance of the other party in the claim, in which case it is established with all its consequences. That said, there is a problem (not a clear-cut ruling) regarding inheritance between them when there exists another heir for

one or both of them if the latter did not confirm; the same applies to inheritance with others of the rest of relatives when they do not confirm the blood ties.

2- Giving witness, by two witnesses, based on which the consequences of the witnessed blood ties in terms of inheritance etc come in force; this is not affected by the denial of some parties, unless they provide conclusive proof or decisive evidence to the contrary.

1425. The husband has no right to deny paternity of a child in the following cases:

1- If their birth by him has been absolutely confirmed, particularly if by resorting to decisive modern methods, such as medical tests, whether the child from his permanent or term wife.

2- If the child was born within permanent marital life; this brings to bear, the condition, as has been mentioned, of his semen entering her vagina and the elapse of the appropriate period of time.

3- If he had accepted their blood tie to him previously, although it is more appropriate to observe the precaution in the various angles of this situation regarding marriage, divorce, inheritance etc.

4- If the father is not a husband to the mother or the mother is observing the period of irrevocable divorce marriage-abstention from him and other men have had sexual intercourse with her in addition to him, as adultery or in a state of legal uncertainty, and the child can possibly have been conceived from any one of them, then the child was made his child through a lottery (between them).

1426. If the child is by his permanent wife who is still his wife, but it is not known that all the conditions of the child's blood ties to him exist, nor has he accepted the presence of all the conditions or the heredity of the child, he is allowed to deny the child through *li'ān* (cursing) – in fact it might become obligatory on him to do so, when the wife is accused of adultery, because he knows that the heredity conditions are not met. Then, if he denies his paternity in relation to the child but his wife contradicts his claim and confirms his paternity, he must carry out *li'ān* in front of the Islamic authority, using a specific form that will be mentioned in the divorce section; and if they do that, his blood tie to the child is ruled out and his wife becomes permanently forbidden to him.

(B) Pregnancy and giving birth

1427. Giving birth is not obligatory for a woman; however since it is regarded as an implicit condition in the marriage contract, the woman must meet her obligation in this, but according to her wishes regarding the timing and number, not her husband's wishes. However, if he had made a certain number of children conditional in the marriage contract, she must abide by the condition.

1428. It is not allowed for both spouses to do anything that leads to permanent infertility, even if after giving birth; other contraceptive methods are allowed provided that they do not cause the abortion of an embryo after the formation of the *nothfeh* ('a drop of fluid', i.e. up to 40 days (see below) into the pregnancy) and its implantation in the womb.

1429. If the embryo's *nothfeh* is formed and becomes stable in the womb, it is not allowed to abort it from the womb except in two circumstances:

1- If the continuation of the pregnancy will lead to the death of the mother or to an intense harm such as paralysis, insanity, blindness and the like, in which case it is allowed to abort it – in fact it might be obligatory – so that the mother can protect herself. Included in such cases is if the woman fears being killed because of some entrenched customs of her society and if preventing the killing depends on abortion.

2- If keeping the embryo is intensely difficult for the woman and the difficulty is so intense that it will disturb her life and threaten its stability to a great extent, such as if the pregnancy is shameful to her; however allowing its abortion – here – is limited to the situation in which the spirit has not yet entered in it, but if it has entered it, it is not allowed to abort it unless the matter presents the dangers cited in the previous case.

Abortion of the embryo is not allowed in the case of an intense difficulty for the man because of the pregnancy, such as if his wife is a term wife and it would be intensely difficult for him to withstand the situation of her pregnancy in front of his family or wife.

1430. In every situation in which the person is allowed to abort the embryo, the doctor is allowed to carry out the abortion as long as he is certain of the person's justification for it, however this does not relieve him of the obligation to pay compensation (*diyeh*), unless he makes it conditional that the person requesting the abortion meets its cost on his behalf, as will be explained.

1431. If a person causes abortion, such as if the mother does it to herself or someone else does to her something that leads to abortion (either directly such as by beating her on her abdomen, or putting a medicine in her mouth or other ways that lead to abortion, or indirectly by doing something that causes abortion and which is regarded as similar to direct action, such as digging a ditch for her to fall into it, or encouraging her to drink a medicine that leads to abortion without her knowing its effect, or similar ways in which the person causing the abortion is stronger than the person having it), if a person causes an abortion in this manner, he or she must pay compensation for the embryoas we will explain, whether the abortion is the result of intention and awareness or unintentional and through lack of awareness, and whether the person is one of the two parents (father or mother) or someone else, and whether it is the doctor who the two parents asked to do this or someone else, and whether the mother has justification toabort the baby or not. However, if the mother has a justification and the doctor makes it conditional on her to pay the compensation for him, in this case it would not be due from him, as mentioned previously.

1432. If the pregnancy was '*nothfeh*' ('a drop of fluid') and was aborted, the compensation payable would be twenty gold dinars; if it was '*'alaqeh*' ('a clinging form', i.e. it clings to the womb), the compensation would be forty dinars; if it was '*mothghheh*' ('a lump of flesh'), the compensation would be sixty dinars; if it had formed bones, the compensation would be eighty dinars; if it had flesh (i.e. muscle tissue), the compensation would be one hundred dinars; if the spirit had entered it, the compensation would be one thousand dinars for a male and five hundred dinars for a female.
The period in which it becomes *nothfeh* is forty days from the day it was conceived, then *'alaqeh* another forty days, then *mothghheh* another forty days.
The *shar'I* dinar equals one half Reshādī Ottoman gold lire, so the person paying compensation must check its value according to his or her country's currency if paying it in that country.

1433. The compensation is to be paid to the embryo's progenitors, who are its two parents, in the first line (of inheritance), if they are alive and available to give them compensation; but if the person responsible for the abortion is one of them, and has acted without justification and deliberately, the other will take all the compensation; if the mother was the person responsible for the abortion and the father is dead, the rest of its relatives will inherit it according to the levels of inheritance.
In all cases, it is allowed for the person to whom the compensation is to be paid to give it up, in which case it is cancelled and not due from the person responsible; if the person responsible has no justification, they have sinned and must repent and ask Allah forgiveness in the hope that Allah will forgive them and accept their repentance.

(C) Breastfeeding

Here follows an explanation of the rulings for breastfeeding from the angle of showing the reason for establishing a relationship in a certain manner between a number of individuals, also from the angle of its relationship to the areas of pregnancy and giving birth.

1434. The kinship through breastfeeding has no consequence except the prohibition of marriage and what is related to it, which is: the prohibition of marriage for certain individuals amongst the breastfeeding relatives, with all the consequences such as allowing them to

lookat each other except the private parts, and allowing them to touch each other. The rest of consequences, however, which are inheritance, guardianship, custody, maintenance, good treatment of the parents, good treatment of the kinship and the rest, all of these are limited to biological kinship, not kinship through breastfeeding.

1435. The following are conditional in the breastfeeding that results in prohibition (of marriage):

First: The milk must have been formed by the breastfeeding woman after giving birth, not before, and her pregnancy must be the result of a legitimate marriage, including sexual intercourse of questionable legitimacy. So, if the woman became pregnant from an illegitimate relationship, gave birth, and her milk formed and she breastfed her child, prohibition would notbe enforced – as an obligatory precaution – even if the rest of conditions exist; equally, if the woman was pregnant and her milk formed during that pregnancy, even shortly before giving birth, this would not call for prohibition, not to mention if the milk formed without pregnancy.

Regarding giving birth, no distinction is made between one in which the mother gives birth to a complete baby and one which she has a miscarriage, if it is commonly regarded as a baby. Also, no significance is given to the formation of milk immediately after giving birth, so if a short while elapses when the mother produces no milk, then it starts coming again, so that this newly formed milk is related to that birth of hers, in this case prohibition is established, in contrast to the case where the newly formed milk is not related to that birth, in which there would be no prohibition.

Also prohibition is imposed because of her birth if her husband divorces her or dies, then she marries another and the second husband had sexual intercourse with her and she became pregnant or not pregnant; in this case if she breastfed a baby her milk from her birth from her first husband and the milk had been still forming without stopping, this breastfeeding would result in prohibition between this mother and this baby and her first husband.

Second: The breastfeeding woman is the same woman for the whole amount or the period in which the prohibition is established; so if a man has two breastfeeding wives and one baby is breastfed by one of them seven times and by the other eight times, for example, then although the baby had completed fifteen feeds from the milk of one man, this would not establish prohibition because the milk was from two women, not one.

Third: The milk is related wholly to one man, then if this man divorces his wife after giving birth to a child by him then she marries another and becomes pregnant by him and gives birth, then if she breastfeeds another baby from her first husband seven times, for example, then she breastfeeds him eight times after giving birth to the baby by her second husband, such breastfeeding would not establish prohibition.

Fourth: The breastfeeding takes place before the baby is more than two years old, so if he is breastfed or completes breastfeeding after the two years, prohibition would not be established; regarding the breastfeeding woman, however, establishing prohibition through her breastfeeding would not be affected by the elapse of more than two years on giving birth to a baby that results in the formation of the milk.

What is meant by two years is the elapse of twenty four lunar months starting from the birth, so if the baby is born in the middle of the month, the number of days equal to the number of days elapsed from the start of the month of his birth and the two years completed must be counted in the twenty-fifth month.

Fifth: The breastfeeding must last until the time when flesh firms up and bones strengthen, something which is established, in its duration or amount, by fifteen consecutive breasfteeding feeds during each of the minimum spells of the breastfeeding ofone full day (day and night), provided that no breastfeeding of another woman takes place in between nor any nutrition by food or drink other than milk. However, if the baby's breastfeeding from her was for a period that is not short – a month or more or less – in this case, establishing prohibition due to breastfeeding would not be affected by breastfeeding – every now and then – from another woman or nutrition by food and drink other than milk, as long as flesh has

firmed up and bones have strengthened as a result of breastfeeding from the milk of that woman. The criterion regarding flesh formation and bone strengthening is the extent that is commonly appreciable which conforms to the precise scientific measurements. Also, the criterion of a one breastfeeding time, when it is used as a measure, is that if the baby is hungry and is breastfed, he or she will be satisfied and will leave the breast on his or her own.

1436. It is not conditional for establishing prohibition through breastfeeding that it takes place by the baby sucking it from the breast, so if the milk is made to flow into the baby's mouth or if the baby drinks it from a bottle or cup, prohibition would be established.

Also, it is not conditional that the mother is aware when breastfeeding the baby, so establishing prohibition would not be affected if she was asleep, unconscious or insane when the baby is breastfeeding; in fact, it would not be affected if she was dead and the baby completed the number by one breastfeeding from her after her death, just as it establishes prohibition as if she is alive.

1437. If the breastfeeding that meets all conditions takes place, the father becomes the milk owner and the breastfeeding woman becomes a mother to the breastfed baby, their fathers and mothers grandfathers and grandmothers to the him or her, their children brothers and sisters to him or her, their children's children nephews and nieces to him or her, their brothers and sisters uncles and aunts to him or her, also their uncles (father's and mother's sides) and aunts (father's and mother's sides), and the breastfed baby becomes a son or daughter to them, and his or her children grandchildren to them.
We have mentioned in some entries about the description of the spouses details of those males and females who become forbidden through breastfeeding when we talked about who is forbidden to marry through kinship (see no. 1337 and after.)

1438. The breastfeeding prohibition is confirmed in two ways:

First: Knowledge or satisfaction that it took place, through the information given by one person or more.

Second: Testimony given by two just witnesses that it took place in which a detailed account is given in which the reason of prohibition is to be given, whether it is due to the period, or number (amount) or development of flesh – so a general account is not sufficient, such as saying that the prohibition breastfeeding took place, or that so and so is the son of so and so through breastfeeding.

There is an *ishkāl* (not a clear-cut ruling) in confirming it through the witness of one man and two women, or the witness of four women.

1439. It is better to prevent women from carrying out too many breastfeedings of children to avoid mishaps due to their forgetfulness and marriages taking place between unmarriageable relatives without awareness.

1440. It is not obligatory on the mother to breastfeed her baby –either free of charge or upon payment – if preserving the baby did not depend on her breastfeeding; it is also not obligatory on her to breastfeed the baby free of charge even if preserving it depends on it, but she has the right to claim a fee for breastfeeding her baby in its first two years especially, not longer than that, in which case she is paid out of the baby's money if he has money, otherwise out of his father's money if he is capable, or out of the money of his grandfather, on the father's side's, when the father is not capable or dead; when all this is not available, the mother is then obliged to breastfeed the baby for free, either herself or by hiring a breastfeeding woman to that, paying with her own money as an obligatory precaution.
That said, the mother has more right to breastfeed her baby if she wants to do it, and the father has no right to appoint another woman unless if she asks for a fee while the other woman accepts to breastfeed at a lower fee or for free; in this case the father has the right to hire the other, and if the mother objects to the breastfeeding of the other woman and she carries out the breastfeeding of her baby herself, no fee will be due to her.

1441. A baby should be breastfed its mother's milk, as it is narrated in the *η≅adīth*: **'No milk a child breastfeeds on is more blessed than his mother's milk.'** That said, if there is something that makes another woman better, then there is no problem in choosing her instead. And when it is decided that a woman other than the mother is to breastfeed the baby, one should choose a sane Muslim who has good characteristics, in both physical form and character.

(D) Custody

1442. When the father and mother live together in one house, it is natural that the child lives with them and under their care, but when they separate through divorce or revocation of the marriage, and when the custody conditions (which will be explained below) are met, the child that has reached seven Hijri years stays with its mother and under her custody until it reaches seven, and the mother takes care of the child's usual affairs (its feeding, clothing, sleeping, protection of health, prevention from harm and so on) provided that no dispute with the father, nor anyone else – arises in these matters, whether the child is male or female, and as long as the mother does not marry. When the period elapses, or if the mother gets married during it, the custody goes to the father, in which case he is allowed to separate the child from his mother or leave it with her; this is if the parents separate through divorce or revocation during the first seven years of the child's life.

However, if the separation takes place because of the death of the husband during this period – or after it and after the transfer of the custody to the father – the mother will then have more right of custody over the child than all of her husband's relatives until the child becomes *rāshid*, whether the mother gets married after this or remains unmarried. Also, the father has more right of custody over all the mother's relatives – not to mention any person appointed in her will– if the mother dies during the period of her right of custody. But if the mother dies after the father's death and after she has had independent custody of the child, in this case the custody goes to the child's grandfather, on the father's side, but if he is not available, the custody goes to the person appointed in his father's will- or to his father's grandfather. If the two people appointed by the wills- are available and they reach an agreement satisfactory to both, then no problem arises; but if they dispute, the matter has to be resolved through a lottery. And if both people appointed by the wills are not available, custody goes to the rest of the father's relatives according to their place in the line of inheritance, resorting to a lottery between them if more than one has legitimate claim and dispute the child's custody.

1443. Conditions relating to who gets custody amongst the two parents and others are:

First: Sanity, so custody is not given to the insane during the period of his insanity.

Second: Trustworthiness regarding the fulfilment of the duties of custody in a way that secures safety for the child in its self, body and religion.

Third: The custodian must be Muslim if the child is Muslim; so if one, not both, of the parents is Muslim, the child is given to a Muslim and the custody is given to the Muslim, and not to a non-Muslim in any case; the same ruling applies regarding the child who is ruled as Muslim when custody is given to one of its relatives when both parents are not available.

Fourth: During the period of her custody, the mother must be, living independently following her divorce with the ex-husband –, and not married; so if she gets married, she loses her right to the child's custody.

Hence, if the mother lacks any of the above conditions during the period of her right of custody, she loses her right to it and the custody transfers to whoever comes after her, according to their place in the list. Also, if the father or the grandfather, on the father's side, lacks any of these conditions, they lose their right of custody and is transferred to the next in line, but without cancelling their guardianship of the child if they were the child's guardians and if their qualification as guardians remained valid. For example, if the custody of the grandfather, on the father's side, is cancelled because he cannot be trusted with the child due to his old age and inability to meet the obligations of his duties towards the child's, in this case, as long as he is still qualified as a guardian by his sanity and Islam, he continues to be the child's guardian despite not being his custodian.

1444. The right of custody is one of the rights that are open to cancellation, so it is acceptable for anyone who has that right to surrender it to the next person that comes after him in the list of the child's relatives, instead of a non-relative, provided that this person meets the conditions, whether giving up the child is with or without exchange; so if the other person accepts, the right is confirmed to them in place of the person who gave up the right, and the latter cannot retract from it; even if they want to retract from it, the right of custody will not be returned to them. But if the second person to whom they gave up the right did not meet the requirements, or if someone else was more appropriate, giving the right up to the second person is not valid and the right is not cancelled.

1445. The right of custody implies that the child lives with the person who has custody over it, so if the mother is the custodian, she is allowed to take the child to live with her where she lives, and the child's guardian has no right to force her to live in a particular place. But if a woman custodian has no home after her divorce or her husband's death, she has no right to ask the guardian to arrange for a home for her to carry out her custodianship of her child, whether using the guardian's assets or the child's; it is sufficient for the mother's home to be suitable for her, even if someone donates it or if she moves in with her new husband if she gets remarried after the death of her first husband, or the like. But if she does not have a home or she did find one but it is not suitable for her or her child, so that she is no longer regarded as trustworthy regarding the care of her child, she loses her right of custody until she finds a suitable home.
And just as it is inappropriate for the guardian to interfere in the housing of the child, nor in any other of the custody affairs that are part of the duties and responsibilities of the custodian mentioned above, in every situation where the custodian is not the guardian, it is also inappropriate for the custodian to carry out any of the guardian's duties, such as the protection and investment of the child's assets, providing guidance and discipline, and other matters that come under the guardian's authority. In any case, the guardian should agree with the person who has custody – who is often the mother – on how to deal with the child's affairs and they should coordinate the duties between them in the way that preserves the right of each of them and best serves the interests of the child.

1446. The custody comes to an end when the child becomes *rāshid* (having reasonable conduct and behaviour), when it becomes *rāshid* no one has a right of custody of it, even the two parents, not to mention the others. Rather, the child now has rights over itself, and can choose to join either of the parents, or someone other than them, whether the child is male or female. That said, if the child's separation from them will lead to living in a way that is contradictory to the requirements of happiness and normal living, so the parents worry about their child and they order him or her to live with them out of fear for his or her safety, the child must obey them in this, for the sake of good conduct towards them (*birr*) and to avoid hurting them.

(E) Maintenance from relatives

1447. It is obligatory for the male child to provide maintenance for his parents, and it is obligatory for the father to maintenance for his male and female children; this structure of maintenance duties towards relatives is definitively confirmed upon the conditions that we shall mention; however, maintenance is also conferred on relatives other than these as follows:

First: Just as it is obligatory for the male child to provide maintenance of for parents, it is also obligatory for the female child to provide maintenance for her parents.

Second: Just as it is obligatory for the immediate child – male or female – to provide maintenance for his/her parents, it is also obligatory for the grandchildren to provide maintenance for the grandfathers and grandmothers, and so on up the line of ancestry chain, – on the father's side or mother's side. This applies when the immediate father is not available or when he is unable to meet the expenses.

Third: Just as it is obligatory for the father to provide maintenance for his male and female children, it is also obligatory for the grandfather, on the father's side, and so on up the line of ancestry, to provide maintenance for his grandchildren, male and female, when the immediate father is not available or when he is unable to meet the expenses. Then, if the grandfathers, on the father's side are not available or unable, it becomes obligatory for the mother, then for her father, then for her mother, then for her father's father, then for her mother's father, and so on to the nearest then the next one in the list, including if the origins are present with the branches . So if one of the origins such as his grandfather, on his mother's side, is present along with one of the branches such as his son's son, in this case his grandson is nearer to him than his grandfather and more appropriate for paying the maintenance.
However, the duty of paying maintenance is not conferred on relatives other than the fathers and sons, such as the brothers, sisters, uncles (on the father's and the mother's sides) and aunts (father's and mother's sides), or others amongst their sons and daughters, although meeting their expenses from one's assets is a good thing that also promotes maintaining a good relationship with them and kindness towards them.

1448. If there is more than one person who has the duty of maintenance, such as if the person worthy of maintenance has a father and a son, or many sons, it becomes obligatory on each one of them to provide his maintenance; but if one of them meets the expenses and secures the whole of his needs, the obligation on the others is cancelled, as long as the maintenance is provided, but if the recipient secures only some of it, in this case all of them, including the one who is already providing some, must make up the deficiency.

1449. Poverty is a condition regarding the obligation on relatives to provide maintenance, meaning that if they actually do not have what they need themselves for living – food, clothes, bed, shelter, housing and so on – it is not obligatory to provide for anyone who actually has his or her means of maintenance, although they might be regarded as poor as far as the Sharī'ah is concerned (i.e: he or she does not have enough to cover a full year's maintenance).
The obligation on a person to provide maintenance for their relative who is finding his or her own maintenance applies if the latter is managing that by begging or asking people or taking it from the *khoms*, *zekāt*, alms and the like, or through borrowing but with intense difficulty and hardship or when it is quite probable that they are not going to pay off the debt later, or if they can only obtain it (their maintenance) by earning it through work that is not appropriate for their status and situation. However, if they can avoid any of the above-mentioned ways, especially things like begging and asking people, or manage to get maintenance from religion-based money revenues (*η≅oqūq shar'īyyeh*) or through borrowing without hardship, and it is possible that they will be able to pay off their debt, ending up actually getting enough to meet their expenses (maintenance), in this case the obligation of providing maintenance for their relatives is cancelled. The obligation of maintenance is also cancelled if they are able to earn it through ways that are appropriate to their status and situation, such as strong people who can carry weights but abstain from that, or someone who could earn through some crafts and works but he abstains from that out of laziness. That said, maintenance of them is obligatory in the case when they abstain from earning because of engagement with things that cannot be performed if one is earning, such as fighting, religious preaching and the like.

1450. It is not conditional that the relative being maintained is a Muslim, or just, or suffering from a defect such as blindness, disabling paralysis and the like. However, it is conditional in relatives other than the two parents that they are not a *kāfir η≅arbī*, i.e.: a non-Muslim who is in a state of war with the Muslims in the manner explained in the section on defence (Section 7).

1451. It is conditional in the person who is providing the maintenance that he is able to maintain his relatives, after providing the maintenance of himself and his permanent wife in the manner appropriate to his needs and his status, including what he needs to spend for his own marriage, even if this is not necessary, or for offering hospitality to his guests and meeting the needs of those who turn to him for their needs, and similar things that are

regarded as part of his maintenance. Then what is left is to be used for his obligation to maintain those unable to do so amongst his relatives to the amount that is possible (from what is left). If that meets the expenses of all that he is obliged to provide as maintenance, then the matter is fulfilled, but if what is left can only maintain some of them, in this case he has to give priority to those nearest to him and so on; hence his son, for example, is given priority over the grandson; but if they are level in their degree of kinship, he must distribute the maintenance equally between them if what he has is divisible and remains useable after division, otherwise he may choose to whom he wants to pay it.
It is not conditional for the conferment of responsibility for maintenance that the person providing the maintenance has reached the Islamic legal age or is sane; so if a young person or an insane person has assets that are more than that needed for their own maintenance and that of their wife, the guardian must use it to provide maintenance for whomsoever that young or insane person is obliged to providemaintenance.

1452. The obligatory maintenance of relatives is limited to the relative himself or herself, so it does not cover the maintenance of those that they maintain among the members of their families, such as their wife and children, unless this is obligatory on the maintaining relative through another route. Hence, it is obligatory on the father, for example, to pay maintenance for his son, not the latter's wife, but he is obliged – also – to maintain the children of this son on the basis of what was explained earlier, that maintaining his grandchildren is obligatory for him, independent of his maintaining their father or otherwise. Also, the son is obliged to maintain his father, not the latter's sons since they are his brothers, and so on.

1453. There is no particular estimate of the level of maintenance for the relative that one is obliged to provided, as it is sufficient to pay whatever is enough to sustain their life in terms of food, clothes, housing and other matters in the manner that is appropriate to their situation and status, such as their servant, vehicle, treatment costs, travel costs and the kind of things that were mentioned regarding the wife's maintenance (no. 1411). However, paying their debts is not regarded as part of the obligatory maintenance, nor paying any *fidyeh* (worship compensation), *keffāreh* (atonement) or *diyeh* (killing compensation) or the like, nor the costs of their marriage such as the dowry etc, although this is better, especially in the case of the father when he is in need of marriage but is unable to meet its expenses.

Addendum on term marriage

This marriage is called 'term' because in the contract it defines a fixed period at the end of which the marriage ends without divorce. This marriage is not different in its essence, nor in a lot of its rulings, to permanent marriage, however, there are a number of rulings that distinguish it from permanent marriage:

1454. Two conditions must be present in term marriage:

1- Stating the dowry, so if the couple established the contract without stating this – out of ignorance or forgetfulness, not to mention intentionally – the contract is invalid.

2- Stating the term, so if they establish the contract without stating it – out of ignorance or forgetfulness, not to mention intentionally – the contract is valid, but it is established as permanent.
On the basis of this, the best form of the *mot'ah* (i.e. term) marriage contract is one in which the woman says: '*Zewwejtoka nefsī bi-mahrin qedrohū kethā li-moddet kethā*' (I am marrying off myself to you at a so and so dowry for a so and so period), the man says: '*Qebilt*' (I accept), using correct classical Arabic, with the proposal (*ījāb*) coming from the woman and the acceptance (*qobūl*) coming from the man, and the proposal coming before the acceptance; however, it is allowed to carry it out differently to this, as mentioned under permanent marriage (no. 1373).

1455. There is no particular limit to the time period of the term, so it it is valid to make it for one hour just as it is valid to make it for fifty years. That said, it is not valid to make it for a period that is longer than the possible age of man according to normal experience, so if he makes it that long, it is established as permanent not term.
The term must be specified in a way that does not accept curtailment or extension, and the contract is invalidated if the termination is given as an unspecified time, such as a day of the week or the like.

1456. The right of pleasure (*istimtā'*) is confirmed for each of the two spouses, as is the case in permanent marriage; however (in contrast to permanent marriage) the husband has no right to force the term wife to stay with him and to abstain from leaving their meeting place without his permission for as long as he does not need her for his pleasure. Also, *'azl* (ejaculation outside the vagina) is allowed with the term wife even if she does not accept it. In addition, the term wife has no right of maintenance, nor is there any inheritance between them.
It is allowed for each of them to impose any reasonable conditions they want in the contract, such as living together, maintenance or others except inheritance, and if they make inheritance conditional, the condition is invalid while the contract stays valid.

1457. Forced separation in term marriage takes place when the term specified in the contract ends, and they have to establish a new contract if they want to return to each other. Voluntary separation can only take place if the husband gives up the period left of the term to his wife and relieves her from her obligation; this is a right for the husband only, unless if she makes it conditional to be a proxy for him in giving up the period to herself. Once he has given up what is left of the term, he cannot retract from that.
Any divorce (in this marriage) has no effect and is regarded as meaningless speech and the bond of the term marriage is not broken by it.

1458. If he gives her up in the period before having sexual intercourse with her, half of the agreed on dowry is due to her, but if he gives her up in the period after sexual intercourse, the whole of the dowry will be due to her.

1459. If the term ends, or the husband relieves himself of it, then if he has not had sexual intercourse with her, no marriage-abstention period needs to be observed by her; but if he has had sexual intercourse with her and she has not reached menopause, then she has to observe a marriage-abstention period lasting two menstrual periods as an obligatory precaution to check that she is not pregnant, otherwise her marriage-abstention period ends by giving birth. That said, if she is someone who does not have menses because of an illness or due to a defect, her marriage-abstention period is then forty-five days.

1460. If the man renews his term contract with the woman – with whom he has had sexual intercourse– during her marriage-abstention period (*'iddeh*) following her first contract with him, then gives her up in the period before renewed sexual intercourse, the woman is not regarded a non-*'iddeh* woman because he did not have sexual intercourse with her in the second contract, but she keeps observing the first ruling of observing the marriage-abstention period following the first contract; so she is not allowed to marry another man until she completes her first contract's marriage-abstention period.

1461. If the husband of a term wife dies, her marriage-abstention period is four months and ten days if she is not pregnant, and the furthest of the two time periods of that period (4 months and 10 days) or giving birth if she is pregnant – which means that if one of the two things took place before the other, she must wait for the second to take place.

Chapter Four

Ancestry, Pregnancy and Custody

(A) Ancestry

1419. It is known that the blood ties of the child to his mother are not concealed after he or she has been born to her, while doubt may arise – in some cases – over the blood ties of the child to his or her father, therefore to confirm the relationship of the child to his or her father, the following points must be met:

1- Confirmation that the semen of this man did enter the vagina of the woman, by any means.

2- That a period of time elapses between the entry of the semen and giving birth of not less than six months and not more than one year.

If these points are established, the child is ruled to be the man's child and is to be biologically linked to him regardless to whether the relationship of the father with his or her mother is legitimate or adulterous.

1420. If a man commits adultery with a woman then he marries her after that, if the pregnancy by him appears after the contract with her and it is not known that the baby is from the forbidden or the allowed sexual intercourse, it is ruled that he or she is from the allowed intercourse and is regarded as a legitimate child. But if it is known that the child is the result of the adultery, the child will be regarded as a son of adultery (*ibn zinā*) even if the adulterer married his mother after she became pregnant with him or her.

1421. The stigma of adultery does not continue in the sons and grandsons, so someone whose father is the son of adultery, and who has been born to a legitimate marriage, is not considered to be the son of adultery; the same goes for his sons and grandsons.

1422. The principle standpoint in connecting the child to his father is the fact that he was created from his sperm, just as the principle standpoint in connecting the child to his mother is that fact that he was created from her egg; so if the woman placed in her womb another woman's egg, the mother is the owner of that egg not the woman that went through pregnancy to bear it.

1423. Blood relationships can be established through what is called 'artificial insemination' – in which the sperm and the egg are joined outside the womb (in-vitro) – between the child and the owners of the egg and the sperm, even if they had not entered into a marriage contract.

1424. There are two dependable ways to confirm the ancestry of a child – in general – which are:

1- **An acceptance or admission by someone who is qualified**; it will be accepted – provided that his truthfulness is probable – in all matters in which the consequences of loss and payment are involved; but the confirmation of ancestry by acceptance has different rulings depending on two situations:

a- If a man accepts that a young child is his son and that the son's fate is in his hands, and if his truthfulness is probable in this acceptance, when judged by normal standards and according to the Sharī'ah, and there is no other person claiming fatherhood, paternity is confirmed by the father's acceptance and all the consequences come in force, although precaution should be observed in this regarding all of the consequences of ancestry.

b- If a man accepts that an adult is his son or his father or brother or other similar relationship, the blood tie is not confirmed except with the acceptance of the other party in the claim, in which case it is established with all its consequences. That said, there is a problem (not a clear-cut ruling) regarding inheritance between them when there exists another heir for one or both of them if the latter did not confirm; the same applies to inheritance with others of the rest of relatives when they do not confirm the blood ties.

2- Giving witness, by two witnesses, based on which the consequences of the witnessed blood ties in terms of inheritance etc come in force; this is not affected by the denial of some parties, unless they provide conclusive proof or decisive evidence to the contrary.

1425. The husband has no right to deny paternity of a child in the following cases:

1- If their birth by him has been absolutely confirmed, particularly if by resorting to decisive modern methods, such as medical tests, whether the child from his permanent or term wife.

2- If the child was born within permanent marital life; this brings to bear, the condition, as has been mentioned, of his semen entering her vagina and the elapse of the appropriate period of time.

3- If he had accepted their blood tie to him previously, although it is more appropriate to observe the precaution in the various angles of this situation regarding marriage, divorce, inheritance etc.

4- If the father is not a husband to the mother or the mother is observing the period of irrevocable divorce marriage-abstention from him and other men have had sexual intercourse with her in addition to him, as adultery or in a state of legal uncertainty, and the child can possibly have been conceived from any one of them, then the child was made his child through a lottery (between them).

1426. If the child is by his permanent wife who is still his wife, but it is not known that all the conditions of the child's blood ties to him exist, nor has he accepted the presence of all the conditions or the heredity of the child, he is allowed to deny the child through *li'ān* (cursing) – in fact it might become obligatory on him to do so, when the wife is accused of adultery, because he knows that the heredity conditions are not met. Then, if he denies his paternity in relation to the child but his wife contradicts his claim and confirms his paternity, he must carry out *li'ān* in front of the Islamic authority, using a specific form that will be mentioned in the divorce section; and if they do that, his blood tie to the child is ruled out and his wife becomes permanently forbidden to him.

(B) Pregnancy and giving birth

1427. Giving birth is not obligatory for a woman; however since it is regarded as an implicit condition in the marriage contract, the woman must meet her obligation in this, but according to her wishes regarding the timing and number, not her husband's wishes. However, if he had made a certain number of children conditional in the marriage contract, she must abide by the condition.

1428. It is not allowed for both spouses to do anything that leads to permanent infertility, even if after giving birth; other contraceptive methods are allowed provided that they do not cause the abortion of an embryo after the formation of the *notfeh* ('a drop of fluid', i.e. up to 40 days (see below) into the pregnancy) and its implantation in the womb.

1429. If the embryo's *notfeh* is formed and becomes stable in the womb, it is not allowed to abort it from the womb except in two circumstances:

1- If the continuation of the pregnancy will lead to the death of the mother or to an intense harm such as paralysis, insanity, blindness and the like, in which case it is allowed to abort it – in fact it might be obligatory – so that the mother can protect herself. Included in such cases is if the woman fears being killed because of some entrenched customs of her society and if preventing the killing depends on abortion.

2- If keeping the embryo is intensely difficult for the woman and the difficulty is so intense that it will disturb her life and threaten its stability to a great extent, such as if the pregnancy is shameful to her; however allowing its abortion – here – is limited to the situation in which the spirit has not yet entered in it, but if it has entered it, it is not allowed to abort it unless the matter presents the dangers cited in the previous case.

Abortion of the embryo is not allowed in the case of an intense difficulty for the man because of the pregnancy, such as if his wife is a term wife and it would be intensely difficult for him to withstand the situation of her pregnancy in front of his family or wife.

1430. In every situation in which the person is allowed to abort the embryo, the doctor is allowed to carry out the abortion as long as he is certain of the person's justification for it, however this does not relieve him of the obligation to pay compensation (*diyeh*), unless he makes it conditional that the person requesting the abortion meets its cost on his behalf, as will be explained.

1431. If a person causes abortion, such as if the mother does it to herself or someone else does to her something that leads to abortion (either directly such as by beating her on her abdomen, or putting a medicine in her mouth or other ways that lead to abortion, or indirectly by doing something that causes abortion and which is regarded as similar to direct action, such as digging a ditch for her to fall into it, or encouraging her to drink a medicine that leads to abortion without her knowing its effect, or similar ways in which the person causing the abortion is stronger than the person having it), if a person causes an abortion in this manner, he or she must pay compensation for the embryoas we will explain, whether the abortion is the result of intention and awareness or unintentional and through lack of awareness, and whether the person is one of the two parents (father or mother) or someone else, and whether it is the doctor who the two parents asked to do this or someone else, and whether the mother has justification toabort the baby or not. However, if the mother has a justification and the doctor makes it conditional on her to pay the compensation for him, in this case it would not be due from him, as mentioned previously.

1432. If the pregnancy was '*nothfeh*' ('a drop of fluid') and was aborted, the compensation payable would be twenty gold dinars; if it was '*'alaqeh*' ('a clinging form', i.e. it clings to the womb), the compensation would be forty dinars; if it was '*modghheh*' ('a lump of flesh'), the compensation would be sixty dinars; if it had formed bones, the compensation would be eighty dinars; if it had flesh (i.e. muscle tissue), the compensation would be one hundred dinars; if the spirit had entered it, the compensation would be one thousand dinars for a male and five hundred dinars for a female.
The period in which it becomes *nothfeh* is forty days from the day it was conceived, then *'alaqeh* another forty days, then *modghheh* another forty days.
The *shar'ī* dinar equals one half Reshādī Ottoman gold lire, so the person paying compensation must check its value according to his or her country's currency if paying it in that country.

1433. The compensation is to be paid to the embryo's progenitors, who are its two parents, in the first line (of inheritance), if they are alive and available to give them compensation; but if the person responsible for the abortion is one of them, and has acted without justification and deliberately, the other will take all the compensation; if the mother was the person responsible for the abortion and the father is dead, the rest of its relatives will inherit it according to the levels of inheritance.
In all cases, it is allowed for the person to whom the compensation is to be paid to give it up, in which case it is cancelled and not due from the person responsible; if the person responsible has no justification, they have sinned and must repent and ask Allah forgiveness in the hope that Allah will forgive them and accept their repentance.

(C) Breastfeeding

Here follows an explanation of the rulings for breastfeeding from the angle of showing the reason for establishing a relationship in a certain manner between a number of individuals, also from the angle of its relationship to the areas of pregnancy and giving birth.

1434. The kinship through breastfeeding has no consequence except the prohibition of marriage and what is related to it, which is: the prohibition of marriage for certain individuals amongst the breastfeeding relatives, with all the consequences such as allowing them to lookat each other except the private parts, and allowing them to touch each other. The rest of consequences, however, which are inheritance, guardianship, custody, maintenance, good treatment of the parents, good treatment of the kinship and the rest, all of these are limited to biological kinship, not kinship through breastfeeding.

1435. The following are conditional in the breastfeeding that results in prohibition (of marriage):

First: The milk must have been formed by the breastfeeding woman after giving birth, not before, and her pregnancy must be the result of a legitimate marriage, including sexual intercourse of questionable legitimacy. So, if the woman became pregnant from an illegitimate relationship, gave birth, and her milk formed and she breastfed her child, prohibition would notbe enforced – as an obligatory precaution – even if the rest of conditions exist; equally, if the woman was pregnant and her milk formed during that pregnancy, even shortly before giving birth, this would not call for prohibition, not to mention if the milk formed without pregnancy.

Regarding giving birth, no distinction is made between one in which the mother gives birth to a complete baby and one which she has a miscarriage, if it is commonly regarded as a baby. Also, no significance is given to the formation of milk immediately after giving birth, so if a short while elapses when the mother produces no milk, then it starts coming again, so that this newly formed milk is related to that birth of hers, in this case prohibition is established, in contrast to the case where the newly formed milk is not related to that birth, in which there would be no prohibition.

Also prohibition is imposed because of her birth if her husband divorces her or dies, then she marries another and the second husband had sexual intercourse with her and she became pregnant or not pregnant; in this case if she breastfed a baby her milk from her birth from her first husband and the milk had been still forming without stopping, this breastfeeding would result in prohibition between this mother and this baby and her first husband.

Second: The breastfeeding woman is the same woman for the whole amount or the period in which the prohibition is established; so if a man has two breastfeeding wives and one baby is breastfed by one of them seven times and by the other eight times, for example, then although the baby had completed fifteen feeds from the milk of one man, this would not establish prohibition because the milk was from two women, not one.

Third: The milk is related wholly to one man, then if this man divorces his wife after giving birth to a child by him then she marries another and becomes pregnant by him and gives birth, then if she breastfeeds another baby from her first husband seven times, for example, then she breastfeeds him eight times after giving birth to the baby by her second husband, such breastfeeding would not establish prohibition.

Fourth: The breastfeeding takes place before the baby is more than two years old, so if he is breastfed or completes breastfeeding after the two years, prohibition would not be established; regarding the breastfeeding woman, however, establishing prohibition through her breastfeeding would not be affected by the elapse of more than two years on giving birth to a baby that results in the formation of the milk.

What is meant by two years is the elapse of twenty four lunar months starting from the birth, so if the baby is born in the middle of the month, the number of days equal to the number of days elapsed from the start of the month of his birth and the two years completed must be counted in the twenty-fifth month.

Fifth: The breastfeeding must last until the time when flesh firms up and bones strengthen, something which is established, in its duration or amount, by fifteen consecutive breasfteeding feeds during each of the minimum spells of the breastfeeding ofone full day (day and night), provided that no breastfeeding of another woman takes place in between nor any nutrition by food or drink other than milk. However, if the baby's breastfeeding from her was for a period that is not short – a month or more or less – in this case, establishing prohibition due to breastfeeding would not be affected by breastfeeding – every now and then – from another woman or nutrition by food and drink other than milk, as long as flesh has firmed up and bones have strengthened as a result of breastfeeding from the milk of that woman. The criterion regarding flesh formation and bone strengthening is the extent that is commonly appreciable which conforms to the precise scientific measurements. Also, the criterion of a one breastfeeding time, when it is used as a measure, is that if the baby is hungry and is breastfed, he or she will be satisfied and will leave the breast on his or her own.

1436. It is not conditional for establishing prohibition through breastfeeding that it takes place by the baby sucking it from the breast, so if the milk is made to flow into the baby's mouth or if the baby drinks it from a bottle or cup, prohibition would be established.

Also, it is not conditional that the mother is aware when breastfeeding the baby, so establishing prohibition would not be affected if she was asleep, unconscious or insane when the baby is breastfeeding; in fact, it would not be affected if she was dead and the baby completed the number by one breastfeeding from her after her death, just as it establishes prohibition as if she is alive.

1437. If the breastfeeding that meets all conditions takes place, the father becomes the milk owner and the breastfeeding woman becomes a mother to the breastfed baby, their fathers and mothers grandfathers and grandmothers to the him or her, their children brothers and sisters to him or her, their children's children nephews and nieces to him or her, their brothers and sisters uncles and aunts to him or her, also their uncles (father's and mother's sides) and aunts (father's and mother's sides), and the breastfed baby becomes a son or daughter to them, and his or her children grandchildren to them.
We have mentioned in some entries about the description of the spouses details of those males and females who become forbidden through breastfeeding when we talked about who is forbidden to marry through kinship (see no. 1337 and after.)

1438. The breastfeeding prohibition is confirmed in two ways:

First: Knowledge or satisfaction that it took place, through the information given by one person or more.

Second: Testimony given by two just witnesses that it took place in which a detailed account is given in which the reason of prohibition is to be given, whether it is due to the period, or number (amount) or development of flesh – so a general account is not sufficient, such as saying that the prohibition breastfeeding took place, or that so and so is the son of so and so through breastfeeding.

There is an *ishkāl* (not a clear-cut ruling) in confirming it through the witness of one man and two women, or the witness of four women.

1439. It is better to prevent women from carrying out too many breastfeedings of children to avoid mishaps due to their forgetfulness and marriages taking place between unmarriageable relatives without awareness.

1440. It is not obligatory on the mother to breastfeed her baby –either free of charge or upon payment – if preserving the baby did not depend on her breastfeeding; it is also not obligatory on her to breastfeed the baby free of charge even if preserving it depends on it, but she has the right to claim a fee for breastfeeding her baby in its first two years especially, not longer than that, in which case she is paid out of the baby's money if he has money, otherwise out of his father's money if he is capable, or out of the money of his grandfather, on the father's side's, when the father is not capable or dead; when all this is not available, the mother is then obliged to breastfeed the baby for free, either herself or by hiring a breastfeeding woman to that, paying with her own money as an obligatory precaution.
That said, the mother has more right to breastfeed her baby if she wants to do it, and the father has no right to appoint another woman unless if she asks for a fee while the other woman accepts to breastfeed at a lower fee or for free; in this case the father has the right to hire the other, and if the mother objects to the breastfeeding of the other woman and she carries out the breastfeeding of her baby herself, no fee will be due to her.

1441. A baby should be breastfed its mother's milk, as it is narrated in the *η≅adīth*: **'No milk a child breastfeeds on is more blessed than his mother's milk.'** That said, if there is something that makes another woman better, then there is no problem in choosing her instead. And when it is decided that a woman other than the mother is to breastfeed the baby, one should choose a sane Muslim who has good characteristics, in both physical form and character.

(D) Custody

1442. When the father and mother live together in one house, it is natural that the child lives with them and under their care, but when they separate through divorce or revocation of the marriage, and when the custody conditions (which will be explained below) are met, the child that has reached seven Hijri years stays with its mother and under her custody until it reaches seven, and the mother takes care of the child's usual affairs (its feeding, clothing, sleeping, protection of health, prevention from harm and so on) provided that no dispute with the father, nor anyone else – arises in these matters, whether the child is male or female, and as long as the mother does not marry. When the period elapses, or if the mother gets married during it, the custody goes to the father, in which case he is allowed to separate the child from his mother or leave it with her; this is if the parents separate through divorce or revocation during the first seven years of the child's life.

However, if the separation takes place because of the death of the husband during this period – or after it and after the transfer of the custody to the father – the mother will then have more right of custody over the child than all of her husband's relatives until the child becomes *rāshid*, whether the mother gets married after this or remains unmarried. Also, the father has more right of custody over all the mother's relatives – not to mention any person appointed in her will– if the mother dies during the period of her right of custody. But if the mother dies after the father's death and after she has had independent custody of the child, in this case the custody goes to the child's grandfather, on the father's side, but if he is not available, the custody goes to the person appointed in his father's will- or to his father's grandfather. If the two people appointed by the wills- are available and they reach an agreement satisfactory to both, then no problem arises; but if they dispute, the matter has to be resolved through a lottery. And if both people appointed by the wills are not available, custody goes to the rest of the father's relatives according to their place in the line of inheritance, resorting to a lottery between them if more than one has legitimate claim and dispute the child's custody.

1443. Conditions relating to who gets custody amongst the two parents and others are:

First: Sanity, so custody is not given to the insane during the period of his insanity.

Second: Trustworthiness regarding the fulfilment of the duties of custody in a way that secures safety for the child in its self, body and religion.

Third: The custodian must be Muslim if the child is Muslim; so if one, not both, of the parents is Muslim, the child is given to a Muslim and the custody is given to the Muslim, and not to a non-Muslim in any case; the same ruling applies regarding the child who is ruled as Muslim when custody is given to one of its relatives when both parents are not available.

Fourth: During the period of her custody, the mother must be, living independently following her divorce with the ex-husband –, and not married; so if she gets married, she loses her right to the child's custody.

Hence, if the mother lacks any of the above conditions during the period of her right of custody, she loses her right to it and the custody transfers to whoever comes after her, according to their place in the list. Also, if the father or the grandfather, on the father's side, lacks any of these conditions, they lose their right of custody and is transferred to the next in line, but without cancelling their guardianship of the child if they were the child's guardians and if their qualification as guardians remained valid. For example, if the custody of the grandfather, on the father's side, is cancelled because he cannot be trusted with the child due to his old age and inability to meet the obligations of his duties towards the child's, in this case, as long as he is still qualified as a guardian by his sanity and Islam, he continues to be the child's guardian despite not being his custodian.

1444. The right of custody is one of the rights that are open to cancellation, so it is acceptable for anyone who has that right to surrender it to the next person that comes after him in the list of the child's relatives, instead of a non-relative, provided that this person meets the conditions, whether giving up the child is with or without exchange; so if the other person accepts, the right is confirmed to them in place of the person who gave up the right, and the

latter cannot retract from it; even if they want to retract from it, the right of custody will not be returned to them. But if the second person to whom they gave up the right did not meet the requirements, or if someone else was more appropriate, giving the right up to the second person is not valid and the right is not cancelled.

1445. The right of custody implies that the child lives with the person who has custody over it, so if the mother is the custodian, she is allowed to take the child to live with her where she lives, and the child's guardian has no right to force her to live in a particular place. But if a woman custodian has no home after her divorce or her husband's death, she has no right to ask the guardian to arrange for a home for her to carry out her custodianship of her child, whether using the guardian's assets or the child's; it is sufficient for the mother's home to be suitable for her, even if someone donates it or if she moves in with her new husband if she gets remarried after the death of her first husband, or the like. But if she does not have a home or she did find one but it is not suitable for her or her child, so that she is no longer regarded as trustworthy regarding the care of her child, she loses her right of custody until she finds a suitable home.
And just as it is inappropriate for the guardian to interfere in the housing of the child, nor in any other of the custody affairs that are part of the duties and responsibilities of the custodian mentioned above, in every situation where the custodian is not the guardian, it is also inappropriate for the custodian to carry out any of the guardian's duties, such as the protection and investment of the child's assets, providing guidance and discipline, and other matters that come under the guardian's authority. In any case, the guardian should agree with the person who has custody – who is often the mother – on how to deal with the child's affairs and they should coordinate the duties between them in the way that preserves the right of each of them and best serves the interests of the child.

1446. The custody comes to an end when the child becomes *rāshid* (having reasonable conduct and behaviour), when it becomes *rāshid* no one has a right of custody of it, even the two parents, not to mention the others. Rather, the child now has rights over itself, and can choose to join either of the parents, or someone other than them, whether the child is male or female. That said, if the child's separation from them will lead to living in a way that is contradictory to the requirements of happiness and normal living, so the parents worry about their child and they order him or her to live with them out of fear for his or her safety, the child must obey them in this, for the sake of good conduct towards them (*birr*) and to avoid hurting them.

(E) Maintenance from relatives

1447. It is obligatory for the male child to provide maintenance for his parents, and it is obligatory for the father to maintenance for his male and female children; this structure of maintenance duties towards relatives is definitively confirmed upon the conditions that we shall mention; however, maintenance is also conferred on relatives other than these as follows:

First: Just as it is obligatory for the male child to provide maintenance of for parents, it is also obligatory for the female child to provide maintenance for her parents.

Second: Just as it is obligatory for the immediate child – male or female – to provide maintenance for his/her parents, it is also obligatory for the grandchildren to provide maintenance for the grandfathers and grandmothers, and so on up the line of ancestry chain, – on the father's side or mother's side. This applies when the immediate father is not available or when he is unable to meet the expenses.

Third: Just as it is obligatory for the father to provide maintenance for his male and female children, it is also obligatory for the grandfather, on the father's side, and so on up the line of ancestry, to provide maintenance for his grandchildren, male and female, when the immediate father is not available or when he is unable to meet the expenses. Then, if the grandfathers, on the father's side are not available or unable, it becomes obligatory for the mother, then for her father, then for her mother, then for her father's father, then for her mother's father, and so on

to the nearest then the next one in the list, including if the origins are present with the branches . So if one of the origins such as his grandfather, on his mother's side, is present along with one of the branches such as his son's son, in this case his grandson is nearer to him than his grandfather and more appropriate for paying the maintenance.
However, the duty of paying maintenance is not conferred on relatives other than the fathers and sons, such as the brothers, sisters, uncles (on the father's and the mother's sides) and aunts (father's and mother's sides), or others amongst their sons and daughters, although meeting their expenses from one's assets is a good thing that also promotes maintaining a good relationship with them and kindness towards them.

1448. If there is more than one person who has the duty of maintenance, such as if the person worthy of maintenance has a father and a son, or many sons, it becomes obligatory on each one of them to provide his maintenance; but if one of them meets the expenses and secures the whole of his needs, the obligation on the others is cancelled, as long as the maintenance is provided, but if the recipient secures only some of it, in this case all of them, including the one who is already providing some, must make up the deficiency.

1449. Poverty is a condition regarding the obligation on relatives to provide maintenance, meaning that if they actually do not have what they need themselves for living – food, clothes, bed, shelter, housing and so on – it is not obligatory to provide for anyone who actually has his or her means of maintenance, although they might be regarded as poor as far as the Sharī'ah is concerned (i.e: he or she does not have enough to cover a full year's maintenance).
The obligation on a person to provide maintenance for their relative who is finding his or her own maintenance applies if the latter is managing that by begging or asking people or taking it from the *khoms*, *zekāt*, alms and the like, or through borrowing but with intense difficulty and hardship or when it is quite probable that they are not going to pay off the debt later, or if they can only obtain it (their maintenance) by earning it through work that is not appropriate for their status and situation. However, if they can avoid any of the above-mentioned ways, especially things like begging and asking people, or manage to get maintenance from religion-based money revenues (*η≅oqūq shar'īyyeh*) or through borrowing without hardship, and it is possible that they will be able to pay off their debt, ending up actually getting enough to meet their expenses (maintenance), in this case the obligation of providing maintenance for their relatives is cancelled. The obligation of maintenance is also cancelled if they are able to earn it through ways that are appropriate to their status and situation, such as strong people who can carry weights but abstain from that, or someone who could earn through some crafts and works but he abstains from that out of laziness. That said, maintenance of them is obligatory in the case when they abstain from earning because of engagement with things that cannot be performed if one is earning, such as fighting, religious preaching and the like.

1450. It is not conditional that the relative being maintained is a Muslim, or just, or suffering from a defect such as blindness, disabling paralysis and the like. However, it is conditional in relatives other than the two parents that they are not a *kāfir η≅arbī*, i.e.: a non-Muslim who is in a state of war with the Muslims in the manner explained in the section on defence (Section 7).

1451. It is conditional in the person who is providing the maintenance that he is able to maintain his relatives, after providing the maintenance of himself and his permanent wife in the manner appropriate to his needs and his status, including what he needs to spend for his own marriage, even if this is not necessary, or for offering hospitality to his guests and meeting the needs of those who turn to him for their needs, and similar things that are regarded as part of his maintenance. Then what is left is to be used for his obligation to maintain those unable to do so amongst his relatives to the amount that is possible (from what is left). If that meets the expenses of all that he is obliged to provide as maintenance, then the matter is fulfilled, but if what is left can only maintain some of them, in this case he has to give priority to those nearest to him and so on; hence his son, for example, is given priority over the grandson; but if they are level in their degree of kinship, he must distribute the

maintenance equally between them if what he has is divisible and remains useable after division, otherwise he may choose to whom he wants to pay it.
It is not conditional for the conferment of responsibility for maintenance that the person providing the maintenance has reached the Islamic legal age or is sane; so if a young person or an insane person has assets that are more than that needed for their own maintenance and that of their wife, the guardian must use it to provide maintenance for whomsoever that young or insane person is obliged to providemaintenance.

1452. The obligatory maintenance of relatives is limited to the relative himself or herself, so it does not cover the maintenance of those that they maintain among the members of their families, such as their wife and children, unless this is obligatory on the maintaining relative through another route. Hence, it is obligatory on the father, for example, to pay maintenance for his son, not the latter's wife, but he is obliged – also – to maintain the children of this son on the basis of what was explained earlier, that maintaining his grandchildren is obligatory for him, independent of his maintaining their father or otherwise. Also, the son is obliged to maintain his father, not the latter's sons since they are his brothers, and so on.

1453. There is no particular estimate of the level of maintenance for the relative that one is obliged to provided, as it is sufficient to pay whatever is enough to sustain their life in terms of food, clothes, housing and other matters in the manner that is appropriate to their situation and status, such as their servant, vehicle, treatment costs, travel costs and the kind of things that were mentioned regarding the wife's maintenance (no. 1411). However, paying their debts is not regarded as part of the obligatory maintenance, nor paying any *fidyeh* (worship compensation), *keffāreh* (atonement) or *diyeh* (killing compensation) or the like, nor the costs of their marriage such as the dowry etc, although this is better, especially in the case of the father when he is in need of marriage but is unable to meet its expenses.

Addendum on term marriage

This marriage is called 'term' because in the contract it defines a fixed period at the end of which the marriage ends without divorce. This marriage is not different in its essence, nor in a lot of its rulings, to permanent marriage, however, there are a number of rulings that distinguish it from permanent marriage:

1454. Two conditions must be present in term marriage:

1- Stating the dowry, so if the couple established the contract without stating this – out of ignorance or forgetfulness, not to mention intentionally – the contract is invalid.

2- Stating the term, so if they establish the contract without stating it – out of ignorance or forgetfulness, not to mention intentionally – the contract is valid, but it is established as permanent.
On the basis of this, the best form of the *mot'ah* (i.e. term) marriage contract is one in which the woman says: '*Zewwejtoka nefsī bi-mahrin qedrohū kethā li-moddet kethā*' (I am marrying off myself to you at a so and so dowry for a so and so period), the man says: '*Qebilt*' (I accept), using correct classical Arabic, with the proposal (*ījāb*) coming from the woman and the acceptance (*qobūl*) coming from the man, and the proposal coming before the acceptance; however, it is allowed to carry it out differently to this, as mentioned under permanent marriage (no. 1373).

1455. There is no particular limit to the time period of the term, so it it is valid to make it for one hour just as it is valid to make it for fifty years. That said, it is not valid to make it for a period that is longer than the possible age of man according to normal experience, so if he makes it that long, it is established as permanent not term.
The term must be specified in a way that does not accept curtailment or extension, and the contract is invalidated if the termination is given as an unspecified time, such as a day of the week or the like.

1456. The right of pleasure (*istimtā'*) is confirmed for each of the two spouses, as is the case in permanent marriage; however (in contrast to permanent marriage) the husband has no right to force the term wife to stay with him and to abstain from leaving their meeting place without his permission for as long as he does not need her for his pleasure. Also, *'azl* (ejaculation outside the vagina) is allowed with the term wife even if she does not accept it. In addition, the term wife has no right of maintenance, nor is there any inheritance between them.
It is allowed for each of them to impose any reasonable conditions they want in the contract, such as living together, maintenance or others except inheritance, and if they make inheritance conditional, the condition is invalid while the contract stays valid.

1457. Forced separation in term marriage takes place when the term specified in the contract ends, and they have to establish a new contract if they want to return to each other. Voluntary separation can only take place if the husband gives up the period left of the term to his wife and relieves her from her obligation; this is a right for the husband only, unless if she makes it conditional to be a proxy for him in giving up the period to herself. Once he has given up what is left of the term, he cannot retract from that.
Any divorce (in this marriage) has no effect and is regarded as meaningless speech and the bond of the term marriage is not broken by it.

1458. If he gives her up in the period before having sexual intercourse with her, half of the agreed on dowry is due to her, but if he gives her up in the period after sexual intercourse, the whole of the dowry will be due to her.

1459. If the term ends, or the husband relieves himself of it, then if he has not had sexual intercourse with her, no marriage-abstention period needs to be observed by her; but if he has had sexual intercourse with her and she has not reached menopause, then she has to observe a marriage-abstention period lasting two menstrual periods as an obligatory precaution to check that she is not pregnant, otherwise her marriage-abstention period ends by giving birth. That said, if she is someone who does not have menses because of an illness or due to a defect, her marriage-abstention period is then forty-five days.

1460. If the man renews his term contract with the woman – with whom he has had sexual intercourse– during her marriage-abstention period (*'iddeh*) following her first contract with him, then gives her up in the period before renewed sexual intercourse, the woman is not regarded a non-*'iddeh* woman because he did not have sexual intercourse with her in the second contract, but she keeps observing the first ruling of observing the marriage-abstention period following the first contract; so she is not allowed to marry another man until she completes her first contract's marriage-abstention period.

1461. If the husband of a term wife dies, her marriage-abstention period is four months and ten days if she is not pregnant, and the furthest of the two time periods of that period (4 months and 10 days) or giving birth if she is pregnant – which means that if one of the two things took place before the other, she must wait for the second to take place.

Section Two

Types of Divorce

Aτ≅ T≅elāq, Al-Khol‘ and *Al-Mobārāt*

Chapter One

Divorce

A τ≅- T≅elāq

Islam has legislated for divorce to end marital relationship on the basis that marriage is a human relationship that is founded on mutual agreement and love, aiming to establish a common happy life, so if something happens to the relationship between the married couple that tarnishes the love between them and prevents the establishment of a happy family, the spouses have the option to separate.

(A) Conditions of divorce

1462. Divorce is one of the declarations that do not need the acceptance of the other party, who is the wife. The husband alone has the right to declare divorce, even if the wife does not accept it. It has two fundamental pillars:

1- **The form**, and this can be done using any words that mean divorce in Arabic, and even in a language other than Arabic as long as it is the language of the country in which the divorce takes place, and even if the husband has the ability to carry it out in Arabic; it is valid in both classical and colloquial Arabic, also in both correct and error-laden language. That said, divorce is not valid if it is declared using sentences that have been prohibited from use by the Sharī 'ah, since such sentences are regarded as descriptions, such as saying: '*Anti kheliyyeh*' (You are free/without a husband), '*Anti beriyyeh*' (You are relieved), '*H≅abloki 'alā ghāribik*' (Your rope is on your back – i.e. like an untied camel) or '*Il η≅aqī bi-Ahlik*' (Go and join your family.)

The best form for divorce in correct classical Arabic is: '*Zawjetī folāneh τ≅āliq*' (My wife so-and-so is divorced.) And just as divorce is established using words, it is also established by using writing that is coupled with the intention of declaring it, even from someone who is able to say it in words. That said, a sign that shows the intention is not sufficient except from someone who is unable to talk, such as the dumb, although it is better to give preference to writing when he is capable of writing.

2- **Witnessing**, for it is obligatory to declare divorce in front of two male, just witnesses. However, if divorce is declared by someone who does not believe in the obligatory ruling of witnessing – who follows a school of thought other than ours, in this case the divorce goes through and is binding on him.

1463. It is an obligatory precaution not to make divorce dependant on a future matter that is known to be going to happen or is expected to happen, such as the birth of the new moon, the return of a traveller and so on.

1464. It is valid to authorise a proxy to declare divorce; it is even valid to make the woman a proxy for her husband to divorce herself in the way dictated in the authorisation.

1465. If the two witnesses are proven to be not just, the divorce is invalidated, even if the husband, his proxy or both of them believed that they were just at the time; if the matter is reversed, i.e. if the protagonists believed that they were not just but they are in fact just, the divorce is valid.

(B) Conditions of the two parties

1466. The following conditions are required of **the person carrying out the divorce**:

1- **Age of *bolūgh***, so if a young man (who has not reached the Islamic legal age) wants to divorce his wife, it is not valid, even if he authorises other adults to divorce her; also, his guardian has no right to divorce her, but rather it is obligatory to wait for his *bolūgh* and *roshd*. However, a young man (not *bāligh*) may be authorised by another person to divorce the wife of that other person.

2- **Sanity**, so it is not valid for the insane to declare divorce. But it is in the interest of the insane to divorce, his guardian can carry it out on his behalf. The insane whose insanity strikes him in phases, however, has to wait for a time when he is sane – since it is not valid to declare a divorce when he is insane, nor to have it declared it on his behalf.

3- **Serious intention** to declare divorce, so it is not valid from someone who is joking, unaware or asleep.

4- **Free will**, so divorce is not valid from someone who is forced into it except when rightful, such as if the Islamic authority forces the husband to divorce, as may occur in some situations.

1467. Conditions for the **divorced wife** are:

1- Being contracted to a **permanent marriage**; separation through divorce is not applicable to a term marriage.

2- **Purity from** *η≅ai*δ≅≅ **(menses) and** ***nifās*** (blood seen after giving birth), especially if she has not washed it from herself yet; this is if she is not pregnant (or pregnancy has not yet been discovered), has had sexual intercourse with the husband, and her husband is currently around. But if she has not had sexual intercourse with him, or has had intercourse but she is pregnant, or she has had intercourse and is not pregnant but her husband is away from her, in this case her divorce is valid during the menses or *nifās*.

3- **She must be in a state of purity, after the last menses, and after which her husband has not (yet) had sexual intercourse with her** neither in the vagina nor the anus, if she is not pregnant, not very young (i.e. pre-menstrual), or has not reached menopause. Otherwise divorcing her in the period between two consecutive menses in which she has had intercourse with him is allowed.

4- **Specifying the divorced woman** when applicable, such as if the husband has more than one wife; but if he has only one wife, it is sufficient for him to say: '*Zawjeti τ≅āliq*' (my wife is divorced.)

1468. It is obligatory for a valid divorce from an absent man, if taking place during the menses or *nifās*, that he does not know of her state of the menses or *nifās*, and unable to get information about her and that a period of time has elapsed since his absence in which it is known – according to the norm – that she has moved from one purity period to the next; (but) it is better that this period is not less than one month if satisfaction took place before it.

1469. If the woman was someone who does not have a monthly period despite being of an age in which women have the menses – such women are called '*al-Mosterābeh*' (the doubtful – her absent husband must not divorce her until three months have elapsed after having sexual intercourse with her (the first time), after which period her divorce will be valid.

1470. If the husband intentionally declares the divorce during her menses or *nifās*, then he discovers that she was pregnant when declaring divorce, in this case the divorce is valid and goes through.

(C) Types of divorce

Divorce takes two forms: revocable (*rej'ī*) and irrevocable (*bā'in*). Each has its own rulings as follows:

First: Revocable divorce

1471. With revocable divorce (*rej'ī*) , 'the husband – himself or acting through his proxy or guardian, out of his own free will divorces his wife, who must be neither young (i.e. *bāligheh*) nor have reached menopause; she must have had sexual intercourse with him actually or what regarded as such, which is if the wife gets pregnant by letting semen flow in her vagina.'I It was called '*rej'ī*' because it is allowed for the husband to retract (*rej'ī*) from it in a certain way during the marriage-abstention period (*'iddeh*) without the need for a new contract.

1472. The husband has the right to return to his revocably-divorced wife, as long as this is still during the marriage-abstention period – even without her acceptance, unless she has had

made it conditional on him in a binding contract not to come back to her, in which case he must abide by this, but if he violates this, both of them must observe the obligatory precaution regarding the consequences of such a reunion that is contradictory to the condition. This means that the marital consequences of sexual intercourse – touching and looking – must be abstained from, as too the consequence of divorce that allows her to marry another man (i.e. she cannot do that.)

Returning to her is established by using any wording that shows this, including if he retracts her divorce and emphasises her staying as his wife, or if he does anything that shows his aim to return to her, such as dealing with her as a wife and indulging in pleasure with her through sexual intercourse or less than that, intending (with such acts) to have her back; but if he does not intend this – even if sexual intercourse occurs – the restitution of marriage will not have taken place, although it is better and more precautionary for he who has had sexual intercourse with his wife without the intention of returning to her to renew his divorce of her; thus she starts after this divorce a new marriage-abstention period.

1473. The divorcee who was divorced revocably is regarded as a wife in most matters as long as she is still in the marriage-abstention period, except for having sexual pleasure with her, so her husband is not allowed to make her leave his house and leave her without a house prepared for her, unless she commits a proven fornication in her house of residence, such as adultery. Also, it is not allowed for her to go out when this violates his right of pleasure with her, except with his permission; she must allow him to have pleasure with her in the way he likes – even if this results in returning to him (in marriage) – if his intention is to return to her, but if she knows that he does not want to return to her, she is not allowed to allow him (to have pleasure with her) since this is forbidden for him at this time. Her maintenance is his responsibility, and each of them inherits from the other if one of them dies during the marriage-abstention period, along with other marital consequences and rulings. However, the husband is not obliged to respond to her request of sexual pleasure if she asks for it, if he does not want to return to her, since this is forbidden for him.

1474. If the marriage-abstention period elapses and the separation is finalised, he cannot return to her except with a new contract.

1475. It is not conditional for the validity of a reunion (after a revocable divorce) to declare it in front of witnesses, although witnessing it is better to avoid disputes. Also it is not conditional that the husband himself carries it out, but it may be done be the proxy, or the guardian if insanity befell the husband and he had an interest in reuniting with his wife, or it was the guardian himself who had divorced her then changed his mind and decided to restore her to the person to whom he is the guardian.

Second: Irrevocable divorce

1476. Irrevocable (*bā'in*) divorce is: 'Divorce after which the husband has no right to return to his wife except with a new contract even if during her marriage-abstention period if she has one, not to mention if she has no marriage-abstention period'; an irrevocable divorce takes place in the following cases:

1- The divorce of the young girl who has not reached the Islamic legal age, even if he has had sexual intercourse with her.

2- The divorce of a woman who has reached menopause, and completed fifty lunar years.

3- Divorce before sexual intercourse.

And there is no marriage-abstention period (*'iddeh*) for these three.

4- The third divorce which had been preceded by two divorces with two reconciliations in between, or what is similar to them.

5- The divorce established by the Islamic authority of the wife of someone who is refusing to divorce after this has become binding on him due to his failure to provide her with maintenance.

6- The *khol'* or *mobārāt* divorces; divorce taking place through them is irrevocable unless the wife forgoes the money/asset that she gave to the husband, in which case it becomes revocable.

1477. An irrevocably-divorced woman is like a non-unmarriageable woman regarding the removal of the consequences of the marital ties from the moment the divorce takes place; so there is no living together or maintenance payable to the wife unless she is pregnant by him, in which case maintenance is due from him until she gives birth.

(D) Mutiple divorces

1478. Divorce does not take place more than one time through the mere repetition of the number, such as saying: '*T≅elleqtoki thelāthen* or *merretain*' (I am divorcing you three times or twice), and if the mandivorces his wife in this fashion, only one divorce takes place and the rest is regarded as meaningless speech.

1479. If the husband divorces his wife then returns to her back one time after the other up to three times, the situation may be as follows:

1- If he divorces her revocably with all its conditions, then returns to her during the marriage-abstention period, has sexual intercourse with her in the vagina or the anus, then divorces her – after a short or long time – a second time, then returns to her as the first time, then divorces her a third time, here the third divorce is established as irrevocable and she cannot return to him until she marries another man in a permanent marriage with a valid contract and with sexual intercourse in the vagina not the anus. It is better if the second husband is *bāligh* (has reached the Islamic legal age), although it is valid if he is a teenager upon his guardian's permission; it is also better that the sexual intercourse involves ejaculation. Now, if the second husband divorces her, she is then allowed to marry the first husband with a new contract; the scholars have called this divorce '*aτ≅-T≅elāq al-'Iddī*' (a marriage-abstention-period-type divorce).

2- If he has divorced her revocably, then returns to her during her marriage-abstention period, but does not have sexual intercourse with her, then divorces her likewise a second time, then returns to her during her marriage-abstention period but does not have sexual intercourse with her, then he divorces her a third time, the divorce is established as irrevocable and she becomes forbidden to him unless she marries another man as in (1) above; the scholars have called this divorce '*aτ≅-T≅elāq as-Sonnī*' (the *Sonneh*-type divorce).

3- If he has divorced her revocably but abstains from returning to her until her marriage-abstention period elapses, then marries her with a new contract, then does this one time after the other, then divorces her a third time, she is then irrevocably divorced from him (and becomes forbidden to him) unless she marries another man as previously described; this is '*aτ≅-T≅elāq as-Sonnī bil-Ma'nā al-Akhaσ≅σ≅*' (the-more-specific-meaning *Sonneh*-type divorce).

1480. If the man divorces his wife then returns to her during the marriage-abstention period, has sexual intercourse with her, then divorces her, and does this repeatedly until this reaches nine divorces with another man marrying her after each three divorces, in this case she becomes permanently forbidden to him after the ninth divorce.

(E) The *'iddeh*

A *'iddeh* (marriage-abstention period) is: 'A period of time which the Sharī 'ah specified in which the woman spends after separation from her husband through divorce, death or the like, so that she is not allowed to marry another man until after the elapse of it'. The situations in which this is obligatory are:

1- Separation from the wife through divorce.

2- Separation of the wife through an invalidation of a marriage on account of a defect or other reason, or forced invalidation through desertion from Islam (*irtidād*) or the like, as explained before.

3- The husband's death.

4- Sexual intercourse of questionable legitimacy (*shobheh*), whether with or without a contract.

5- The elapse of the period of term marriage, or abandoning it up, as explained before.

The rulings of the marriage-abstention period differ according to the situation of the divorced woman regarding being pregnant or not, whether she has had sexual intercourse with the husband or not, the reasons for the separation (death or otherwise), and whether the marriage is permanent or term. This we shall detail in parts:

Part 1: The non-pregnant (*η≅ā'il*) marriage-abstention period

1481. The non-pregnant woman observes a marriage-abstention period only if she has had sexual intercourse with the husband who is divorcing her, and she is neither young nor has reached menopause; otherwise she does not have to observe a marriage-abstention period, as mentioned before. Sexual intercourse takes place when the (penis) glans (*η≅ashefeh*) – at least – penetrates the woman's vagina, even if with no ejaculation; observing a marriage-abstention period with sexual intercourse in the anus is based on precaution, so no importance is attached to the question of whether his semen entered the vagina without ejaculation. As for the period of the marriage-abstention period, it differs as follows:

1- If she has a period (menses) and between each two consecutive periods a time period of not less than three months, in this case her marriage-abstention period is three purity times, starting to count them from the purity in which she was divorced, if there was still something left of it, even if just one moment. Then when the menses arrives again she becomes pure; this is her second purity time. Then when the menses comes again and she becomes pure, this is her third purity time, but her marriage-abstention period is not complete until the next menses arrives; her marriage-abstention period is complete the moment this next menses starts again.

2- If she has a period, but her purity between each two consecutive periods is more than three months, in this case her marriage-abstention period is three lunar months from the moment of her divorce. So if the divorce took place at the beginning of the month; then counting it is straightforward, but if she is divorced during it, her marriage-abstention period will last the rest of that month plus two lunar months plus what had elapsed from the first month before the divorce; but she must regard the month other than the two months in the middle as thirty days, as an obligatory precaution.

This is if her monthly period is has an extended cycle, i.e. she has her menses every three months or more; but if this occurs in different ways, so that the menses arrives like this only for part of the year, while it arrives in less then three months in other times of the year, in this case the ruling is that she starts her marriage-abstention period after her divorce, then if her purity lasts for three months, then this is her marriage-abstention period, but if the menses arrives (earlier), then she observes a marriage-abstention period counting the number of (three) purity times – as an obligatory precaution – even if this takes a long time. That said, if she is used to having her period in less than three months, then when her husband divorced her, she saw the blood once then it stopped, unlike her period, in this case it is sufficient to observe a marriage-abstention period counting months, although it is better to do this counting the times of purity.

3- If she has no period, although she has reached the age of menses, due to an illness, breastfeeding or the like, in this case her marriage-abstention period is three months as explained in (2) above.

Part 2: The marriage-abstention period for the pregnant

1482. The marriage-abstention period of the divorcee who is pregnant from her husband is the duration of her pregnancy, so her marriage-abstention period ends when she gives birth, even if one hour only after the divorce. However, if she is pregnant with twins, triplets or more, her marriage-abstention period does not end until she gives birth to all the babies.

1483. A condition for the marriage-abstention period for the pregnant divorcee, which ends after giving birth, is that her pregnancy must be from her husband who is divorcing her – even

if the pregnancy was as a result of adultery or intercourse of questionable/erroneous legitimacy –; but if the pregnancy was by someone other than her husband, whether in adultery or intercourse of questionable/erroneous legitimacy, in this case her marriage-abstention period is either counted by purity times or months as explained before. That said, if she became pregnant as a result of intercourse of questionable/erroneous legitimacy, she must observe a marriage-abstention period from this this intercourse until giving birth, then to observe (another) marriage-abstention period of purity times or months after the husband's divorce, as will be explained.

Part 3: Rulings for the divorce marriage-abstention period

1484. Counting for the divorce marriage-abstention period starts from the moment the divorce takes place, not when she receives the divorce news, so if a period has elapsed after the divorce without her knowing it, then she counts her marriage-abstention period from the time the divorce took place; and if some time is left, she waits until it elapses, but if the whole of the marriage-abstention period has elapsed, in this case she is free now and is allowed to marry someone else, regardless of whether the husband was absent or present.
And if when she learns about the divorce she does not know its date, then if she can be certain that she has been divorced at least a month ago, for example, but with the possibility that the divorce might have taken place even earlier, she is allowed to start counting her marriage-abstention period from the time that is certain, otherwise she will have to observe a marriage-abstention period starting from the moment she received the news, which is the best in all cases.

1485. If the husband divorces his wife with whom he has had sexual intercourse in a revocable divorce, then it happens that he returns to her with sexual intercourse, then divorces her again, in this case the ruling for a divorcee who did not have sexual intercourse (regarding her need to observe a marriage-abstention period) will not apply, but it is her first ruling (as one who has had sexual intercourse) that will continue to apply, and she has to start a new marriage-abstention period starting from her second divorce, without counting what had elapsed from her marriage-abstention period after the first divorce. This ruling also applies to the marriage-abstention period for an irrevocably divorced woman, one of the cases of which is: he separates from her after sexual intercourse either by giving up the term or reaching the end of it, if he entered into a contract with her during her marriage-abstention period then separated from her before sexual intercourse; however, in this case (i.e. she is in her irrevocable divorce marriage-abstention period) it is sufficient for her to complete what is left from her marriage-abstention period after the first divorce without the need to start a new marriage-abstention period after separating from him again.

1486. If the married couple dispute the elapse of the marriage-abstention period, the claim of the wife under oath is given preference, whether she claims that the elapse of the marriage-abstention period has taken place or not, and whether her marriage-abstention period was calculated by counting purity periods or months. That said, if her claim is doubtful, such as if she claims that she had three menses in one month and so her marriage-abstention period has ended, her claim cannot be accepted without proof.
It must be noted regarding accepting or rejecting her claim on account of a doubt over her claim that the nature of the norm should be considered, and whether her claim seems unlikely should be judged against this; but if the claim is likely and normal – such as in cases like the example where she is taking a medicine that brings on her menses early – in this case her claim can be accepted.

1487. If a non-*imāmite* (a non-follower of the *imāmī ithnā-'asherī Shi'ite* school of thought) divorces his wife in a way that conforms to his school of thought but contradicts ours, an *imāmite* is allowed to marry that divorcee after the elapse of her marriage-abstention period if that conforms to her divorcing husband's school of thought; it is also allowed for the *imāmite* woman divorced from her non-*imāmite* husband to marry another, in conformity to what the Muslim who follows a school of thought other than ours adheres to in himself and all his affairs. It is also allowed for someone who has not previously followed our school of thought,

when he starts following it, to observe the consequences of his past divorce on followers of our school of thought where they do not conform to the requirements and conditions that we observe. This is also the case with his *imāmite* wife if he divorces her then he starts following our school of thought.

Part 4: The marriage-abstention period relating to intercourse of erroneous legitimacy (*shobheh*; the error is discovered later, hence here it is erroneous rather than questionable)

1488. Just as a marriage-abstention period is to be observed after divorce in which the marriage contract ties and covenant are broken, a marriage-abstention period might become necessary after sexual intercourse that takes place between the married couple in in circumstances of erroneous legitimacy.

The criterion that sexual intercourse may be one of erroneous legitimacy is: the (erroneous) belief of the man that the woman is a wife of his, whether this circumstance arises when he enters a contract with her then the marriage is discovered to be invalid because she is forbidden to him through breastfeeding, blood ties or marriage kinship; or the belief of the man that she is free then it is found that she is not because she is married, or for other reasons; or the error arises in the absence of a contract, such as if he thought that she was his wife because it was dark or the like. In such cases, it is obligatory on her to observe a marriage-abstention period, even if she had no knowledge of the situation and, like him, made this error believing in her marriage to him, or had knowledge of it. The important thing in this is that the error is on the side of the husband, even if on his side alone. However, if the error was on the side of the woman only, with the knowledge of the man and his awareness that she was not his wife, if she went along with him believing that he was her husband, then here as well she must observe a marriage-abstention period – as an obligatory precaution.

1489. The marriage-abstention period for intercourse of erroneous legitimacy is like the divorce marriage-abstention period previously explained, so it becomes obligatory to be counted in term of purity time periods or months or giving birth, if the wife is not young nor has reached menopause; otherwise no marriage-abstention period is obligatory. All this is in accordance with the details given previously, whether she was married or free, so if intercourse of erroneous legitimacy took place with a married woman, her husband will be obliged to abstain from having sexual intercourse with her until her marriage-abstention period elapses; however indulgence in pleasures other than sexual intercourse is allowed. It seems that her maintenance is not cancelled during the days of the marriage-abstention period, despite this.

As for the free (unmarried) woman, it is allowed for the man who had sexual intercourse with her to enter a marriage contract with her during her marriage-abstention period, in contrast to other men, who will have to wait until the elapse of her marriage-abstention period to be able to marry her.

1490. The start of the count of the marriage-abstention period for intercourse of erroneous legitimacy when there is no contract with the woman whose her marital status was the centre of the problem is the moment at which the sexual intercourse ended, not when the situation is uncovered; so if it happened that he had sexual intercourse with her then went away from her for a month then the erroneous legitimacy of the intercourse was found out, in this case the marriage-abstention period should be counted from the sexual intercourse, not when they discovered the matter. The same ruling applies if the intercourse of erroneous legitimacy occurred in the presence of a contract with her and his belief in the validity of his marriage to her; here, if he had sexual intercourse with her then went away from her for a while then the matter was discovered, her marriage-abstention period would start from the day he had sexual intercourse with her.

1491. Another marriage-abstention period might become obligatory for a woman who becomes involved in sexual intercourse of erroneous legitimacy during her marriage-abstention period after intercourse that is legitimate or of erroneous legitimacy; this is in these four cases:

1- When she is in a divorce or death marriage-abstention period, then a man other than her husband has intercourse of erroneous legitimacy with her during the marriage-abstention period.

2- When she has had intercourse of erroneous legitimacy, then her husband divorces her or dies during her marriage-abstention period relating to intercourse of erroneous legitimacy.

3- When she had intercourse of erroneous legitimacy with a man, then again had intercourse of erroneous legitimacy with another man during her marriage-abstention period, after the first one.

4- When she is in an irrevocable divorce marriage-abstention period, then her husband has intercourse of erroneous legitimacy with her during her marriage-abstention period.

The ruling regarding these cases above takes two different forms:

First: When the man who had the intercourse of erroneous legitimacy with her was the husband, as in case (4), the ruling of this is that she must neglect what has elapsed from the divorce marriage-abstention period and starts a new marriage-abstention period for the intercourse of erroneous legitimacy.

Second: When the man who had the intercourse of erroneous legitimacy with her is not the man with whom she is observing his marriage-abstention period, whether the first was a husband or not, as in the cases (1), (2) and (3), the ruling of this is that the two marriage-abstention periods do not overlap, but implementing this is different, as follows:

a- When one of her two marriage-abstention periods is a pregnancy marriage-abstention period, whatever its reason, in this case she must give preference to the pregnancy, so when she gives birth she looks into the situation: if the pregnancy came first, in this case she must start with the other marriage-abstention period after giving birth; but if the other marriage-abstention period came before the pregnancy marriage-abstention period, such as if she was observing a marriage-abstention period and after the elapse of some of it she became pregnant, in this case it is sufficient for her to complete what is left of it (only) after giving birth.

b- When she has no pregnancy marriage-abstention period, then her ruling is to complete the marriage-abstention period that she was observing, then to start another marriage-abstention period for the second.

Part 5: The death marriage-abstention period

1492. If the husband dies, the wife has to observe a death marriage-abstention period, whether she is young or adult, sane or insane, Muslim or non-Muslim, has had sexual intercourse with her husband or not, or is a permanent or term wife; also no distinction is made between the husband being young or adult, or sane or otherwise. Her marriage-abstention period is four lunar months and ten days.

This is if she is not pregnant; however, if she is pregnant, her marriage-abstention period is the longer of the two terms: giving birth or this period. Giving birth must be waited for in any case, then if the time elapsed between his death and giving birth was equal to (or more than) this period (4 lunar months and 10 days), then her marriage-abstention period has ended, otherwise she must complete this period after giving birth.

1493. If the husband dies during his wife's marriage-abstention period following their divorce, here if the marriage-abstention period is following a revocable divorce, it is invalidated and she must start a new marriage-abstention period for his death as explained earlier; but if the marriage-abstention period is following an irrevocable divorce, then she only needs to complete the divorce marriage-abstention period without adding to it.

1494. The start of the marriage-abstention period for the death of the present husband is from the moment the death took place; however if the husband was absent from the wife's country or regarded as absent, such as if he was present in her country but the news of his death did not arrive to her for reasons of illness, imprisonment or other obstacles, in this case the start of her marriage-abstention period is from the moment she receives the news of his death. However, applying this ruling to the wife of the absent person is not clear-cut if she is young

(not *bāligheh*) or insane, although it is likely that it is sufficient for them to start counting it from the moment of death.

1495. It is obligatory on the wife observing the death marriage-abstention period to observe what is known as '*η≅idād*' (mourning), which is: to abstain from anything that is regarded as make-up according to the social norms of the place in which she lives, something which differs according to the time, the place and the customs, in both the body and clothes. *H≅idād* does not mean that the wife stays in the home in which she was living when her husband died, nor that going out is forbidden to her during the marriage-abstention period. In addition, if she violates her obligations during the marriage-abstention period, this does not affect the marriage-abstention period, although she will have sinned.

(F) The wife whose husband is missing

1496. What is meant by 'missing' refers to someone whose family has no news of him and his whereabouts, whether it is known or not known if he is alive or dead, whether he is a traveller, a fighter in a battle, or if his ship sunk in the sea, or if he has been detained by government authorities who have issued neither any news of him, nor given details of his place of detention, or any other reasons for going missing.

1497. If the husband goes missing, here are several scenarios:

1- **The wife withstands** what she is losing in terms of her rights, such as maintenance, and does not fear succumbing to forbidden acts; in this case she may do so without any problem and her marital tie with him continues as long as she does not know that he has died.

2- **The wife claims her maintenance**; in this case if her husband has assets that can be accessed and used to provide maintenance, or else his guardian or someone in his position provides this so she does not fear succumbing to forbidden acts. She must keep to this path and uphold her marital ties with him, however long it takes.

3- **The wife cannot bear the deprivation of her sexual needs** and starts to fear that she will succumb toadultery and other forbidden acts, despite receiving maintenance; or that she can bear the deprivation of her sexual needs but her husband does not have assets which can be used for her maintenance, nor does the guardian provides this; in this case the ruling is as follows:

a- If her missing husband is known to be alive but his whereabouts is unknown in a way in which reaching him and agreeing with him on the matter is not possible, in this case she is allowed to turn to the Islamic authority to request divorce from him, and after the Islamic authority ascertains that he is missing in this manner and after it is proven to the authority that her maintenance is not being met, it will be appropriate for the authority to call the husband's guardian and order him to grant her a divorce. If he responds positively the matter is solved; otherwise the authority will force him to divorce her, but if forcing him is not possible, the Islamic authority will divorce her; the divorce is irrevocable and she must observe the previously described divorce marriage-abstention period. The same ruling applies when she fears succumbing to forbidden acts; so if she claims that she fears succumbing to forbidden acts, her claim is to be believed, since knowing her situation cannot be ascertained except from her. If the guardian or the Islamic authority divorces her, her husband will have no right over her when he returns.

b- If it is not known if the missing husband is alive or dead, here the ruling is that his wife turns to the Islamic authority in the case when she fears succumbing to forbidden acts, even when her maintenance is provided, and in the case where her maintenance is not provided, the Islamic authority sets a waiting period of four years starting from the moment of her claim, searching during these years for her husband; if the four years elapse without learning of his situation, the Islamic authority orders his guardian to divorce her, but if he refuses and forcing him is not possible, the Islamic authority divorces her and she must observe a marriage-abstention period like a death marriage-abstention period. However, it is a revocable marriage-abstention period in which her maintenance is confirmed for her and her husband can have her back if he returns during that marriage-abstention period; each of them inherits

the other if dies during the marriage-abstention period; when the marriage-abstention period finishes, she is allowed to marry someone else.

1498. If she knows that her husband is alive, or that he has returned to his house, after searching for him and the elapse of the time period that the Islamic authority has set for her, here if this takes place before the divorce, then she is still his wife, but if this takes place during the marriage-abstention period, he is given the choice of having her back or leaving her until she finishes her marriage-abstention period and becomes forbidden to him; and if this takes place after her marriage-abstention period has finished, in this case she becomes forbidden to him and he has no right to her unless with a new contract.

1499. If the wife learns of the death of her missing husband, then if this is during the period (set by the Islamic authority), or after it but before the divorce, she must observe a death marriage-abstention period; but if this is during the marriage-abstention period, she must start a new death marriage-abstention period, and if this is after finishing the marriage-abstention period, then it is sufficient.

Chapter Two

Divorce upon Payment

Al-Khol' and *Al-Mobārāt*

According to the scholars' terminology, a *khol'* is: a divorce that takes place in response to the request of the wife who has developed an aversion to or hatred of her husband, and which is granted upon a payment that she makes to the husband; *mobārāt* is: a mutually-agreed divorce that takes place between a married couple who have developed an aversionto or hatred of each other, and which is granted upon a payment that the wife makes to the husband.
Both the *khol'* and *mobārāt* are forms of divorce aimed at separation between the married couple, so the conditions of divorce are also observed here, as well as other things as follows:

1500. The *khol'* is based on two things:

1- The woman hates her husband and if she stays with him it is feared that she will rebel against him and against obeying him when he claims his rights, which it is obligatory for her to accede to, thus resulting in disobedience to God, regardless of the reasons for hating him.

2- The divorce request is coupled with the wife's proposal to pay an amount of money (or asset) to her husband to divorce her. It is a condition that the money or asset paid is owned by the wife and can be used, and is allowed to be owned by Muslims, and is accepted in exchange transactions and that the payment is made upon her free will.

1501. The best form of *khol'* is: the woman begins by declaring that she will make the payment, using the correct classical Arabic, saying – for example –: '*Bethelto leka alfa dollār li-tekhla'anī 'alayhi*' (I am paying you one thousand dollars so you will divorce me in the *khol'* way) and the husband says immediately: '*Qebilto al-Bethl*' (I have accepted the payment proposal). Then the husband hastens –after accepting the payment proposal, without delay– to declare the *khol'* by saying: '*Zawjetī folāneh mokhtele'ah 'alā mā bethelet, fe hiye τ≅āliq*' (My wife so-and-so is divorced in the *khol'* way upon what she paid, so she is divorced.) It can also be declared using the *khol'* term on its own or the *τ≅elāq* (divorce) term on its own. It is also valid that that the payment proposal is done in a request form from the wife, if the husband follows this with the declaration of divorce; so if the wife says: '*T≅elliqnī 'alā alfi dollār*' (Divorce me upon (payment of) one thousand dollars) and the husband says: '*Anti τ≅āliq*' (You are divorced) the divorce is established as *khol'* and she is obliged to pay this amount in exchange.

1502. A *khol'* divorce is irrevocable, and does not allow the husband to retract from it unless the woman retracts from the payment during the marriage-abstention period; so if she returns to him, he must return the payment to her; after that he may choose to keep the divorce, which has now turned revocable, or to return to her, as long as she is still in the marriage-abstention period and he is returning her to his marriage.

That said, she is not allowed to retract from the payment when her husband can no longer return to her after her retraction from the payment, such as if the marriage-abstention period has finished or if the divorce itself was irrevocable, for example in the case the divorce of someone who has not had sexual intercourse and the like.

1503. There is no inheritance between the husband and the *khol'*-divorced wife if one of them dies during the marriage-abstention period, unless she retracted from the payment and the case allowed the husband to return to her.

1504. *Mobārāt* does not differ from *khol'* in all the previous conditions and rulings except in two points:

1- In *mobārāt*, the two couple must hate each other, unlike in *khol'* where the hatred comes from the wife only.

2- The payment must not be more than the dowry, but it must be equal to or less than it, while in *khol'* the payment is allowed to be more than the dowry.

Addendum on
Adh-Dhehār and *Al-Li'ān*

(A) *Adh-Dhehār* (prohibiting by likening one's wife to an unmarriageable women)

According to the terminology of the scholars, *dhehār* is the intention of the husband to separate from his wife, showing his intention by using a form in which he likens her to the back of her mother in its prohibition to him (or to another woman other than his mother amongst the women who are biologically unmarriageable for him), such as by saying: '*Anti 'alayyeh ke-dhāri ommi*' (You are for me like my mother's back). This was one type of divorce used before Islam then Islam prohibited it and put restraints on it, two of which we are going to explain here:

1505. If the *dhehār* is declared unconditionally, it takes effect immediately, but if it is declared upon a condition, its consequence will not manifest itself unless the condition is fulfilled, and when it takes effect the man is forbidden from sexual intercourse with his wife until he makes atonement (give *keffāreh*) for *dhehār*, which is: freeing a slave, but if he cannot then to fast for two consecutive months, and if he fails in this then to feed sixty *miskīn*s, as explained in the section on atonement.

1506. If he has sexual intercourse with his wife – the subject of the *dhehār* which he had declared – before making atonement, in this case he has sinned and atonement is due on this act in particular; then he must abstain from sexual intercourse with her until he makes atonement for the *dhehār* as an obligatory precaution. And if the sexual intercourse was repeated by him before the *dhehār* atonement, another atonement will be due – as an obligatory precaution – for the second intercourse, but not the third or any other after that.

(B) *Al-Li'ān* (sworn allegation of adultery committed by one's spouse)

1507. It is not allowed for the husband to accuse his wife of adultery and to come out with it and slander her on the basis of mere suspicion or doubt, even if it has become known to a lot of people, or it comes through information provided by individuals whom he trusts. But if he becomes certain that adultery took place as a result of seeing the sexual intercourse itself, in this case he is allowed to openly accuse her; however, if his wife did not confess to adultery four times, or if four just men do not give witness on the adultery for him, he must be punished (*η≅add*). If he slanders her with adultery without witnesses nor confession from her, his punishment will not be waived except by '*molā'eneh*' (derived from *la'n*, i.e. cursing – the whole thing is *li'ān*), which is: he must give witness under oath four times that she committed adultery and curse himself – giving witness for the fifth time under oath – if he is a liar. If this is done, her adultery is confirmed and she will deserve punishment; but if the wife insists that he is lying in his witness, she – to avoid punishment – must give witness under oath four times that he is a liar and to make a supplication – giving witness for the fifth time under oath – that Allah's wrath will fall on her if he was telling the truth. All of these proceedings are to be carried out in front of the Islamic authority, or a person appointed by him.

1508. If the *li'ān* which meets all conditions is established, the following consequences take effect:

1- The invalidation of the marriage contract between them the moment the cursing process takes place, and the husband has to pay the dowry that he owes.

2- Permanent separation between them, so she will never be allowed to have him back, neither by returning to him (during the marriage-abstention period) nor through a new contract, even if she marries another man and is divorced from him later.

3- The punishment (*η≅add*) for slander imposed on the husband is cancelled, and the punishment of adultery imposed on the wife is cancelled.

4- If the *li'ān* is coupled with denying ancestral kinship to a child, the child's ancestral link to him is broken, redirecting his ancestry to his mother's line, without him being regarded as the son of adultery from her side.

1509. If the husband was a liar or wrong in his claim, then he retracts from accusing her of adultery and edeclares that his claim was false, here there are two possibilities:

1- If his retraction takes place after the *li'ān*, in this case the permanent prohibition is not removed, but he will not be punished by the *η≅add* of the slander.

2- If his retraction takes place during the *li'ān*, in this case the *li'ān* is invalidated and he deserves the *η≅add* of slander.

In addition, this has no effect on the woman's confirmation of the man's claim and her confession of adultery four times after the *molā'eneh*, so the permanent prohibition will not be removed, nor will she be punished the *η≅add* of adultery.

Section Three

Inheritance

Al-Mīrāth

Chapter One

Conditions for the Heir/Legatee and the Deceased/Legator

The conditions for both the heir/legatee (*wārith*) and the deceased/legator (*mowerrith*), are:

First: Death of the legator and life of the heir/legatee

1510. The heir does not deserve anything from the estate of the deceased/legatoruntil the 'living' status of the heir, when the legator dies, is confirmed after the 'death' status of the legator when the heir is confirmed to be alive, so if they die at the same time, they do not inherit from each other; it is sufficient regarding the death of the legator – in addition to natural death – if it is regarded as death according to the Sharī'ah, something which has two possibilities:

First: Deserting the faith (*irtidād*) by one who was born to Muslim parents (*mortedd fi τ≅rī*), in this case it is allowed for the heirs of the man who is a *fi τ≅rī* deserter to distribute his estate during his life upon the confirmation of his desertion of Islam even if before carrying out the *η≅add* on him, whilst the estate of the *millī* deserter (who was born as non-Muslim then embraced Islam after *bolūgh* then deserted it) is not distributed until after carrying out the *η≅add* on him.

Second: Going missing, when regarding the missing person is not known whether he is dead or alive; in this case after four years of his family's waiting and searching for him, as explained in the divorce section, it is allowed to distribute his estate.

1511. Death – that requires the transfer of inheritance – is confirmed through decisive knowledge formed by seeing or otherwise, also through things that are similar to knowledge, which are: satisfaction (*i τ≅mi'nān*) coming from any reason, such as common knowledge (*shiyā'*) and the like, or a witness with proof, even through the witness of only one just, trustworthy person.

1512. Of the assets of the *fi τ≅rī* deserter, only the assets that he owned before his desertion are to be transferred to his heirs; however, the assets that come into his ownership after that and until the *η≅add* is carried out on him, or when the *η≅add* is not carried out on him, are owned by him.

1513. Inheriting from the *fi τ≅rī* deserter is limited to those in whom the conditions required for inheriting from the deserter are met, so other individuals who meet these conditions after distributing the inheritance do not get anything, even if meeting these conditions before the actual distribution of his assets to the heirs.

1514. The missing person is not regarded as dead – as far as the Sharī'ah is concerned – until the elapse of four years of searching for him, then if there is no news about him, his heirs may distribute his estate. It seems more probable that it is allowed to distribute his estate after the elapse of ten years after he goes missing, without the need to search for him. His heirs are those in whom the conditions are fulfilled when the period of waiting finishes, not after it. And just as his estate will be inherited by others after the elapse of the two mentioned periods, he will inherit from others when they die in any case, i.e.: if the death of a legator benefiting him takes place before the commencement of searching for him, or during the two mentioned periods or after them, in which case what he inherits is added to his assets, making him the owner of it like the rest of his assets; then if he comes back from his absence, he can dispose of it, but if his death is discovered or if he remained missing, his heirs inherit from him. If his estate is then distributed to his heirs after the elapse of one of the two periods, he will not – thereafter – inherit from others.

1515. To ascertain the living status of the heir, two things must be established: first, knowledge of the formation of his *no τ≅feh* ('drop of fluid', or early form of life in the womb) before the death of his legator, although he is still an embryo in which spirit has not entered

yet; second, his birth alive from his mother's womb even a very short while, even one moment, in this case, if he separates from his mother alive, he deserves his share and he owns it with all consequences, so that if death befalls him afterwards, his heirs will in turn inherit from him as from any other deceased people.

1516. The embryo does not inherit as long as he is still embryo, even if he is known to be alive in his mother's womb, until he separates alive; however, he must be taken into consideration when dividing the estate in the cases where his share is affected by the other heirs; the details of this as follows:

a- If the subject of pregnancy (i.e. the embryo) is alone in his group and level (of inheritance) so that others are in a lower group or level and do not inherit with his existence, in this case, it is not allowed to distribute the estate until after giving birth, so as to see if inheritance is due to him, through being born alive, or to others, if he is born dead.

b- If there are others in the same group or level,and if there are among them people whose share is going to be reduced due to the pregnancy and others whose share will not, in this case those who will not see their share reduced (due to the pregnancy) are to be given priority regardless of the status, such as the husband or wife, and are to be given their share complete, then the share of those whose shares are going to be affected by the presence of the pregnancy or otherwise must be reduced by the amount that the subject of the pregnancy will inherit; this is to be put aside and the rest of the heirs are to receive their shares, which are estimated on the basis of the assumption that the birth will result in a living child and so it will inherit with them. After that, if he is born alive and the amount which was put aside was equal to his share, then all the estate has been distributed properly, but if the amount put aside was less than his share, he must take from the shares of the rest of heirs to the ratio of each of their shares in the deficit to complete the share of the newly born baby; but if he is born dead, or the amount which was put aside was more than the correct share, each one of the others are to receive their share of the excess.

And where it is possible to ascertain if the pregnancy is of one or more babies and male or female, as is the case in our time, the amount to be put aside should be the correct share; but when it is not possible to know, it is an obligatory precaution to put aside the share of a male not a female and according to the number of babies that is more likely, be it one or more.

1517. The life of an embryo after his separation from his mother – even if he died immediately – is acknowledged by its crying and clear movement that cannot take place except in a living person; so a movement that is the result of muscle tension, that can take place in someone who has just died, is not regarded as a sign of living.

Second: The death of the deceased that is not at the hands of his heir (killing)

1518. For the heir to get his share of the deceased's estate, he must not have intentionally killed him, so a killer does not inherit from the person he killed if the killing was intentional and unjustified, but he will inherit from him if this was a punishment, a *η≅add* or in self defence or in the defence of his honour or possessions; he also inherits him if the killing was purely by mistake, such as if he was shooting a bird but missed and shot his would-be legator. However, he does not inherit from the *diyeh* (killing compensation) which is due from the *'āqileh*, as the more probable ruling. The *'āqileh* are the relatives from the father's side who join in paying the *diyeh* to the killed person's family on behalf of the killer.

If the killing was an error, that is similar to an intentional killing, which is: if he intended to inflict the act on the killed person, but did not intend to kill him and the act was something that would not normally result in killing, such as if he hit him with something that does not normally kill, intending to hit him not kill him, but this ended up in killing him, in this case he is not excluded from the inheritance, but – also – he does not inherit from the *diyeh*.

Regarding the killing excluding the potential heir from getting his inheritance, there is no distinctionbetween the killer being one or more than one; and also no distinction – in the case of more than one killer – between some of them being heirs while the others not.

1519. If the legatee (heir) ordered a sane person to kill his legator, threatening him to inflict harm on him or on someone who is related to him if he does not do it, and the killer executed his wish and order and killed the person, in this case the person who ordered the killing is not excluded from his inheritance because he is not the one who carried out the killing, although he has sinned and will be given life imprisonment until he dies.

1520. The *diyeh* is regarded as the killed person's asset, so it can be used to pay off his debts, then used first to execute his will before further inheritance is distributed, as long as the *diyeh* is equal to or less than a third of the total; then the rest is to be distributed amongst his heirs like his other assets.
The *diyeh* is inherited by every heir, whether their inheritance was through ancestral kinship or marital kinship, even to two spouses involved in intentional killing. That said, half-brothers and half-sisters from the mother do not inherit, nor do the rest of those who relate to her on her own, such as uncles (on the mother's side) and grandfathers (on the mother's side).

1521. The *diyeh* that becomes obligatory for cutting off some of the organs of the deceased is not paid to the heirs, but to be spent – in given on charity on his behalf if he had no debt; otherwise, it is allowed to use it, as the rest of his assets, to pay off his debts.

Third: The Islam of the heir if the deceased is Muslim

1522. There is no dispute that Muslims inherit from each other even if they differ in the schools of thought that they follow or if they differ in some beliefs; so the fact that the father follows one school of thought and the son follows another does not stop them inheriting from each other. That said, if the person following another school of thought denies an essential belief (*δ≅≅erūreh*), the denial of which implies atheism, in this case he becomes a *mortedd* who does not inherit from a Muslim, as will be explained.
Also, there is no dispute that non-Muslims inherit from each other regardless of their religions and beliefs, so there is no problem – in our Sharī'ah – if the father is Jewish or Buddhist and the son is Christian or Zoroastrian preventing each of them inheriting from the other.
This is if the inheriting individuals are either all Muslims or all non-Muslims. However, if they are a mixture of Muslims and non-Muslims, in this case the ruling is different as will be explained.

1523. If a Muslim dies and there are among his heirs a Muslim and a non-Muslim, the non-Muslim does not inherit from him however near he is in his ancestral relationship, and the non-Muslim does not inherit from him through a marital relationship even if the deceased is his wife, such as if a Muslim man married a woman from the People of the Book, while the Muslim inherits from him however distant he is in his ancestral relationship; so if a Muslim dies leaving a non-Muslim son and a Muslim relative who owes compensation, the latter inherits from him, not his non-Muslim son. Also, if there is no one to inherit from him amongst his Muslim heirs except the *imam* or someone who stands in his place, the latter inherits from him without any share going to the non-Muslims, even if the latter are related to the deceased through biological or marital relations. But if one or more of them embrace Islam after the death of the legator (but) without a time separation that is too long, the person(s) who embrace Islam inherits from him, not his other non-Muslim relatives or the *imam*.
Regarding non-Muslims there is no distinction between the *kāfir η≅arbī* (a non-Muslim who is in a state of war with the Muslims) and the *thimmī* (a non-Muslim who is a citizen of the Muslim state), or between the *mortedd fiτ≅rī* (a born-Muslim who deserted Islam after *bolūgh*) and the *mortedd millī* (a born-non-Muslim who embraced Islam after *bolūgh* then deserted it), nor regarding Muslims is there a distinction between the *imāmī ithnā-'asharī* (followers of Ahlol-Bayt (as)) and others.

1524. If a non-Muslim dies and among his heirs are a Muslim and a non-Muslim, his ruling is the same as the previous entry, i.e. the Muslim inherits from him however distant he is in his ancestral relationship, not the non-Muslim however closely related; so if a non-Muslim dies leaving one non-Muslim son and a Muslim relative who owes compensation, the latter

inherits from him not his non-Muslim son. However, there is one difference here, which is that if all his heirs – through both biological and marital relations – are non-Muslims, in this case they inherit from him, not the *imam*, if the deceased was originally a non-Muslim, also if he was *mortedd millī*, even *mortedd fiτ≅rī* as well.

But excluded from this complete exclusion from the non-Muslim estate is his young child who is regarded as a non-Muslim (since he is his child); here it is an obligatory precaution on the Muslim heir to provide his maintenance using what he has inherited – even if there is more than one child – until he reaches *bolūgh*, then if he embraces Islam, what is left of the estate – if anything is left after the Muslim's spending on the child's maintenance and on himself in any way he has wished – is to be handed over to him. In fact, if Islam is declared by that young child before his *bolūgh*, it is more appropriate for the Muslim heir, as a precaution, to hand over what is left of the estate to the Islamic authority to take over the maintenance of the child; then if he remains a Muslim after *bolūgh*, the Islamic authority hands over what is left, if anything, of the estate; otherwise the Islamic authority returns what is left of the estate to the Muslim heir.

There are some further details relating to the non-Muslim who embraces Islam after the death of the legator; for these, please refer to the original guide 'Fiqh ash- Sharī'ah'.

Fourth: Being born to a legitimate marriage

1525. When inheriting due to a kinship, the ancestral link must have come from legitimate marriage not adultery; the legitimate marriage includes marriage based on a valid contract and sexual intercourse taking place between a man and woman in questionable/erroneous legitimacy, regardless to whether the *noτ≅feh* (first state of the embryo) forms as a result of allowable or forbidden intercourse; this occurs when a man has sexual intercourse, whether with his wife or the woman with whom he had intercourse of erroneous legitimacy, during her menses or when one of them was in a state of *iη≅rām* (for pilgrimage or *'omreh* in Mecca), as this does not affect the legitimate status of the resulting child. On the basis of this, if the child was the result of adultery, the child does not inherit from his adulterous parents nor from their relatives, however the ancestry chain continues upwards, and they do not inherit from their illegitimate child, nor does anyone who is born to him, including his children or grandchildren and however the ancestry chain continues downwards.

1526. Just as the adultery of the parents prevents inheritance between them and their illegitimate child, the adultery of one of the parents with someone acting in erroneous legitimacy prevents inheritance between the adulterer and the child born from that sexual intercourse, just as it prevents inheritance between the child and the relatives of the adulterer, but it does not prevent inheritance between the child and the parentwho acted in erroneous legitimacy, nor the relatives of that latter.

1527. The fact that the child is a son of adultery does not affect inheritance between him and whoever relates to him through non-adultery, through either biological or marital links, such as children, or a husband or a wife, in addition to people who owe compensation, then the *imam* when no heir exists.

Chapter Two

The Inheritance of the Groups

(A) The inheritance of the first group

Which consists of the two parents and the children, the inheritance of whom is as follows:

Part 1: The inheritance of the two parents when there are no children

1528. If a child dies and leaves his father only, the father inherits the whole of the estate through his ancestral relationship.

And if the deceased was a female and left her husband and father, the husband inherits half of the estate share-based (i.e. on the basis of the shares as specified in the Sharī'ah) and the rest goes to the father kinship-based (i.e. on the basis that the kinship-related automatically inherit, but after separating the shares of those who inherit share-based). And if the deceased was a male and left his wife and father, the wife inherits one quarter share-based and the father the rest kinship-based.

However, if the deceased – male or female – died leaving his/her mother only, his/her mother inherits the whole of the estate – one third share-based and the rest kinship-based, without excluding from (*ηΞajb*) her inheritance the existence of brothers and/or sisters of the deceased (*ηΞajib*, i.e. one who excludes or changes the inheritance), since their excluding of her is conditional upon the existence of the father, who – according to the example – does not exist. But if the deceased was a female and she left her husband and mother, the husband inherits half and the rest goes to the mother, one third share-based and the rest kinship-based. And if the deceased was a male and he left his wife and mother, his wife inherits one quarter and the rest goes to the mother, one third share-based and the rest kinship-based.

1529. If the two parents are alive, their inheritance is as follows:

1- If the deceased has no living husband or wife: the mother inherits one third share-based if the deceased had no brothers or sisters who can qualify to exclude inheritance (as *ηΞājib*), in which case her share is one sixth share-based; then the remainder after the mother's share – whether one third or one sixth – goes to the father kinship-based.

2- If one of the spouses survived them, then if it is a husband, he inherits one half, and if it is a wife, she inherits one quarter, the mother inherits one third when no *ηΞājib* exists and one sixth when a *ηΞājib* exists, share-based, with the rest going to the father kinship-based.

1530. Although the deceased's brothers and/or sisters do not inherit if they exist with the two parents, they act as a *ηΞājib* of the mother's share, reducing it from one third to one sixth if seven conditions are met:

First: The father is alive when the child died. If he was missing and it is not known whether he is dead or alive, then he is regarded as alive for the period mentioned in the section on divorce, or until the elapse of ten years since he went missing.

Second: There must not be fewer than two brothers, or one brother and two sisters or four sisters.

Third: They must be the deceased's brothers and/or sisters from his two parents or from the father only, so the brothers and/or sisters from the mother only do not affect the inheritance.

Fourth: They must be born already, so it is not sufficient to count one who is still an embryo.

Fifth and sixth: They must be Muslims and free, not slaves.

Seven: Whoever qualifies to become a *ηΞājib* must not be the killer of the deceased, so if they are the killers, the precaution must be observed.

Part 2: The inheritance of the children when the parents do not exist

1531. The **sole son** inherits the whole of the deceased's estate kinship-based.

The **sole daughter** inherits the whole of the deceased's estate as well, half share-based and the rest kinship-based, and no one from among the heirs from the other groups can dispute this remainder with her.

Two sons (no daughters) – or more – inherit the whole of the estate kinship-based, divided equally between them.

T**wo daughters (no sons)** – or more – inherit two thirds share-based and the rest also goes to them kinship-based, divided equally between them.

When **sons and daughters** exist – one or more of each – they inherit the whole of the estate, with the male receiving twice the share of the female.

1532. If there is **a spouse with the one or more sons**, the husband inherits one quarter share-based and the whole of the rest goes to the sole son, or is shared equally between the many sons, kinship-based. But if the spouse is a wife, she inherits one eighth share-based, with the rest going to the one son or is shared equally between the many sons.
If there is **a husband with one or more daughters**, the husband inherits one quarter – as well – share-based, with the sole daughter inheriting one half share-based and the rest kinship-based. The same applies if there are two or more daughters: the husband has one quarter share-based and the daughters inherit two thirds share-based and the rest kinship-based, divided between them equally. But if there **is a wife with one or more daughters**, she inherits one eighth share-based, and the daughter, two daughters or more inherit two thirds as above.
And if there is **a spouse with sons and daughters**, then if the spouse is a husband he inherits one quarter, but if it is a wife she inherits one eighth, with what is left from the quarter or eighth divided between the sons and daughters, with the male getting twice the share of the female.

Part 3: The inheritance of the two parents and children together

1533. If one son exists with the parents (of the deceased) – one or both – with or without one of the spouses, the ruling is as follows:

1- If **he exists with the two parents**, each one of the parents inherits one sixth and the rest goes to the son.

2- If **with him – in addition to the two parents – there is a husband (of the deceased) or a wife (of the deceased) also**, each of the two parents inherit one sixth, the husband one quarter, or if a wife one eighth, then the rest goes to the son.

3- If **he exists with only one of the two parents**, whether a father of the deceased or a mother, this parent inherits one sixth share-based and the rest goes to the son kinship-based.

4- If **with him – in addition to one of the parents – there is a husband (of the deceased) or a wife (of the deceased) also**, then the ruling is like no. (3) above after giving the husband one quarter or the wife one eighth.

The ruling of this will not be different if there are two or more sons: when there are no daughters, the sons inherit what is left of the estate after taking out the share of the sole or both parents and the share of the spouse, equally divided between them.

It is also not different if there are one or more sons and one or more daughters with the others; in this case they divide what is left after the share of the parent(s) and spouse, with male getting twice the female's share.

1534. If a daughter exists with both parents and with or without a spouse, the ruling is as follows:

1- If **one daughter exists with two parents**, the division takes into consideration the existence or not of a *ηājib* to the mother's share, so if the deceased did not have brothers and/or sisters who can exclude some of the mother's share, in this case the estate is divided into five shares: one share for the father, one share for the mother and three shares for the daughter, all of them taking their shares share-based and kinship-based; but if the deceased

had brothers and/or sisters, the mother takes her one sixth without getting anything from the rest, the father one quarter of the rest and the daughter three quarters of the rest.

The shares ended up like this because the rest – which is one sixth – after the third (the parents' share) and the half (the daughter's share) is divided between them according to the share of each of them; so the result after correcting the shares is to divide the estate as fifths or quarters as mentioned. This is a rule which applies in every situation where there is an additional amount to be added to the share and which leads to the correction (change) of the shares, as will arise in more than one situation.

2- If **two parents exist with the daughter and a spouse**:

If **the spouse is the husband**, he gets one quarter, and each of the two parents get one sixth, and the rest is for the daughter, ending up with a share that is less than her share – which is one half – by half of one sixth; this is on the basis of the rule: 'Who gets the profit gets the loss', which means: the person who gets more than his/her specified share through kinship of what is left from the estate when the estate is more than the specified shares is the one who gets a reduction – often – of his share when the specified shares are more than the estate. This rule is used in many situations.

And if **the spouse is the wife**, she gets one eighth, but since the estate – here – is more than the specified shares, and since the excess will be distributed to all of them except the wife, then the ruling in this part of the matter applies to the daughter and the two parents as in (1) above; so it is seen that if the deceased had brothers and/or sisters who can exclude or change some of the inheritance distribution, then the rest after the share of the wife is to be made fifths, given as one fifth to each one of the two parents and three to the sole daughter, which is for all on the share-based and kinship-based basis. But if the deceased had brother and/or sisters who can change the division, the mother gets her one sixth without any more, and the rest from the wife and mother is to be divided between the father and the daughter in quarters as share-based and kinship-based, so that the father gets one quarter and the daughter three quarters.

1535. If the two parents exist with two or more daughters, with or without the spouse, the ruling is as follows:

1- If **the two parents exist with two or more daughters**, the estate is divided according to their specified shares: the two parents get one third equally divided between them (i.e. one sixth for each) and the two or more daughters get the two thirds left equally divided between them.

2- If **along with the two parents and two or more daughters one of the spouses exist**, in this case if it is the husband, he gets one quarter, and if it is the wife, she gets one eighth, then each of the parents gets their share which is one sixth, leaving the rest to the daughters equally divided between them.

1536. If one of the two parents exists with one or more daughters, with or without a spouse, the ruling is as follows:

1- If **along with one of the two parents there is one daughter only**, the parent gets one quarter share-based and kinship-based, with the daughter getting the rest share-based and kinship-based as well.

But if there is **one of the spouses with them as well**, then if it is the husband, he gets one quarter, and if it is the wife, she gets one eighth, with the rest divided in quarters: one quarter to the parent, mother or father, and three quarters to the sole daughter, all share-based and kinship-based.

2- If **along with one of the two parents there are two or more daughters**, the estate is divided between them in fifths: the father gets one fifth share-based and kinship-based, with the rest to the two or more daughters equally divided between them.

If **along with the two or more daughters – in addition to the parent – one spouse exists**, then if it is the wife, she gets one eighth, and the rest is divided in fifths: one fifth goes to the parent share-based and kinship-based, and four fifths go to the two or more daughters share-

based and kinship-based, equally divided between them. But if it was the husband, he gets one quarter, one sixth goes to the sole parent, with the rest going to the two or more daughters, which is less than their specified share, i.e. the two thirds.

Part 4: The inheritance of the children's children

1537. The children's children do not inherit if the deceased had a child, male or female, so if he left a daughter and a son's son, the inheritance goes to the daughter.

1538. The children's children come in order of inheritance, so that the nearer excludes the farther; so if the deceased had a son of a son and a son of a son of a son, the inheritance goes to the former not the latter.

1539. The children's children inherit the share from those whom they are related to, so the daughter's child – male or female – inherits his mother's share which is one half, whether the child is alone or exists with the two parents, then the rest is given to him/her, kinship-based, even if male, as this is done with the mother if she exists. The son's child – male or female – inherits his/her father's share, so if he/she is alone he/she gets all, but if a person who has a specified share – such as a husband – exists, the child will then have all that is left after that person's share.

1540. If the deceased had a son with children and a daughter with children – and the children were of different gender in both – then the daughter's children inherit one third which is their mother's share to be divided between them, as the male gets twice the female's share, while the son's children get two thirds, which is their father's share to be divided between them likewise.

1541. The children's children join – when thechildren do not exist – the deceased's two parents in inheritance; this is because the parents and the children's children are two types from the same group and the parents' nearness to the deceased does not exclude the inheritance of the others, so:

If **the deceased left two parents and a son's child**, each of the parents gets one sixth, leaving the rest to the son's child.

And if **the deceased left two parents and a daughter's children**, the two parents get two sixths and the daughter's children one half, then the sixth that is left is to be divided between all of them according to the ratio. This is if the deceased had no brothers and/or sisters who had the conditions of exclusion (*η≅ājb*); but if that is the case, the estate is to be divided into fifths: three fifths to the daughter's children share-based and kinship-based and two fifths to the two parents likewise. However, when there are brothers and/or sisters, the mother gets one sixth, and the rest is to be divided into quarters: one quarter goes to the father share-based and kinship-based, with the rest going to the daughter's children, equally divided between them, share-based and kinship-based as well.

And if **the deceased left one parent and a daughter's children**, the daughter's children get three quarters of the estate share-based and kinship-based, with the father getting one quarter share-based and kinship-based as well.

And if **the deceased left a spouse, two parents and a daughter's children**, the spouse gets one quarter, the parents get two sixths, and the daughter's children get two and a half sixths, since the shortfall is taken from the daughter's children as it would have been taken from the daughter had he left a spouse, two parents and one daughter.

The same ruling applies in other situations – nothing changes except replacing the title 'son' or 'daughter' with the title 'son's children' or 'daughter's children' in all the possible situations of Part 3.

Addendum

1542. *Al-H≅abweh* is: the clothes which the deceased used to wear, his ring, weapons and Quran, not any other of his personal belongings, such as his vehicle, watch and books.

Included in the weapons is what is normally is annexed to them, such as the sword sheath, bullet magazines or cartridges for rifles and the like.
It is more probable that the *η≅abweh* – according to the above definition – is not a specified right of the eldest male son when considering his father's asset, nor does he take it for free in addition to his share. That said, it is recommended for the rest of heirs to make the *η≅abweh* – separated from the rest of assets of the estate – exclusive to the eldest male son as part of his inheritance, but not for free, unless if they accept to give it to him for free. It is not conditional that the son getting the *η≅abweh* is *rashīd* (has reasonable conduct), nor that he has already been born alive, so the *sefīh* (one of unreasonable conduct) may get the *η≅abweh*, and so too the embryo not yet born, in which case the *η≅abweh* is to be put aside until he is born alive.

1543. Grandfathers and grandmothers of the deceased do not inherit when one or both of his parents exist, but it is recommended that each of the two inheriting parents give something out of their inheritance to the deceased's grandfathers and grandmothers if they are alive when their grandson or granddaughter dies, whether they are from the father's side or mother's side. The amount should be limited to one sixth of the estate, not one sixth of the share of each one of them, which means that giving a sixth will be if the share of each one of them is more than one sixth.

(B) The inheritance of the second group

The second group consists of the brothers, sisters, grandfathers and grandmothers. No one from this group inherits anything unless no one exists from the first group.
Regarding brothers and sisters, they are treated the same regardless of whether their kinship is from both mother and father, from the father only or from the mother only, and whether they are male or female; so too are their children when all the brothers and sisters do not exist. Also treated the same are grandfathers and grandmothers and whoever is in the ancestry chain as it continues upwards, whether they are from the father's side or mother's side.
However, some levels may exclude inheritance from another level of the same type, so the brothers and/or sisters from both parents exclude inheritance from the brothers and/or sisters from the father only, not the brothers and/or sisters from the mother only, and the brothers and/or sisters from the father only do not exclude the brothers and/or sisters from the mother only; also the brothers and/or sisters exclude their children in competition. And if the upper grandfather exists with the lower (nearer) grandfather (see No.1549 for an explanation of upper and lower grandparents), the lower (nearer) inherits, not the upper, ; this is with competition, as will be detailed later; so the upper does not inherit unless the lower (nearer) grandfather does not exist, with or without the brother. In addition to all that, the husband and the wife join this group in inheritance in all cases; all this we are going to detail as follows:

Part 1: The inheritance of the brothers and sisters alone

1544. If there is one or more brother or sister, and all of them are from both parents or from the father only, in this case their inheritance – with or without a spouse – is as follows:

1- **The sole brother** inherits the whole of the estate kinship-based. And if with him is the deceased's husband, he gets one half share-based, but if with him is the deceased's wife, she gets one quarter share-based, leaving the rest to the brother kinship-based.

2- **Two or more brothers** inherit the whole of the estate as well, equally divided between them. But if there is a husband or wife with them, the spouse gets his/her highest share (which is one half or one quarter), leaving the rest to the brothers kinship-based, equally divided between them.

3- **The sole sister** inherits half of the estate share-based and half kinship-based, the latter she gets without being joined by any of the deceased's relatives of the third group.

And if the deceased's husband is with her, he gets one half share-based, leaving the sister with her specified share; but if her brother left a wife, the wife takes one quarter, leaving the rest for the sister: one half share-based and the rest kinship-based.

4- **Two or more sisters** inherit the whole of the estate, two thirds share-based and the rest kinship-based, equally divided between them. And if there is a wife with them, she takes one quarter, leaving the rest for them share-based and kinship-based, equally divided between them; but if there is a husband with them, he takes one half, leaving the rest which is the deficit from the two thirds.

5- **A brother and a sister together**, also many brothers and sisters, inherit the whole of the estate, divided for the male in a ratio of twice of the share of the female.
But if there is a husband or a wife, the latter is given his/her highest share, leaving the rest for the brothers and sisters with the male getting twice the female share.

1545. If there is one or more brother and/or sister, and they are from the mother only, their inheritance – with or without a spouse – is as follows:

1- **The sole brother** – also **the sole sister** – inherits the whole of the estate, one sixth share-based and the rest kinship-based.

2- **Two or more brothers and/or sisters**, same or mixed gender, inherit the whole estate also, one third of it share-based and the rest kinship-based, equally divided between them even if they are mixed brothers and sisters.

And if in each of the above two cases a husband or a wife exists, the estate can still include the shares of all of them, and even an excess will be left – so the spouse is given his/her highest share (one quarter or one half) and the rest is given to the brothers and/or sisters share-based and kinship-based, which is clear.

1546. If the brothers and/or sisters from both parents exist with the brothers and/or sisters from the mother only, or the brothers and/or sisters from the father only exist with the brothers and/or sisters from the mother only, their inheritance is as follows:

1- **The sole brother or sole sister from the mother only** inherits one sixth, leaving the rest for those who are from both parents – or from the father only. But if **they are more than one brother or sister**, they divide it as we mentioned when dealing with their inheritance, i.e. equally if they are of the same gender (either all male or all female), and the male takes twice the female share if they are mixed.

2- **Two or more brothers and sisters from the mother only**, male or female or mixed, inherit one third equally divided between them, leaving the rest for those who are from both parents – or from the father only. But if **they are more than one brother or sister**, they inherit it as explained in (1) above.

Here, a note is due, which is:
In every situation in which the estate adds up to more than the specified shares, the excess is given only to the person who is related to both the father and mother from the father's side only when they exist together with those from the mother's side only, and nothing of the excess is given to those who are related to the mother only, while they are given the excess when they inherit the estate on their own, as we mentioned in the previous entry.

3- If along **with the brothers and/or sisters from both parents** – or the brothers and/or sisters from the father only – and the brothers and/or sisters from the mother only there is one of the spouses, then – according to the rule – those whose shares must not be reduced must be given their share first, who are – here – the spouses and the brothers and/or sisters from the mother only, then it is to be seen: if the estate can accommodate all those who have specified shares, then no problem, but if the estate cannot accommodate all of them, the deficit befalls the shares of those who are related to both parents – or to the father only. Some such cases are: if the husband exists with two sisters of the deceased from both his parents – or his father only – and one or more of his brothers and/or sisters from his mother only, in this case the shares are: one half for the husband, one sixth for each brother and/or sister from the mother and two thirds for the sisters from the two parents, and in this case the share of the husband and the one related to the mother only is to be given preference, then what is left – however little it is – is for those who are related to both parents. There are other situations in which the shares can be deducted following the general rules explained above.

Part 2: The inheritance of the nephews and nieces

1547. The rule is that nephews and nieces do not inherit unless there exist no brothers and/or sisters of the deceased; however, the ruling here differs a little from the inheritance of the deceased's grandchildren as explained before, because the nephew is excluded from the inheritance only when the deceased's brothers and/or sisters exist in every case where a nephew competes with the other brother for something of his share; the nephew does not inherit unless the brother does not exist, but if there is no competition in the manner above, then they both inherit and the nephew inherits the share of his father who would have been given his share had he/she existed.

And if there are no direct brothers or sisters nor direct nephews or nieces, the inheritance goes to the children of the nephews or nieces, and so on downwards through the line of ancestry, in the same manner as mentioned before, that the nearer relative takes precedence over those competing with him who are farther down the chain, otherwise they inherit with him. Also, the children of the person who is related to both parents excludes the children of the person who is related to the father only.

1548. If the deceased had no brothers and/or sisters in the manner that we explained in the previous entry, their children take their place in inheritance, sharing it with the grandfathers and/or grandmothers, on the basis that: every one of the children gets the share according to his or her relationship to the deceased, as follows:

1- If **the deceased left nephews and/or nieces from the mother**, they inherit all the estate: one sixth share-based and the rest kinship-based, divided between them equally, even if they are a mixture of males and females.

And if **he left nephews and/or nieces from the father – or from the two parents –** they inherit all the estate kinship-based, equally divided when they are the same in gender (either all males or all females) or the male gets twice the female share when mixed.

2- If **he left nephews and/or nieces (brother's or sister's side) from the two parents – or the father only –** here the estate is divided between them with differentiation: two shares for the nephews and/or nieces from the brother's side and one share for the nephews and/or nieces from the sister's side, then each group divides what they inherit equally with the same gender, or with the males getting twice the female share when mixed.

3- If **he left nephews and/or nieces from (the brother's children) from the mother and nephews and/or nieces (the brother's children) from the father**, here the nephews and/or nieces from the mother inherit one sixth however numerous they are, equally divided between them even when they are mixed males and females, leaving the rest for the nephews and/or nieces from the father however few they are, equally divided between them when they are of the same gender, but with the male taking twice the female share when they are mixed.

The same is to be done with all situations when the nephews and/or nieces exist on their own or with grandfathers and/or grandmothers replacing the brothers and/or sisters – in the calculations – with the nephews and/or nieces, giving in every case the nephews and/or nieces what would have been given to the brothers and/or sisters had they existed. How to divide the shares over each group of the nephews and/or nieces is the same as its division between their origins, so if a group of nephews and/or nieces are related to a brother and/or sister from a mother only, their share is divided between them equally even if they are mixed males and females, but if a group of nephews and/or nieces are related to a brother and/or sister from two parents or the father only, their share is divided between them equally when they are of the same gender – either all males or all females, and with differentiation when they are mixed – giving each male twice the share of the female.

Part 3: The inheritance of the grandfathers and grandmothers when there are no brothers or sisters

1549. If the deceased had no heir from the second group except grandfathers and/or grandmothers, their inheritance will be as follows:

1- For **the grandfather on his own**, also **the grandmother on her own**, whether they are from the father or a mother, he or she gets the whole of the estate kinship-based.

2- If **both of the grandfather and grandmother** of the deceased exist, then if they are from the father's side, the estate is divided between them with the male taking twice the female share, but if they are from the mother's side, it is equally divided between them.

3- If **grandfathers and/or grandmothers exist**, some of whom are from the father while some are from the mother, whether one or more, all male, all female or mixed, then the grandfathers and/or grandmothers from the father's side take two thirds, divided – when they are more than one and mixed – with the male taking twice the female share, leaving the grandfathers and/or grandmothers from the mother's side with one third to be divided – when more than one exists – equally, even if they are mixed males and females.

This is regardless, in all of the three above cases, of whether they – all – are direct or indirect grandfathers and/or grandmothers, which are called 'lower/nearer) grandfather and/or grandmother', i.e. the direct, and 'upper/farther grandfather and/or grandmother', i.e. the indirect. The detail of this point will come in the next entry.

1550. Grandfathers and/or grandmothers become heirs – as we have pointed out more than once – only if they are direct grandfathers and/or grandmothers of the deceased, but this includes any grandfather and/or grandmother, however high in the ancestry chain. That said, if the lower grandfather and/or grandmother exist with the upper grandfather and/or grandmother, the former will not exclude the latter from inheritance unless if the latter is competing with him/her and taking some of his/her share that he/she would have taken in full had it not been for the competition of the latter; and since competition does not always take place between the lower and upper grandfather and/or grandmother, then the inheritance or exclusion from it of each of them depends on the existence, or lack, of competition. These are two examples:

An example of an existing competition is: if the deceased had one grandmother with her father, since the sole grandmother – from the father or mother – inherits the whole of the estate kinship-based, then gives inheritance to her father (who is the upper grandfather of the deceased) this leads to taking two thirds from her if both the grandmother and her father are from the (deceased's) father's side, for example. So, since the father does not compete with her, he will not inherit anything with her. The same applies for similar situations.

An example for lack of competition is: if the deceased left brothers and/or sisters from the mother's side and an upper grandfather from the mother and a lower grandfather from the father, now since the inheritance of the brother from the mother and the grandfather from the mother is one third to be equally divided between them, and since the share of the grandfather from the father when he exists with a brother or a grandfather from the mother or both parents is two thirds, in this case giving inheritance to the upper grandfather from the mother from the third with the brother from the mother will not take anything from the two thirds of the lower grandfather, who is a grandfather of the father, so, since the upper grandfather does not compete with him, he inherits with him without anyone of them excluding the other. This applies to similar situations.

1551. If one of the two spouses exists with grandfathers and/or grandmothers, the spouse is given his highest share in any case in all situations; then the existing grandfathers and/or grandmothers are examined: if they have a specified share and the estate could accommodate all specified shares, in this case there is no problem; but if it cannot accommodate all, the deficit will befall the heir who relates from the father's side, giving preference to the heir who relates from the mother's side without any reduction from his/her share. But if the existing grandfathers and/or grandmothers have no specified share, he/she takes the rest that is left after the share of the spouse. This rule applies here as it applies in every group.

Part 4: The inheritance of the brothers and sisters and grandfathers and grandmothers

The general principle that controls and specifies the inheritance of grandfathers and/or grandmothers when they exist with brothers and/or sisters is to regard each one of the

grandfathers and/or grandmothers as an equal to his/her parallel amongst the brothers and/or sisters; so the grandfather – however high in the ancestry chain – is like the brother, sharing with him his share that he takes share-based or kinship-based, so that one of them removes the title of the other, ending up as if they were originally two brothers. The same applies for the grandmother and the sister: the grandmother – however high in the ancestry chain – shares the deceased's sister'sr share that she inherits share-based or kinship-based.
The existence of grandfathers and/or grandmothers together with brothers and/or sisters has many possible situations. We are going to give some of them in the following:

1552. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters and they are all from the father's side**, with any of them one person or more, then if they are the same in gender, the inheritance is divided equally between them; but if they are mixed, the male takes twice the female share.

1553. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters and they are all from the mother's side**, with any of them one person or more, all male, all female or mixed, the inheritance is divided equally between them.

1554. If **the grandfathers and/or grandmothers, some from the father only and some from the mother only, exist with the brothers and/or sisters, also some from the father only and some from the mother only,** one person of each group or more, then the inheritance will be as follows:

a- One third for those who relate to the mother's side amongst both the grandfathers and/or grandmothers and the brothers and/or sisters, equally divided between them, whether they are all male, all female or mixed.

b- Two thirds for those who relate to the father's side, equally divided between them if the are either all male or all female, and giving the male twice the female share if they are mixed.

1555. If **the grandfathers and/or grandmothers from the father only exist with the brothers and/or sisters from the mother only, then:**
if the brother and/or sister is one, he/she takes one sixth, but if they are more than one, they take one third, equally divided between them whether all male, all female or mixed.
The grandfather and/or grandmother takes the rest, whether he/she is one or more; if they are all male or all female, they divide it equally between them, but if they are mixed, the male takes twice the female share.

1556. If **the grandfathers and/or grandmothers from the mother only exist with the brothers and/or sisters from the father only, then:**
The grandfather and/or grandmother takes one third, whether he/she is one or more, male or female, divided – when more than one – equally between them whether all male, all female or mixed.
The brother and/or sister from the father only takes two thirds, whether one or more than one, male or female; if they are more than one and the same in gender (either all male or all female), their share is divided equally between them, but if mixed in gender, the male takes twice the female share.
However, it must be recognised that in the casewhere who exists with the grandfather and/or grandmother from the mother's side is one sister from the father's side, then the sister's specified share is one half, but since the specified share of the grandfather and/or grandmother is one third, then the estate will be more than the specified shares by one sixth. The ruling regarding this sixth is that it is given to the sister from the father's side, although it is better to be given to all through an agreement accepted by all.

1557. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters, and among the grandfathers and/or grandmothers are those who are from the father only and those who are from the mother only, whilst the brothers and/or sisters are from the father**, then:

The grandfathers and/or grandmothers from the mother's side take one third, whether they are one or more, male or female, divided – when more than one – equally between them, even when mixed males and females.
The grandfathers and/or grandmothers from the father's side and the brothers and/or sisters from the father's side inherit two thirds, equally divided between them if they are the same in gender, but with the male taking twice the female when mixed.

1558. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters, and among the grandfathers and/or grandmothers are those who are from the father only and those who are from the mother only, whilst the brothers and/or sisters are from the mother**, then:
The grandfathers and/or grandmothers from the mother's side and the brothers and/or sisters from the mother's side inherit one third, equally divided between them, even if they are mixed males and females.
The grandfathers and/or grandmothers from the father's side take two thirds, whether they are one or more, male or female, divided – when more than one – equally between them, even when mixed males and females.

1559. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters, and among the brothers and/or sisters are those who are from the father only and those who are from the mother only, whilst the grandfathers and/or grandmothers are from the father**, then:
The brothers and/or sisters from the mother's side take one sixth if he/she is one, and one third if more than one, equally divided between them, even when mixed males and females.
The grandfathers and/or grandmothers from the father's side and the brothers and/or sisters from the father's side inherit the rest, equally divided between them if they are the same gender, and the male taking twice the female share if mixed.

1560. If **the grandfathers and/or grandmothers exist with the brothers and/or sisters, and among the brothers and/or sisters are those who are from the father only and those who are from the mother only, whilst the grandfathers and/or grandmothers are from the mother**, then:
The grandfathers and/or grandmothers from the mother's side and the brothers and/or sisters from the mother's side inherit one third, equally divided between them in all cases.
The brothers and/or sisters from the father's side take the rest, equally divided – when more than one – between them if they are the same in gender, but with the male taking twice the female share when mixed.

1561. If one of the spouses exists with the grandfathers and/or grandmothers and the brothers and/or sisters, then in each of the above explained cases, the spouse – husband or wife – is given preference to inherit his/her highest share, then what is left is divided between the grandfathers and/or grandmothers and the brothers and/or sisters in the manner we have detailed, and in each case in which there is a deficit in the estate to take all the specified shares, the deficit befalls the person(s) who is related to the father's side, not those who are related to the mother's side or the spouses.

(C) The inheritance of the third group

The third group are the uncles (father's side and mother's side) and their children. This group includes the uncles (father's side, i.e. *a'mām*), uncles (mother's side, i.e. *akhwāl*), aunts (father's side, i.e. *'ammāt*) and aunts (mother's side, i.e. *khālāt*), and however the ancestry chain continues upwards, from the father or the mother; it also includes – when they do not exist – their children who relate to them from one or both parents, and so on downwards through the line of ancestry , on the condition that the links do not extend to such as length that the person is not regarded – according to the norm in the society – as a relative.

1562. The individuals of this group are regarded as one type, i.e.: uncles (father's side), aunts (father's side), uncles (mother's side) and aunts (mother's side) are all one group, so no one

of their children inherits anything when one of them exists; so if a cousin who the son of an uncle (father's side) from both parents exists with an aunt (mother's side) from the mother only, the former does not inherit with her, but she inherits the whole of the inheritance. That said, it was narrated (in the scriptures) that there is an exception of one case, which is: when an uncle's son from both parents exists with an uncle from the father only, in this case the inheritance goes to the uncle's son not the uncle; the details of this will come later. Another exception of this rule is: any situation where uncles (father's side) exist together, with some from both parents and some from the father only, in this case the uncle (father's side) from both parents is given preference, so the uncle (father's side) from the father only does not inherit unless no uncles (father's side) from both parents exist; the same goes for the uncles (mother's side) from both parents who exclude the uncles (mother's side) from the father only.

1563. Becoming an heir amongst the original members of this group, or those who stand in their place amongst their children when all of them do not exist, is based on the principle of nearness in kinship. So the direct uncle (father's or mother's side) excludes the mother's uncle or the father's uncle (father's and mother's side); also the mother's uncle or the father's uncle (father's and mother's side) is nearer than the uncle of the mother's mother or the uncle of the father's father (father's and mother's side); even the direct cousins, i.e. sons of the uncles (father's and mother's side) – and so on downwards through the line of ancestry – have preference to the indirect uncle (father's and mother's side), not to mention their preference to their children.

Part 1: The inheritance of the uncles and/or aunts (father's side) on their own and the uncles and/or aunts (mother's side) on their own

First: The inheritance of the uncles and/or aunts (father's side) on their own

1564. If the uncles and/or aunts (father's side) exist alone without any of the deceased's uncles and/or aunts (mother's side), and they are exactly the same in their relation to the deceased, so they are all either from both parents, or from the father only or from the mother only, their inheritance in this case is:

1- **The sole uncle or aunt (father's side)** inherits the whole of the estate, whether male or female, kinship-based.

2- **Two or more uncles and/or aunts (father's side)** inherit the whole of the estate; then if they are of the same gender (either all males or all females), they divide it equally between them, but if they are mixed males and females, then it is more probable (ruling) to divide it giving the male twice the share of the female, although it is better – when they are numerous and mixed males and females – to arrive to a mutual agreement regarding the deficit in the female shares if the division was done equally, especially if they are all related to the deceased from the mother's side.

1565. If the uncles and/or aunts (father's side) are alone in the deceased's inheritance, but are different in their relation to the deceased, in this case their inheritance is as follows:

1- Whenever **an uncle and/or aunt (father's side) from both parents exists with an uncle and/or aunt (father's side) from the father only**, only the former(s) inherit, whether one or more, male, female or mixed.

2- If the **uncles and/or aunts (father's side) from both parents or from the father only exist with the uncles and/or aunt (father's side) from the mother only**, then: who is related to the mother takes one sixth of the estate if he/she is alone, but they take one third of the estate if they are more than one, equally divided between them when they are the same in gender, but the male is given twice the share of the female when they are mixed, although it is better that they reach a mutual agreement.

Those who are related to the deceased from both parents or from the father only inherit(s) the rest of the estate, equally divided between them when they are same in gender, but the male is given twice the share of the female when they are mixed, although it is better that they reach a mutual agreement.

Second: The inheritance of the uncles and/or aunts (father's side) on their own

1566. If the uncles and/or aunts (mother's side) exist alone, and they are all either from both parents, or from the father only or from the mother only, their inheritance in this case is:

1- **The sole uncle or aunt (mother's side)** inherits the whole of the estate, whether male or female, kinship-based.

2- **Two or more uncles and/or aunts (mother's side)** inherit the whole of the estate, equally divided between them whether they are all male, all female or mixed.

1567. If the uncles and/or aunts (mother's side) are alone in the deceased's inheritance, but are different in their relation to the deceased, with some from both parents, some from the father only and some from the mother only, in this case their inheritance is as follows:

First: No one amongst the uncles and/or aunts (mother's side) who is related to the father only inherits when uncles and/or aunts (mother's side) from both parents exist.

Second: If some of them are from both parents, some from the father only and some from the mother only:

Whoever is related to the mother only inherits one sixth of the estate if he or she is one, but inherit one third if more than one; when more than one, they divide the inheritance equally whether all male, all female or mixed.

Whoever is related to both parents or from the father only inherits the rest of the estate, whether one or more, but when they are more than one, they equally divide the inheritance, whether they are all male, all female or mixed.

It is better, when they are mixed males and females, that the females reach an agreement with the males in taking what is more than the females' share if there is differentiation in the division of the estate; this is regardless of whether they are from both parents, the father only or the mother only.

Part 2: The inheritance of uncles and/or aunts (father's side) together with the uncles and/or aunts (mother's side)

1568. If uncles and/or aunts (father's side) exist together with the uncles and/or aunts (mother's side), their inheritance is as follows:

1- The uncles and/or aunts (mother's side), one or more, inherit(s) one third, divided – when more than one – equally between them, whether the relation of all of them is the same, i.e. all are from both parents, or from the father only or from the mother only, or if the relation is different, i.e. some are from both parents or the father or the mother only, and whether they are all male, all female or mixed.

2- The uncles and/or aunts (father's side), whether one or more, inherit(s) two thirds, divided – when more than one – equally if the same in gender, but with the male given twice the female share if they are mixed; this is regardless of whether they are all related to the deceased in the same way or in a different way.

Part 3: The inheritance of the children of the uncles and/or aunts (father's side and mother's side)

1569. The children of the uncles and/or aunts (father's side and mother's side) stand in the place of their fathers and mothers when their fathers and mothers do not exist. This means that if there is no one from the first level, they come in the second level after their fathers and mothers and are given preference over the uncles and aunts (father's side and mother's side) of the father and the mother. Hence, no one amongst the children of the latter inherit when one of the children of the uncles and/or aunts (father's side and mother's side) exists, so: the son of the uncle (father's side), for example, does not inherit, even if he is from both parents, when the aunt (mother's side) exists, even if from the mother only; and so on.

That said, the exception of this is if there is a son of an uncle (father's side) from both parents with an uncle (father's side) from the father without any other from his level with him; in this case the son of an uncle excludes the uncle, taking the whole of the estate, in this case in particular; so, if the matter is different and an uncle (father's side) from the mother only exists

with him, he does not exclude him; the same if an aunt (father's side) from the father exists, or an uncle (mother's side) from the father only or mother only.
Also, just as the uncle (father's side) who is related to both parents excludes the uncle (father's side) who is related to the father only, in the same way the children of the former exclude the children of the latter. The same ruling applies to the children of the aunt (father's side), the children of the uncle (mother's side) and the children of the aunt (mother's side) – the exclusion by those who are related to both parents of those who are related to the father only applies to all kinds of relations, whether they are the same in the type of relations or different, and whether they are the same in gender or mixed males and females, i.e.: the brother, as he excludes the brother, he also excludes the sister, and as the uncle (father's side) excludes the uncle (father's side), the uncle (mother's side) excludes the uncle (mother's side), and so on.

1570. If no one of the first level exists as we explained in the previous entry, each one of the cousins inherits the share of the person through whom he relates to the deceased: so if the deceased had only the sons and/or daughters of uncles and/or aunts (mother's side), they inherit the whole of the estate, equally divided between them whether they are all male, all female or mixed, and regardless of the degree of their closeness in the relation of their father or mother to the deceased, in respect of whether they are from both parents, the father only or the mother only.
And if the sons and/or daughters of the uncles (father's side) exist with the sons and/or daughters of the uncles (mother's side), then: the sons and/or daughters of the uncles (mother's side) inherit one third, equally divided between them, whether they are sons of an uncle or an aunt, and whether the relation of their fathers or mothers to the deceased is – for all or some – from both parents, the father only or the mother only, and whether the children are male only, female only or mixed. The sons and/or daughters of the uncles (father's side) inherit two thirds, but if they are only uncles or only aunts, then what their children inherit is equally divided between them regardless of whether the children themselves are all male, all female or mixed; but if they are mixed uncles and aunts, then: the children of the uncles get two shares of the two thirds, while the children of the aunts get one share of the two thirds, because their parents would have inherited these two thirds in differentiation; therefore, each group of the children takes the share of the person they relate to – male or female – in differentiation (the male getting twice the female); however, the children of each group of them divide their share equally.

1571. As the son of the uncle (father's side) or others from the second level do not inherit when the uncle (father's side) or others from the first level exist, also the son of the son of the uncle (father's side), or any other person from the second level and beyond amongst the levels of cousins, both father's side and mother's side, and so on downwards through the ancestry chain, do not inherit when the direct son of the uncle (father's side and mother's side) or others from the first level of the sons of uncles (father's side and mother's side) exist. So, if the deceased left children of an aunt (mother's side) from the mother only and children of the children of an uncle (father's side) from both parents, the former inherit the whole of the estate without anything for the latter; the same applies to all the levels of uncle-relationships (father's side and mother's side): the nearer always excludes the farther.

Part 4: The inheritance of the indirect uncles and/or aunts (father's side) and the uncles and/or aunts (mother's side)

1572. The uncles and aunts (father's side and mother's side) of the father or the mother are at a third level after the direct uncles and aunts (father's side and mother's side) and their children, however the ancestry chain of grandchildren continues downwards, in addition to the fact that the person is regarded – according to the norm in the society – as a relative; so the father's uncle, for example, does not inherit when the uncle exists, nor when the uncle's son exists –and so on down in the chain if the uncle does not exist – ; or if the father's uncle (father's side) exists together with the son of the son of the aunt (mother's side) of the

deceased, the latter is given preference, excluding the former; and so on for all possible situations.

1573. If the indirect uncles and aunts (father's side and mother's side) of the deceased exist on their own, they inherit the whole of the estate, regardless of whether they are from both parents, the father only or the mother only, and regardless of whether they are all males, all females or mixed, or whether they are uncles and/or aunts of the father or the mother, or one or more; they divide the estate between them in the same manner that we have described for direct uncles and aunts (father's side and mother's side).

1574. The children of the father's uncles and aunts (father's side and mother's side) and the mother's uncles and aunts (father's side and mother's side) stand in for their fathers and mothers, inheriting the share of the person through whom they relate to the deceased, however the ancestry chain of the grandchildren of these indirect uncles and aunts continues downwards, on the condition that no one from the third level – which is the one including the indirect uncles and aunts (father's side and mother's side) – exists, so that their children become the fourth level that inherits from the deceased when he/she does not leave any heir from the upper three levels.

In this case, the rulings and division of inheritance of the children of direct uncles and aunts (father's side and mother's side) apply to them without any difference whatsoever.

Part 5: The inheritance of one of the two spouses with the uncles and aunts

1575. In every situation where the husband or the wife joins the uncles or aunts (father's side and mother's side) in all four levels and categories, the husband or wife takes their highest share, which is one half or one quarter, and then the uncles and aunts (father's side and mother's side) inherit what is left of the estate; and since there is no specified share for any of the uncles and aunts (father's side and mother's side), then all that we detailed regarding the way in which the estate is distributed between the heirs applies to what is left of it. So if what is left after the husband takes his share is one half, this one half is the whole of what they share between them according to the previously explained division, with the deficit affecting all of them, not just those who relate from the father only, as is the case when the specified shares exceed one and when they exceed the estate, which is explained in the inheritance of the first and second groups.

Addendum
on the inheritance of the husband and the wife

Having detailed the inheritance of the spouses when explaining the inheritance of the groups of relatives, we have to explain some rulings specific to the inheritance of the spouses.

1576. The husband inherits one half of his wife's estate if she left no children, and one quarter if there are children, even from other husbands. The wife inherits one quarter of her husband's estate if he left no children, and one eighth if there are children, even from other wives.
There is no difference in the child excluding each of the spouses from their highest share if he/she is a direct child or a child's child, however the ancestry chain continues downwards.
However, heirs other than the deceased's children do not exclude any of the spouses from their highest share, not to mention their lowest shares, but each of them inherits with any other heir, who relates through kinship or marital relation, as we have explained before; in fact, the husband can inherit the whole of the estate, taking preference over the Imam (as) as will be mentioned below.

1577. If the wife did not leave an heir who relates to her through kinship or marriage except the Imam (as), in this case one half goes to her husband share-based and the other half kinship-based as a more probable ruling; and if the husband left no heir who relates to him through kinship or marriage except the Imam (as), his wife inherits one quarter without giving her the rest, which goes to the Imam (as).

1578. If the deceased left two or more wives, they divide their inheritance equally, which is one eighth when there are children and one quarter when there are no children.

1579. It is a condition of a permanent marriage contract that the spouses inherit from each other, but there is no inheritance between them in term marriage; it is also conditional that the marital relationship is based on a valid contract, so if it is discovered that the marriage was invalid in its pillars or conditions, such as if it is discovered that the wife was married to her breastfeeding brother, or that he was married to a married woman, their inheritance from each other is cancelled after the invalidity is uncovered and the person who took the inheritance must return it to the other heirs. However, having had sexual intercourse is not conditional, so they inherit from each other even without it; that said, if a sick man married when he was on his deathbed and did not have intercourse with his wife and did not recover from his illness before he died, the marriage is invalid, without any inheritance between them, nor dowry for her; this was explained in the rulings for the marital relationship.

1580. The two spouses inherit from each other if they have separated through a revocable divorce as long as the marriage-abstention period has not yet elapsed; if it has elapsed, or if the divorce was irrevocable, there is no inheritance between them. However, if the man divorced his wife, when ill, with a revocable or an irrevocable divorce, then died before a full lunar year had elapsed after the divorce, the wife inherits from him upon three conditions:

First: That she has not married another man during the year before he died, otherwise it seems that she does not inherit, although it is precautionary to reach an agreement acceptable to her and the rest of heirs.

Second: That the divorce was not in response to her request and satisfaction (with or without exchange of an asset or money), otherwise, she does not inherit from him as a more probable ruling.

Third: That the death of the husband in that illness was because of that illness or for another reason, so if he was cured of that illness then died for another reason, the wife does not inherit from him unless his death occurred during a revocable divorce marriage-abstention period, as mentioned before.

1581. If the sick man divorced one or more of his wives in the manner described in the previous entry, then married others and had sexual intercourse with them, then if he died in

that illness, the wife's specified share – one eighth or one quarter – is divided between his wives who were with him and those whom he had divorced and died before one year had elapsed since the divorce, whatever the number of them – six, seven, eight or less than that. They divide that share equally between them, provided that the above-mentioned conditions apply.

1582. The husband inherits all the assets which the wife has left, as explained before, without distinction between a wife who had children or not, nor between her transferable (such as a car) or non-transferable (such as a house) assets, nor between non-built or utilised property and property that includes buildings or farms. The wife inherits from her husband's assets in the same manner that her husband would inherit from her if she has had children by him, including the properties themselves and the buildings on them; however, if she has no children by him – even if she has from other husbands – then, she would probably inherit also, but it is better that she would reach an understanding, in this case, with the other inheritors.