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Islamic Laws Simplified

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Islamic Laws Simplified

According to the Edicts of
Grand Ayatollah
Sayyid Mohammad Saeed Al-Hakeem

Dar Al-Hilal

Publisher's Note

To provide the believers in the English-speaking community guidance on the edicts of His Eminence, the Grand Ayatullah Sayyid Muhammad Sa'eed al-Tabatabai al-Hakeem, we present this translation of his edicts based on the book *Al-Fiqh Al-Muyassar*. It has been translated by Sheikh Naseer Al-Sa'dawi and Sheikh Ali Abbas al-Yusufi, and they have adapted it in order to make it more appropriate for the English-speaking community and more beneficial for them.

Preamble of Author

All praise is for Allah Alone, and His peace and blessings be upon the last of his Messengers and his holy Progeny.

This book is a summaried and simplified adaption of the book, *Al-Ahkam Al-Fiqhiyya*, in accordance to the edicts of His Eminence, the Grand Ayatullah Sayyid Muhammad Sa'eed al-Tabatabai al-Hakeem. This book has been written to help those who are not familiar with the usual comprehensive books of Islamic rulings, so that they may understand the common laws which are relevant in the usual course of their lives, in a manner that is succinct and clear.

We pray that Allah Almighty accepts this as sincere effort, to benefit the believers, for He is the Master of this life and the Hereafter, and from Him we seek support and guidance.

Fahd Ibrahim
al-Asari al-Madani

INTRODUCTION

There are certain matters which every person must believe in, and they are called the principles of religion (*usul al-deen*).

The Principles of Religion

There are five principles of religion:

(1) Monotheism: This means that Allah is One, and He is the One Who created the universe and everything that it is in it, including the earth, the sky, the sun, the moon, the human beings, animals, and all other things.

(2) Divine Justice: This means that Allah is just and does not wrong anyone, and that He has made the reward for the good and the punishment for the sinners.

(3) Prophethood: This means that Allah, in order to guide people to the good and to distance and warn them from the evil and the ugly deeds, ordered some of the righteous people and made them duty-bound to convey His teachings to the people. This person is called a prophet and some prophets are called messengers.

The prophets are many, the first of them being Adam (peace be upon him), and amongst them is Noah (peace be upon him), Abraham (peace be upon him), Moses (peace be upon him), and Jesus (peace be upon him). The last of them is our Prophet Muhammad (peace be upon him and his holy progeny), whom Allah sent with the religion of

Islam. Whoever believes in him and his message is called a Muslim; thus we are Muslims because we believe in the Prophet Muhammad (peace be upon him and his holy progeny) and that which he came with, and that is the religion of Islam.

(4) Imamate: This means that the Prophet Muhammad (peace be upon him and his holy progeny) appointed a successor to succeed him in guiding the people and continue the Prophet's reformation mission, and he is called the Imam.

The Imams are twelve, appointed in the following order:

(1) Imam Ali bin Abi Talib (peace be upon him), buried in Najaf.

(2) Imam Hasan bin Ali al-Mujtaba (peace be upon him), buried in Medina.

(3) Imam Hussein al-Shaheed (peace be upon him), buried in Karbala.

(4) Imam Ali bin al-Hussein (peace be upon him), buried in Medina.

(5) Imam Muhammad al-Baqir (peace be upon him), buried in Medina.

(6) Imam Ja'far al-Sadiq (peace be upon him), buried in Medina.

(7) Imam Musa al-Kadhim (peace be upon him), buried in Baghdad.

(8) Imam Ali al-Ridha (peace be upon him), buried in Mashhad.

(9) Imam Muhammad al-Jawad (peace be upon him),

buried in Baghdad.

(10) Imam Ali al-Hadi (peace be upon him), buried in Samarra.

(11) Imam Hasan al-Askari (peace be upon him), buried in Samarra.

(12) Imam Muhammad al-Mahdi (peace be upon him), may Allah hasten his reappearance. He is our present Imam in the current era; he is called the Imam of the Age and the Proof of Allah upon us, and he is alive, absent, and will appear by the permission of Allah to spread justice in the earth.

So whoever believes in the Imamate of these Imams is a Twelver Imami Shia Muslim, so we are the Shias of the Ahlul-Bayt (peace be upon them) because we believe in them and in their Imamate

(5) Resurrection: This means that Allah will resurrect the people after their death and will take account of their deeds on the Day of Judgment; then He will enter the good, the obedient, into Paradise in which there is everything which a person could wish for, and He will enter the evil ones, the disobedient, to the hell fire wherein they will be punished.

It is incumbent upon us to obey Allah and abide by the religious laws, such as prayer, fasting, etc – as we will explain – and that we become attributed with the praiseworthy attributes such as truthfulness, trustworthiness, and justice, so that Allah is pleased with us, and enters us into Paradise which the Prophets, Imams, martyrs, and all the good will inhabit.

The Branches of Religion

The branches of religion (*furoo' al-deen*) are the laws of Islam, which are obligatory for every Muslim to abide by, and the most important of them are ten:

(1) Prayer

(2) Fasting

(3) Pilgrimage

(4) *Khums*

(5) *Zakah*

(6) *Jihad*

(7) Enjoining the good deeds

(8) Forbidding the wrongdoing

(9) *Tawalli* : which means friendship and love for the Prophet and the Imams after him.

(10) *Tabarri*: this is that a person disassociates from the enemies of Allah who are obstinate to the truth and who are oppressors.

(1)
RELIGIOUS ADULTHOOD

(1)

RELIGIOUS ADULTHOOD

Ruling 1: The adulthood (*bulugh*) of a boy has three signs:

(1) The completion of fifteen years according to the Islamic calendar, which equals approximately fourteen years and six-and-a-half months of the Christian calendar.

(2) The ejaculation of semen due to having "a wet dream" or any other cause.

(3) The appearance of coarse hair on the face or the pubic region.

To establish adulthood, it is sufficient that one of these three signs appears. If a boy does not know whether he has reached adulthood or not then he should present the matter to one of the elders from his family, such as his father or his older brother, so that they may clarify it for him.

Ruling 2: The sign of puberty for a girl is only one and that is the completion of nine years according to the Islamic calendar, which equals approximately eight years, eight months and twenty days according to the Christian calendar.

Ruling 3: If a boy or a girl reaches religious adulthood (becomes *baligh*), then the time of childhood comes to an end, and it becomes compulsory on him or her to abide by the laws of the Sharia, by carrying out the obligations

and refraining from the forbidden things. He will be considered as an adult, so Allah will hold him to account for his actions, will show him gratitude for his obedience, and will write for him a great deal of reward on the Day of Judgement. It is assumed that he will also carry out some of the recommended acts to increase his reward, such as helping the poor, visiting the mosques and the graves of the Prophet and the Imams (peace be upon them all), supplication, reading the Quran, and the supererogatory prayers (*nawafil*). If he does not know about them then he should ask others so that the rewards of these acts do not pass him by. And before all that he should rely upon Allah Almighty and seek His help in his affairs, as He is the best of masters and the best of helpers.

(2)
EMULATION
(*TAQLID*)

(2)

EMULATION

(*TAQLID*)

Note: Whenever the term 'obligatory precaution' is used, this means that the mentioned ruling is precautionary, and this means that one has a choice between abiding by it on one hand, and on the other hand referring to another *mujtahid* who fulfils the necessary conditions which will be mentioned below, provided that he is the most learned from the rest of the *mujtahids*.

Taqlid: Referring by the duty-bound person (*mukallaf*), in what he does not know of the laws of the Sharia, to a *mujtahid* who knows them, and acting according to his edicts.

Ijtihad: This is the research in order to extract the laws from the reliable religious and rational sources. This is something that is not easy except for a few people, since they have specialized in the matters of religious jurisprudence (*fiqh*). Such specialists are called *mujtahids*.

Ruling 4: It has been mentioned above that it is obligatory upon every Muslim to carry out the acts known as the branches of religion and all the laws of the Islamic religion which Allah has commanded, so that Allah is pleased with him and enters him into Paradise after his death. However

there is a problem which faces us here: The Prophet (peace be upon him and his holy progeny), to whom Allah conveyed the laws of the Islamic religion, died more than 1,400 years ago, so how can we know and therefore obey the laws of the religion if neither the Prophet (peace be upon him and his holy progeny) nor the Imams (peace be upon them) are present with us?

In order to solve this problem we say: There are religious scholars who study the religious sciences and the sources of Islamic legislation, i.e. the Quran, the *sunnah* of the Prophet (peace be upon him) and the narrations of the Infallibles (peace be upon them) for many years, and specialize in them until they are able to derive the laws of the Sharia. These people are called *mujtahid*s.

Reaching this level of knowledge and understanding requires a lot of time and effort, which most believers cannot give; therefore, there are two options:

(1) Acting on precaution: This means that one adheres to the edicts of all of the *mujtahid*s in a manner that he will be sure that he has become free of liability before Allah. For example, if some say that a particular act is permissible, and some say that it is not permissible, then the duty-bound person will refrain from it to ensure that he does not commit anything forbidden. However, this is rather difficult for many.

(2) Emulation (*taqlid*): This means acting according to the edicts of a *mujtahid*, who fulfils all the conditions (as will be mentioned below), in matters that one faces in his life. This is the logical path to take in any matter or field, as is common amongst people, when they refer to the experts in issues that requires remedying; for example, people refer to doctors

when they require medical advice and treatment. The *mujtahids* are the specialists in the Sharia laws, and therefore they are referred to in order for the lay believers to know what their duties are.

Ruling 5: Two important criteria must be present in the *mujtahid* who is emulated:

(1) That he should hold a high level of *adalah*, i.e. that he is obedient to Allah and is committed to the laws of the religion; and that if he commits sins on a rare occasion, he hastens to repent.

(2) That he is more knowledgeable than all the other *mujtahid*s.

There are other conditions also which are necessary for the *mujtahid*s to possess: legitimacy of birth, being male – both according to obligatory precaution –, sanity, and belief in the twelve Imams (peace be upon them).

Ruling 6: The most knowledgeable *mujtahid* is ascertained by either one having sure knowledge of it himself directly, or on relying on high-level religious students who are familiar with the scholastic levels of the *mujtahid*s as a result of his acquaintance with their opinions, by way of being their students or reading their treatises and books, and the like, as a result of which he can make a comparison between the *mujtahid*s and distinguish between their degrees of scholarship and prefer one over the others.

Ruling 7: If one is emulating a *mujtahid* who then dies, he should continue following his edicts until somebody amongst the living *mujtahid*s is ascertained to be clearly more knowledgeable than him.

Ruling 8: The *hakim shar'i*, who will be referred to in this treatise many times, is the *mujtahid* who fulfils the above-

mentioned conditions. He is the Islamic judge to whom disputes may be referred to in issues that have Sharia-related rulings. When he rules on a matter, his judgement cannot be refused.

(3)
RITUAL PURITY
(*TAHARAH*)

(3)

RITUAL PURITY

(*TAHARAH*)

Introduction

Taharah (ritual purity) is divided into two types:

(1) *Taharah* from *hadath*, i.e. incorporeal impurifying occurrences

(2) *Taharah* from *najasah*, i.e. physical ritual impurities.

Hadath is an impurifying occurrence upon a person, which if takes place the person is considered to be in a state of ritual impurity. The *hadath* is of two types:

(1) Minor, which is removed through *wudhu* (ablution by water) or *tayammum* (ablution by earth)

(2) Major, which is removed through *ghusl* (ritual bathing) or *tayammum*.

Whenever water is referred to in this chapter as a purifying agent in *wudhu*, *ghusl*, etc., this means unmixed water which can be called water unconditionally without any qualification, such as rain water, river water, well water, etc. But if it is mixed with something else to such a degree that it cannot be called water without any qualification, such as grape water, rose water, etc., then it is not the subject matter here.

The Causes of *Hadath*

Ruling 9: The things which cause minor *hadath* and require *wudhu* or *tayammum* are as follows:

(1) & (2) The exiting of urine and faeces from their normal places, but the obligatory precaution is for even when they exit from other than their normal places, if it is correct to call the exiting substance urine or faeces.

(3) Exiting of wind from the anal passage, and also from elsewhere according to obligatory precaution, if it is of the type which comes out of the anal passage.

(4) The sleep which overcomes consciousness.

(5) Anything which overcomes the intellectual faculty, such as unconsciousness, intoxication, etc. as an obligatory precaution.

(6) *Istihadha*, as will be explained later.

Ruling 10: *Madhi*, *wadi*, and *wadhi* do not break the *wudhu*. They have been defined as follows: *madhi* is that which is discharged during or after foreplay; *wadi* is what comes out after urinating, and *wadhi* is that which comes out after semen.

Ruling 11: The *wudhu* is not broken with the coming out of blood, or pus, or the water of enema from the anal passage.

Ruling 12: As for the causes of major *hadath*, which require *ghusl* or *tayammum*, some are common between men and women, which are *janabah*, death, and touching a corpse; and there are those which are specific to women, which are as *haydh*, *nifas*, and *istihadha*.

The *Wudhu* (Ablution by Water)

(a) The Method of *Wudhu*

Ruling 13: It is recommended to use the *miswak* to clean the teeth all the time and especially before *wudhu*. It is also recommended to recite *'bismillah'* when starting *wudhu*, to recite the narrated supplications during *wudhu*, to rinse the mouth and nose with water before *wudhu* thrice, and other acts which are mentioned in detailed books.

Ruling 14: It is disliked to seek the help of another person to pour the water for *wudhu* for the purpose of prayer. It is also disliked to use water which has been heated by the sun.

Ruling 15: The face must be washed from the place where the hair of the head grows to the end of the chin in length, and width-wise: the area of the face encompassed by the span of the hand, between the thumb and the middle finger. The obligatory precaution is that the washing be done from the top to the bottom.

Ruling 16: Each of the two arms must be washed from the elbows to the tips of the fingers, and the elbows must be completely included in the washing, going from top downwards (i.e. elbow to fingers). The right arm must be washed before the left arm.

Ruling 17: The top of the head, at the front, must be wiped with the remaining wetness from the previous actions in the *wudhu*, and based on obligatory precaution the wiping must be done with the inside of the right hand.

Ruling 18: The top of both feet must be wiped from the

tips of the toes to the ankle, or vice-versa. As an obligatory precaution, the right feet should be wiped with the right hand, and the left feet should be wiped with the left hand.

(b) Rulings of *Wudhu*

Ruling 19: *Wudhu* is obligatory before every compulsory act of worship which is dependent on it, such as the obligatory prayers, and the obligatory *tawaf* (the circling around the Ka'bah). The recommended prayers are invalid without *wudhu*.

It is also recommended to perform *wudhu* with the intention of being in a state of ritual purity.

Ruling 20: It is not permissible to touch the verses of the Holy Quran without the state of *wudhu*; however, it is permissible for him to touch the translation of the Quran.

Based on obligatory precaution, it is not permissible to touch the word "Allah" and His other names in any language without *wudhu*.

Ruling 21: For the *wudhu* to be valid, the following conditions must be fulfilled:

(1) Use of unmixed water, as explained above.

(2) *Taharah* (ritual purity) of the water; so *wudhu* is not valid with *najis* water.

(3) That the water has not been used in *ghusl* for the removal of major *hadath*, if the water used is little, as it will be explained later.

(4) The intention, which consists of the objective, and gaining proximity to Allah Almighty. This means that it should not take place in a way which is forbidden, provided

that one is aware of it being forbidden.

There are a number of cases in which the *wudhu* can take place in a forbidden way:

(a) when the water container is gold or silver;

(b) when performing the *wudhu* would mean putting oneself in a harm which is unlawful to put oneself in;

(c) when performing the *wudhu* would mean usurping of somebody else's property – by either the water or the water container being usurped, or the place in which it is performed being so;

(5) The *wudhu* is performed directly by oneself, if possible.

(6) It is performed in a continuous manner (*muwalaat*). This means that before performing a particular act of *wudhu*, the part being previously washed or wiped has not become completely dry in usual circumstances. This condition does not apply in unusual cases, like if the water used was very little or when the air is extremely hot, in which cases the parts may become dry quicker;

(7) It is performed in the proper sequence (*tartib*), that is, the face should be washed first, followed by the right arm, then the left arm, then the wiping of the head and then the wiping of the feet. The right foot should be wiped before the left foot as an obligatory precaution.

Ruling 22: If the inside of the hand becomes dry, and one is unable to wipe his head and feet with it, it is sufficient to use the wetness from the beard or the eyebrows.

Ruling 23: As an obligatory precaution, the parts of the body in *wudhu* should be washed a little bit beyond the required limit, to ensure that the whole of the required area has been washed.

Ruling 24: Any barrier preventing the water from reaching the skin must be removed, and *wudhu* is not valid with the presence of such a barrier.

Ruling 25: Wiping of the parts which are washed in *wudhu* is not necessary, but it is sufficient that the water reaches and covers the skin in the manner described above.

(c) Important Principles

There are some basic important principles that can be applied in respect to *taharah*:

(1) One who is certain of *hadath*, but doubts whether he subsequently ritually purified himself (by *wudhu*, etc.), he considers himself as not having ritual purity.

(2) One who is certain of having *taharah* and doubts whether he then lost it, he considers himself as having *taharah*.

(3) One who doubts about having *taharah* during prayer, he must break his prayer, obtain *taharah*, and then start his prayer again.

(4) One who doubts about his *taharah* after having finished the prayer, he considers it as valid, but he should obtain *taharah* for any subsequent prayers or acts requiring *taharah*.

(5) If one doubts during the *wudhu* about a part of it, then he must carry out that part, and continue from there.

(6) If one doubts about the correctness of the *wudhu* after having finished it, he considers it as being valid.

Taharah with Wound-Dressings

What is meant by 'wound-dressings' here are plaster, pieces of wood and cloth, and the like, which are used to dress the broken bones or to wrap the wounds, and their like, and which form a preventative barrier from washing or wiping the skin underneath.

Ruling 26: If it is possible to remove the dressing without harm, and wash or wipe the skin under it as required, then this must be done.

Ruling 27: If it is not possible to remove the dressing, due to it being a cause of harm, but it is possible to have the water reach under the dressing, even if by soaking the dressing in water until it penetrates through to the skin, then this must be done. But, if it is not possible for the water to reach the skin, then it is sufficient to wash that which is around the dressing to the extent possible, and then wipe over the dressing, as long as it is lawful for him to use and its outer surface is *tahir*.

Ruling 28: If the outer surface of the dressing is *najis*, and if it is not possible to remove it, change it, or add something to it which would commonly be seen to be a part of it, then wiping its outer surface will not suffice. One should perform the incomplete *wudhu*, i.e. without wiping on the wound-dressing, and also perform *tayammum* (ablution by earth) as an obligatory precaution.

Ruling 29: In wiping the dressing, it must be done in such a way that all of it would commonly be covered, and being pedantic in the matter is not necessary.

Ruling 30: If an exposed wound is in a place which is

washed in the *wudhu*, then it is sufficient to wash around it; and if it is a place where wiping is done then it must be wiped if that is possible, otherwise something must be placed on the exposed wound and that must be wiped as an obligatory precaution.

Ruling 31: The creams and the oils, which the part of the body is coated with for treatment, are wiped upon if possible; otherwise the area around it is washed and *tayammum* is also performed as an obligatory precaution.

Ruling 32: If it is not possible to remove sticky adhesive substance on the skin, which is not used for treatment and which prevents water from reaching the skin, then the obligatory precaution is to perform *wudhu* wiping over it, along with *tayammum*.

Ruling 33: It is not sufficient to perform *wudhu* or *ghusl* in an alternative way due to a valid excuse – like that with wound-dressings, open wounds or the like – when there is plenty of time available, unless one knows that the excuse will continue for the whole of the time, or it is expected to do so. Then if the excuse no longer exists before the end of the time, the *taharah* must be repeated in its usual manner, as well as the prayer.

Ruling 34: Whenever a person doubts about whether his duty is to perform *taharah* with wound-dressings, or *tayammum*, he should do both, until his state becomes clear by asking or otherwise.

Janabah

Janabah is one of the major *hadath* – as explained above – which requires *ghusl*.

Ruling 35: A person enters the state of *janabah* by one of two ways:

(1) For a man, the ejaculation of semen, even if it is without sexual intercourse. As an obligatory precaution, a woman also enters the state of *janabah* with ejaculation – as a result of which she has to perform both *ghusl* and *wudhu* as an obligatory precaution.

(2) Sexual intercourse, even if it does not result in ejaculation. This refers to the entrance of at least the head of the penis into the vaginal passage. This results in both partners entering the state of *janabah*. As an obligatory precaution, they both also enter the state of *janabah* if the head of the penis enters the anal passage.

Ruling 36: All of those things which cannot be performed validly without *wudhu* also cannot be performed validly by a person in *janabah*.

Ruling 37: The fasting of a person who knows that he is in the state of *janabah* is not valid.

Ruling 38: The following things are prohibited for a person in *janabah*:

(1) Whatever is forbidden for the one without *wudhu* is also forbidden for the person in *janabah*.

(2) It is forbidden for a person in the state of *janabah* to be in Masjid al-Haraam (in Makkah) or Masjid al-Nabi

(in Madinah), even if he is just passing through.

(3) It is forbidden for a person in *janabah* to stay in any mosque, and as an obligatory precaution the same is also the case with the holy shrines of the Infallibles (peace be upon them all). However, it is permissible to pass through them by entering through a door and exiting through another.

(4) It is forbidden for a person in *janabah* to recite the verses of prostration from the four chapters of the Quran: (i) *Alif-Lam-Meem al-Sajdah*, (ii) *Ha-Meem al-Sajdah*, (iii)*Al-Najm*, and (iv) *Al-Alaq*.

The *Ghusl* (Ritual Bathing)

The *ghusl* (ritual bath) is required to cleanse oneself from major *hadath*s like *janabah*.

Ruling 39: It is obligatory in *ghusl* to make the intention, perform it directly oneself, to make the water reach the skin, and that the water is *tahir*, unmixed and lawful to use; the details of some of these matter have been explained above in the chapter of *wudhu*.

Ruling 40: The water must reach all parts of the body, even if the water used was little. This can be done in one of two ways:

(1) The immersion manner, by immersing the whole body at once into water.

(2) The sequential manner, by beginning the washing with the head first, then the rest of the body. The washing of the head should start before the washing of the body; similarly, one should complete the washing of the head before the body is washed entirely. It is best to wash the entire head and neck first, then all of the right side of the body, and then all of the left side.

Ruling 41: The *ghusl* of *janabah* suffices for *wudhu*, as does every *ghusl* which has been established in the Sharia – whether obligatory or recommended, like the Friday *ghusl*, as will be mentioned later.

Ruling 42: If a number a different *ghusls* are to be performed, a single *ghusl* suffices with the intention for all of them, or with the intention of at least one of them – such as *ghusl* for *janabah*.

Ruling 43: Continuity (*muwalaat*) is not a condition for *ghusl*; so it is valid to wash the head first, for instance, and after some time, the rest of the body is washed.

Ruling 44: If a minor *hadath* occurs during the *ghusl*, he may complete the *ghusl*, but it is preferable to start the *ghusl* again. In both cases (whether he repeats the *ghusl* or not) he must perform *wudhu* after it to attain *taharah*.

Ruling 45: If one doubts about being in *janabah* or not, he is considered as not being in *janabah*. If one has certainty of having been in *janabah* but doubts about having performed the *ghusl* or not, he will consider himself to still be in *janabah*. This is so, unless the source of the doubt is obsessive doubting (*waswas*), in which case he does not pay attention to it and considers himself as having performed the *ghusl*.

Ruling 46: It is recommended for a man to do *istibra* from semen (i.e. empty his urethra from semen) by urinating, before the *ghusl* of *janabah*.

Its benefit is that any liquid, about which one doubts whether it is semen or not, which comes out after this is not considered as semen by the Sharia; however, if such liquid is discharged before urinating it will be regarded as semen.

Haydh (Menstruation)

Haydh is another cause of *hadath*, and it requires *ghusl* after it has ended for the woman to ritually purify herself. *Haydh* refers to the habitual menstrual blood which a woman sees when her womb discharges it, after the completion of 9 lunar years until 60 lunar years for the descendent of Quraysh and 50 years for others. However, if it is known that the bleeding is that of *haydh* before the age of nine or after the aforementioned ages, it will be regarded as so. It's commonly red, dark, warm and it comes out with pressure and irritation.

Ruling 47: *Haydh* lasts for a minimum period of three days, even if they are spaced out within ten days; and its maximum is ten days.

Ruling 48: Women are divided into three categories in respect to their *haydh*:

(1) The one having a habit of time and duration: She is the one whose *haydh* starts at a specific time and continues for a specific number of days.

(2) The one having a habit of time only: She is the one whose *haydh* starts at a specific time, but without any specification for it in terms of duration and continuity.

(3) The one having a habit of duration only: She is the one who sees the blood for a specific length of time without any specification of the time in which it starts.

Ruling 49: A woman becomes one having a habit (as explained above) when her blood coincides in time,

duration, or both, for two consecutive months. Her habit stays the same until she sees a different habit for another two consecutive months.

Ruling 50: It is possible that *haydh* and pregnancy be combined, even after the pregnancy has become known. Then if a woman has a habit of time, she takes the beginning of *haydh* as soon as she sees blood, if it corresponds to the beginning of her habit or precedes it by a day or two.

Similarly, she considers the blood as *haydh* if it is discharged after the end of her normal habit, as long as twenty days have not passed from the start of the habitual time, with the condition that it is red. However, if it is yellow, then the obligatory precaution is to combine between the rulings of *haydh* and *istihadha*, i.e. she should avoid the prohibitions of *haydh* and perform the obligations of *istihadha*. If she does not have a habit, then she should consider her *haydh* to begin when she sees red blood, not yellow blood.

The condition of the *haydh* being of a minimum of three days does not apply to the pregnant woman, so her *haydh* can be for a duration of a day or two.

Ruling 51: If the blood apparently stops coming out but it is probable that it is still present internally, she should examine herself by entering cotton inside the vaginal passage. If it comes out stained in blood she remains in *haydh*, and if not then her *haydh* has ended. However, if the blood stops at night and there is a possibility of it remaining, it is not obligatory to examine, and she can consider the *haydh* to be continuing and delay the examination until the daytime.

Ruling 52: Most of the rules which apply to the one in *janabah* also apply to the one in *haydh*. Rather, as an obligatory precaution, they share all the rules.

Ruling 53: It is forbidden to have sexual vaginal intercourse with the woman in *haydh*; and as an obligatory precaution one should refrain from anal intercourse with her, even with her consent. Without her consent, it is forbidden. Sexual pleasure with her by any other way is allowed.

Ruling 54: The woman in *haydh* must make up for any fasts missed in the month of Ramadhan, but she is not required to make for any missed prayers, if the *haydh* duration encompassed the entire time of the prayer – except in the case of the Dhuhr (noon) prayer for which it is not obligatory to make up for it after its preferred time has passed.

Ruling 55: The *ghusl* of *haydh* is like the *ghusl* of *janabah*, except that it is recommended to perform *wudhu* before it.

Istihadha

Any blood not ruled as being *haydh* or *nifas*, and which is discharged from the womb, is called *istihadha*.

Ruling 56: *Istihadha* has three levels, each with their own rulings, as follows:

(1) *Minor*: This is when the blood stains the cotton placed in the vaginal passage, but without penetrating into it to the other side of the cotton.

Ruling: *Wudhu* must be performed for every prayer – obligatory or recommended – and the prayer must be performed immediately after the *wudhu*.

(2) *Medium:* This is when the blood penetrates the cotton and appears on the other side, but does not flow from it.

Ruling: One *ghusl* must be performed for the day; it should be performed for the next prayer after this level of *istihadha* is determined. After *ghusl*, *wudhu* is not required for those prayers offered together immediately afterwards, and *wudhu* will be necessary for those prayers not offered immediately after the *ghusl*.

(3) *Major*: This is when the blood penetrates the cotton and flows from it, but the obligatory precaution is that it is sufficient for the discharge to be considered as major *istihadha* if the blood flows out due to not placing the cotton there.

Ruling: One must perform three *ghusls* daily: one for Fajr prayer, one for Dhuhr and Asr prayers (adjoining them both together), and one for Maghrib and Isha prayers (also adjoining them both together).

Ruling 57: It is upon the woman to ensure that her discharging blood does not make the body or clothing *najis* during the prayer, by placing a pad or the like.

Ruling 58: It is not necessary to change the cotton for every prayer, but it is better to do so.

Ruling 59: The prayer of precaution, the making up of forgotten parts of prayer, and the prostrations of forgetfulness – see the chapter of Prayers for details – are sufficed by the *wudhu* or *ghusl* of the original prayer which they follow, as long as there is no gap as an obligatory precaution.

Ruling 60: If there is a period of time when the woman knows that the bleeding will stop, and that it will be sufficient for obtaining *taharah* and performing the prayer, then she must wait for that period of time and perform the prayer during it. Such is also the case if she falls short of certain knowledge, but is quite confident. As an obligatory precaution, this is also the case even if she is merely expecting there to be such a time period.

Ruling 61: The *tawaf* of the one in *istihadha* is correct if she acts according to her established duties.

Ruling 62: The fast of the one in *istihadha* is correct, even if she fails to abide by her established duties.

Ruling 63: The *ghusl* of *istihadha* is like the *ghusl* of *janabah* and *haydh* in its method and rules.

Ruling 64: A woman in the state of *istihadha* is required to examine for any changes in the levels of her *istihadha* before she offers her prayers, as an obligatory precaution. However, if she did not do so, and she learns later that she did not act according to the current level of her *istihadha*, she must repeat the prayers.

Nifas (Lochia bleeding)

Nifas is that blood which the womb discharges during giving birth or after it, and its minimum is a mere moment, and its duration is measured from the time the birth is complete. It causes ritual impurity which requires *ghusl* for purification once it has ended.

Ruling 65: If the blood of *nifas* continues for more than ten days after the birth, and she had a habit of time in her *haydh*, then her *nifas* is to the extent of her habit. If the bleeding continues after this, as an obligatory precaution she should consider herself to be in *nifas* for a further day at the very least. She may continue to do so until the completion of the ten days.

Ruling 66: The one who does not have a habit of time should consider all of the ten days as *nifas*. If it continues after this, then she should act according to the obligations of the one in *istihadha* while abandoning all those acts which are forbidden for one in *nifas*, until the completion of eighteen days, as an obligatory precaution.

Ruling 67: If the blood of *nifas* stops appearing, she must place cotton inside the vaginal passage to see if there is still blood remaining inside.

Ruling 68: Most of the rules of the *haydh* apply to the one in *nifas*; rather all of them apply to her based on an obligatory precaution.

Ruling 69: *Ghusl* must be performed after the *nifas* has ended, in the same manner as the *ghusl* for *janabah* and *haydh*.

Rules Related to the Deceased

It is obligatory for a person who is feeling death approach, or who is witnessing its direct signs, to fulfil his duties, monetary or otherwise, to fulfil what is due to other people and to make a will for that which he cannot carry out, to admit and testify to that which is on his shoulders in terms of debts, and what possessions he is holding in trust for other people, and to hasten in asking for forgiveness and repentance from the sins.

Ruling 70: It is recommended to make the dying person face the *qibla* such that the soles of his feet are facing the *qibla*, so if he were to sit he would be facing it with his face. And it is obligatory to make him face the *qibla* after his death.

Ruling 71: It is recommended for the dying person and others to give witness to the attestations of Islam (bearing witness to Allah and the Holy Prophet), the guardianship of the Imams (peace be upon them all), and the other true beliefs; it is recommended to declare this in the other's presence, as it is also recommended to dictate it to the dying person.

Ruling 72: It is recommended after death to hasten in closing the eyes of the deceased, fastening his chin, and it is said to close the mouth, extend the hands and legs, and to cover him with a cloak.

Ruling 73: It is obligatory by *kifayah* – i.e. it is obligatory in the beginning on all duty-bound persons, but the obligation is dropped from others by its fulfilment by one or some – to prepare the dead body of the believer for burial.

Ruling 74: The burial preparations (such as the bathing and shrouding) must be done with the permission of the guardian of the dead person – which is the inheritor – and the husband has precedence with respect to his deceased wife over anyone else. With the absence of any guardian or lack of access to him, anyone is free to carry it out.

Ruling 75: The obligatory precaution is to act upon both the permission of the guardian and the will of the deceased, if he wills that someone other than guardian takes charge of his affairs, or that he is to be washed with specific water for example, and other such things. If this necessitates the spending of money then it is considered as part of the will.

Ruling 76: The obligation of bearing the costs of the wife's obligatory funeral rites is on the husband, and anything other than that is taken from her wealth that she left behind, before the paying of debts and executing the will, and it is possible for anybody to voluntarily undertake it.

(a) *Ghusl* of the Deceased's Body

Ruling 77: The *ghusl* for the dead body is like that of *janabah* in its manner and conditions, except that it is necessary to make the body *tahir* before giving it the *ghusl* if it has become subjected to an external *najasah* as an obligatory precaution. It differs from it in two further matters:

(1) The water must be abundant and much in quantity. A little amount of water is not sufficient.

(2) Three *ghusls* are given, the first one by *sidr* water, then by camphor water, and then by unmixed pure water.

Ruling 78: The *ghusl* must have the intention in the manner mentioned previously in the section on *wudhu*; thus

it is not correct if the motive is the taking of payment or being conditional upon it; rather, the obligatory precaution is to not take payment for it even if it is not the motive for doing it. And if something is wished to be given to him, it should be purely a gift, not preceded by any condition or agreement.

Ruling 79: If *sidr* or camphor is not available, *ghusl* is done with the pure unmixed water in place of the thing not available, and as an obligatory precaution it should be intended that this is done as a substitute for the *ghusl* with the missing *sidr* or camphor.

Ruling 80: The amount of *sidr* required is that by which the cleaning of the body can be achieved, and the amount of camphor required is that by which the scenting of the body can be attained.

Ruling 81: If the water does not suffice for three *ghusls*, then the *ghusl* with unmixed water is given preference. If there is a sufficient amount of water for a second *ghusl*, one has a choice between *sidr* and camphor water, and *tayammum* must also be undertaken based on an obligatory precaution.

Ruling 82: In a situation of absence of water or fear of the body dispersing if washed due to being burnt or any other reason, *tayammum* must be performed on the body. One *tayammum* suffices and it must be done with the hand of the deceased if possible; otherwise, the striking and wiping will be sufficient by the hand of the person making the deceased do *tayammum*.

Ruling 83: The corpse and the person giving it the *ghusl* should be of the same gender, except if the age of the deceased does not exceed three years, or if it is a wife in which case the husband may wash her. Likewise it is

permitted for the *mahram* relatives, be they by blood, or due to wet nursing, or due to marriage – to wash the deceased of the opposite gender, if there is nobody who is of the same gender available. And it is forbidden in all conditions to look at the private parts except in the case of husband and wife; rather, even in that case it is forbidden as an obligatory precaution.

Ruling 84: It is forbidden to cut the nails of the corpse or to cut its hair, and the obligatory precaution is to abstain from cleaning under the nails except that much which is needed for the water to reach the surface of the skin. Similarly it is not allowed to comb or arrange its hair, if there is the possibility of some hair falling off due to this. If anything detaches from it due to any other cause, it must be buried with the corpse.

(b) *Takfin* and *Tahnit*

Ruling 85: it is obligatory to perform the *tahnit* (the application of camphor) of the body after washing it, and before completing the *takfin* (shrouding the body with the *kafan*), by rubbing with camphor the seven places of prostration on his body – the forehead, both palms, both knees and the large toes of both feet – in such a way that something of it remains on them.

Ruling 86: *Takfin* of the body is obligatory – except for the martyr, the rules of which are mentioned in detailed books – with three cloths hiding from view his body; rather, each one of them should be such that it hides from view that which is under it, as an obligatory precaution. And these three are:

(1) The *qamis*: this must cover the body between the

shoulders and the knees, as an obligatory precaution.

(2) The *izar*: this must cover the whole body except the head.

(3) The *rida*: this must cover the whole body including the head.

Ruling 87: *Takfin* is not permitted with silk, nor with that which has not been woven, such as leather, as an obligatory precaution, except in the case of not having anything else.

Ruling 88: The *kafan* must be *tahir*, so if it becomes *najis* after the *takfin* then it must be made *tahir*, or the place of the *najasah* should be clipped or cut out. The latter is permissible only if it does not lead to revealing the body based on an obligatory precaution.

Ruling 89: One must be allowed by the Sharia to use the *kafan*, and it is forbidden to do *takfin* with something which is usurped, even in the case of not having anything else.

(c) The Prayer on the Deceased

Ruling 90: Offering the prayer on the deceased Muslim who has reached the Sharia-based adulthood is obligatory, as long as it is not known that he has denied and rejected the Imamate of the Imams (peace be upon them), and it is recommended to offer the prayer on the deceased child if he used to apprehend and understand the prayer. If the deceased is younger than this, prayer on him is not legislated in the Sharia.

Ruling 91: The prayer on the deceased consists of five *takbirs* (the phrase, '*Allahu Akbar*'), with supplication and *dhikr* in between them, and it is ended with the fifth *takbir*.

Ruling 92: It is obligatory to supplicate for the adult deceased if he was a believer, and it suffices to supplicate for his parents and the believers if he was a child and the parents were worthy of this. As an obligatory precaution one should also recite the *salawat* (invocation of blessings) for the Prophet and his progeny (peace be upon them all).

The best way to perform the prayer is that one recites the first *takbir* followed by the two testimonies of faith (in Allah and the Prophet); then the second *takbir* followed by the *salawat* on the Prophet and his holy progeny (peace be upon them all); then the third *takbir* followed by supplication for the believing men and women; then the fourth *takbir* followed by supplication for the deceased, if he was an adult believer; finally, he will recite the fifth *takbir* and the prayer will be completed.

Ruling 93: For the validity of the prayer, it is necessary to observe the following:

(1) The intention.

(2) The permission of the guardian

(3) The presence of the body.

(4) One should stand behind the body.

(5) One should be close to it.

(6) One should offer the prayer standing if possible.

(7) One should face *qibla*, such that the body is lying on its back with the head of the body to his right.

(8) The prayer should be performed after the *ghusl*, the *tahnit* and the *takfin*, and before the burial.

As an obligatory precaution, there should be continuity between the *takbirs* and the recitations.

Ruling 94: It is not necessary for one who is offering the prayer on the deceased to be in *taharah* from *hadath* or *najasah*, and it is recommended for it to be offered in congregation, and the *adalah* of the imam is not necessary.

(d) The Burial

Ruling 95: It is obligatory to bury the body by concealing it inside the earth in such a way that the body is protected from predatory animals and the like, and that it prevents the smell coming to the surface.

Ruling 96: It is obligatory to place the body in his grave lying on his right side, with his face facing the *qibla*.

Ruling 97: It is forbidden to bury a believer in a place which results in insult to his honour such as a dumping ground, or in a place which is *waqf* for something specific not including burying the dead, or in someone else's property without his permission, or in a place subjected to the right of someone else without his permission.

Ruling 98: It is forbidden to bury a person in another body's grave, except if the grave is not designated exclusively for the first body, or the first body has been removed from it and transferred, or the body has disintegrated and decayed and the place is no longer regarded as being a grave for him.

Ruling 99: It is forbidden to exhume the grave of the deceased in such a way that his body is exposed, if that will be insulting towards him by the smell and the changing of his physical appearance. As an obligatory precaution one

should not exhume the grave after the burial even without such an insult. The following cases are excluded:

(1) If he was buried without *ghusl*, *tahnit* or *takfin*, or with them but not in the correct way ordained by the Sharia, as long as exhuming the grave will not be insulting to him, such as if he was buried recently. So if a long time has passed and his physical appearance has changed then it is not permissible to exhume the grave to carry out the *ghusl* and *takfin*.

(2) If the exhuming of the grave is in the interest of the deceased and will not necessitate his being insulted, such as in order to be transferred to one of the holy sites or his family grave, in order for that to be an esteem for the deceased or a cause for his remembrance and prayer for him, for example.

(3) If in exhuming the grave there is the remedy of a forbidden offence, such as if he has been buried in the property of someone else without his permission, or someone else's property has been buried with him wrongly, and the like. Consideration should be made to ensure he is not insulted by the spread of his smell and the like, wherever possible.

(e) The *Ghusl* of Touching the Corpse

Ruling 100: *Ghusl* is obligatory for touching a dead body after the whole body has become cold and before it has been given *ghusl*. This *ghusl* is like that for *janabah* with respect to its manner, and it suffices for *wudhu*. The one who is obligated to perform the *ghusl* for touching the corpse is not allowed to do those things which require *taharah*, such

as prayer, touching the writing of the Quran; but those prohibitions specific to the one in the state of *janabah* are not forbidden for him, such as entering the mosque and reading the four chapters of the Quran which consist of a verse which obligates prostration (as mentioned above).

Ruling 101: Just as *ghusl* is obligatory for touching a corpse, it is also obligatory for touching a part of body separated from a living or dead person, if it consists of meat and bone.

The Recommended *Ghusls*

The recommended *ghusls* are many, among them are the following:

(a) Those which are related to a time

These include the Friday *ghusl*, which is one of the emphasized recommended deeds. Its prescribed time is from the beginning of dawn until Dhuhr time, and it can be made up (as *qadha*) after that until the sunset of Friday; and if it was not done by this time, it can be made up on Saturday during daytime.

Also recommended are the *ghusls* of the two Eids, and the day of *Tarwiyah* (the eighth day of Dhul-Hijjah), and the day of Arafat (the ninth day of Dhul-Hijjah); and the time for all of them is from the beginning of dawn until sunset. Similarly, the *ghusl* of the first night of the month of Ramadhan is also recommended, as well as the seventeenth, nineteenth, twenty-first and twenty third nights of the same month.

(b) Those which are related to a place

These include the *ghusls* for entering the *haram* (sacred precincts) of Makkah and Madinah, and for entering the two cities themselves, if it is for carrying out an obligatory or recommended worship. It is also recommended for entering the mosque of the Prophet in Madinah, and for entering the Noble Ka'bah.

(c) Those which are related to an action

These include the *ghusls* for *ihram*, for staying at Arafat just after Dhuhr, for slaughtering the sacrifice during *hajj*, for shaving of the hair during *hajj*, for the obligatory *tawaf* of *hajj* after returning from Mina; similarly, it is recommended for touching the corpse after having given it *ghusl*, and the *ghusl* for making up the lapsed total lunar eclipse prayer, with negligence in performing it on time.

Ruling 102: All of these *ghusls* suffice for *wudhu*. However, those *ghusls* which have not been proven to be part of the Sharia can be offered with the hope of being rewarded, and they do not suffice for *wudhu*.

Tayammum (Ablution by Earth)

Ruling 103: A person can perform *tayammum* instead of *ghusl* or *wudhu* in the following cases:

(1) There not being sufficient water for the minimum required in *wudhu* or *ghusl*, whether he caused the lack of water or not. The person must search for water until he knows or is satisfied of its absence. It is sufficient for the traveler in the desert or wilderness to search for water, on level earth, to a distance of two arrow shots in all directions in which there is possibility of finding it, and in the uneven earth one arrow shot; an arrow shot refers to a common average arrow shot.

(2) Fear of thirst if the water with him is used for *wudhu* or *ghusl*, regardless of whether the fear is for himself or for one who is under his care, including his animals, or if he fears for the loss of a life which is obligatory for him to protect.

(3) Fear of bodily harm by using the water, due to this causing illness or causing it to become more severe or slowing down its healing.

(4) If it is necessary to use the water for another obligatory act, such as purifying a mosque, or the body, or clothing from *najasah*.

(5) If using the water will necessitate something prohibited in the Sharia, such as using somebody else's property, or something which causes hardship in bearing it, such as aggression of a wrongdoer and its like.

(6) If he has not found water and the time for obtaining it by purchasing, or by asking for it, or striving for it has become constrained. If he has water but the time for prayer has become constrained for performing *wudhu* or *ghusl*, then *tayammum* will not suffice. However, it is preferable that he hastens to pray with *tayammum*, and then repeats it after the time has passed as *qadha*, after the *ghusl* or *wudhu*.

Ruling 104: *Tayammum* is valid with whatever is called earth, from soil, or sand, or rock, or stone, and it is necessary for whatever is used to be lawful to use and *tahir*. If one is unable to use any of them, *tayammum* is done with dust, and if that is also not possible then with mud – but the obligatory precaution is that it is removed from the hand by rubbing and the like, before wiping with them. This is in the case of not being able to dry the mud beforehand; otherwise, it must be dried and then *tayammum* performed with it, before resorting to using dust.

Ruling 105: *Tayammum* should be performed in the following method:

(1) One should first strike the inside of his hands on the earth once.

(2) He should wipe, with both of his hands together, his forehead and the two sides of his face from the place where the hair grows to the bone of the eyebrows.

(3) He should wipe the back of the right hand from the wrist to the fingertips, with the inside of the left hand. Then he similarly wipes the back of the left hand with the inside of the right hand. It is best that he strikes the earth for a second time and then repeats the wiping of the two hands.

Ruling 106: The following conditions must be fulfilled for the *tayammum* to be valid:

(1) Forming the intention.

(2) Carrying out the acts by oneself, if possible.

(3) Following the sequence in the correct order.

(4) Continuity, even if the *tayammum* is in place of *ghusl*, as an obligatory precaution.

(5) The parts of the body on which *tayammum* is done being *tahir*, if the *najasah* would result in the *najasah* of the earth of *tayammum* via transferring moisture; but as an obligatory precaution it should be *tahir* in all cases, except in the case of being unable to make it *tahir*, in which case *tayammum* is permissible if the parts are dry.

Ruling 107: *Tayammum* for prayer is not permissible before its prescribed time, as an obligatory precaution, except if he knows or fears not being able to perform the *tayammum* after the setting in of the time.

Ruling 108: Prayer with *tayammum* is not permissible when there is time left for the prayer, except if it is probable that the cause for *tayammum* will continue till the end of the prescribed time. As such, if one does perform the *tayammum* and its cause does indeed continue, the *tayammum* will suffice; otherwise, the prayer must be repeated with *wudhu* or *ghusl*.

Ruling 109: Excluded from the previous ruling is the one whose cause for *tayammum* is not having water, because if he does not know and does not think that he will have access to water during the time of the prayer, he can hasten

to pray with *tayammum* and that will suffice even if he finds water later within the time of the prayer, indeed, even if he finds it during the prayer after the first bowing (*ruku'*). However, if he finds it before the first bowing, he must break the prayer, then perform the *wudhu* or *ghusl* with the water, and start the prayer again.

Ruling 110: The *tayammum* can be performed in place of the *wudhu* in all the situations where *wudhu* is legislated.

Ruling 111: The *tayammum* can be performed as a substitute for obligatory *ghusls*, like *janabah*, *haydh* or *nifas* for the purpose of performing obligatory and recommended prayers. As an obligatory precaution, *tayammum* has not been legislated in the Sharia as a substitute for *ghusls* which are recommended.

Ruling 112: One who performs *tayammum* for a particular purpose, that will suffice him for another purpose which also requires *taharah*; for example, if one performs *tayammum* for prayers he can also enter the mosques with the same *tayammum*.

Ruling 113: The *tayammum* is not nullified except by two things: having access to water, or *hadath*.

Ruling 114: One who performs *tayammum* for *taharah* from major *hadath*, and then minor *hadath* occurs for him, his first *tayammum* is not nullified, and *wudhu* or *tayammum* for purity from the minor *hadath* is required from him.

The *Najasah*

The *najasah* is the material ritual impurity as defined by the Sharia. It is found in ten things. These ten *najis* things are as follows:

(1) and (2) Urine and faeces of the human being and of every animal whose meat is unlawful to eat and its blood spurts when it is slaughtered. This excludes the urine and faeces of birds, even if the bird is unlawful to eat like a crow.

(3) Semen of the human being and of every animal whose meat is unlawful to eat and its blood spurts when it is slaughtered.

(4) Blood of the human being and of every animal which has spurting blood.

Ruling 115: The blood remaining in the body of an animal after slaughtering and after the exiting of the usual amount of blood, is ruled to be *tahir*; similarly, the blood present in the egg is *tahir* – but the obligatory precaution is that it is not permissible to eat it.

(5) The corpse of animals which have spurting blood; and the same is the case for the part cut off from such an animal while it's alive, other than scales, warts and the like.

Ruling 116: What is meant by the corpse of animals here is every dead body not slaughtered in the Sharia-prescribed manner. If there is doubt about it having been slaughtered in the Sharia-prescribed manner or not, it is ruled as not having been done so, and all the parts of it which are life-containing, such as skin, fat, meat, etc. are ruled to be *najis*.

Ruling 117: If a human dies, his body will become *najis*, and the ruling of the animal corpse will apply on it, until it is given the three *ghusls*, as will be explained later.

(6) and (7) the dog and the pig, with all their parts, even those which do not contain life such as fur and the like.

(8) The non-Muslim, based on an obligatory precaution, other than the People of the Book, who are the Jews, Christians, and Magians. The People of the Book are *tahir* in themselves, and they will be considered *tahir* if it is not known that they have become *najis* due to contact with wine, pork, etc.

(9) Wine and every intoxicant which is originally liquid. This includes beer; but as for other alcohols, their being *najis* is dependent on them being intoxicating and being originally liquid.

(10) The sweat of a camel which eats the faeces of humans – rather, that of every animal who eats that, as an obligatory precaution.

Ruling 118: As for the sweat of the person who has entered the state of *janabah* in an unlawful manner, although it is *tahir*, it is not permissible to perform prayers in it based on an obligatory precaution.

(a) How *Najasah* is Transferred

Ruling 119: A *tahir* object becomes *najis* by coming into contact with an impurity, if one of the two objects contains transferring moisture, i.e. it transfers simply with contact. The *tahir* part which has made contact with the impurity becomes *najis*.

Ruling 120: The thing made *najis* by an impurity also makes *najis* another object which touches it with moisture between them, and so on, however many consecutive objects become *najis*.

Ruling 121: The *najis* urine, faeces, blood and semen as mentioned above are not ruled to be *najis* except if they leave the body; thus anything which touches them inside the body does not become *najis*. For example, the syringe does not become *najis* with the contact with blood inside the body as long as the blood does not come out with the syringe.

Ruling 122: If there is a doubt about whether something is *najis*, it is regarded as being *tahir*.

Ruling 123: It is necessary for the validity of the prayer – except the prayer on the deceased – and also for the making up (*qadha*) of its forgotten parts and, as an obligatory precaution, for the prostrations of forgetfulness too, that the body of the one praying is *tahir* as well as his clothes, even if a clothing is not such that would be sufficient to cover the private parts.

Ruling 124: Whatever is prostrated upon must be *tahir* to the extent of the minimum area of the forehead required for prostration, and there is no problem with any other part of the place upon which one is praying being *najis*, as long as the *najasah* does not spread to the body or clothes.

Ruling 125: One who prays unknowingly with *najasah*, his prayer is valid, except if the blood is that of *haydh*, in which case the obligatory precaution will be to repeat it.

Ruling 126: If one knew about the *najasah* and then forgot about it and prayed, his prayer is invalid and he must repeat the prayer, whether he is within time or the time has

lapsed.

This also applies to the *najis* things that are carried by him, provided that it is not exempted, based on an obligatory precaution. The exemptions will be mentioned in Ruling 130.

Ruling 127: If one began the prayer and his body or clothes were *najis* without knowing it, then he came to know about it during the prayer, it becomes void and he must repeat the prayer after purification.

Ruling 128: If a person knew that his clothing or body is *najis*, and he made it *tahir* and prayed, and then, after finishing the prayer, realizes that there is still *najasah* remaining, he doesn't have to repeat the prayer. However, if he relied on somebody else to make it *tahir* for him and he did not examine it, and the purification of the *najasah* is something requiring extra care in cleaning, such as semen, then he should repeat his prayer as an obligatory precaution.

Ruling 129: It is not necessary for a person to inform others of their body or clothing being *najis*.

Ruling 130: *Najasah* is excused in prayer in some cases, such as the following:

(1) Blood of wounds or sores which is present on the body or clothing until the bleeding stops due to healing.

(2) Blood on clothing in the amount which is less than a dirham in size – and what is meant by a dirham is an area equivalent to that of a circle whose diameter is 2.3cm as an obligatory precaution – provided that it is not mixed with anything else, and that it is not the blood of *haydh* or that of an animal whose meat is not permissible to eat; and the obligatory precaution

is that it is not the blood of *nifas*, or the blood of an animal that is *najis* itself (i.e. the dog and pig), or that of a corpse.

(3) Those items which, if worn, do not suffice to cover the minimal part of the body required to be covered for the validity of prayer, i.e. the private parts of a man, such as a sock, a small handkerchief or a ring, provided that it is not itself an original *najasah*, such as a corpse, nor does it consist of a part of an animal whose meat is not permissible to eat, even if it is something carried on one's person, such as a leather wallet, based on an obligatory precaution.

Ruling 131: It is forbidden to eat or drink an originally *najis* thing or something which has become *najis*.

Ruling 132: It is forbidden to make the mosque *najis* and that which is associated with it, such as the flooring; and it is obligatory on a person to immediately make it *tahir* if it would be considered an insult to it, and even if not considered an insult as an obligatory precaution.

Ruling 133: It is forbidden to make *najis* the Quran and the holy shrines, and it is obligatory to purify it if its remaining *najis* will be an insult to it. This also applies to everything which has sacredness by being related to something sacred, such as the covering of the Ka'bah and the earth of the grave of Imam Hussain (peace be upon him), taken for blessing.

(b) Purification from *Najasah*

The purifying agents are eleven in number:

(1) ***Tahir water***: This is classified into two types: immune (*mu'tasim*) and little. Immune water is categorized

into three types:

(a) water that has reached the amount of *kurr* – approximately 464 kg, and it is better to consider it as 470 kg;

(b) water that has a source, such as spring water, well water, and tap water which is connected to a large tank or mains water supply;

(c) rain water during rainfall;

Little water is that which does not reach the amount of *kurr*, nor does it have such a source as mentioned above.

Ruling 134: Immune water does not become *najis* by contacting something *najis*, except if the colour, taste or smell of the water changes due to the *najasah*. As for little water, it will become *najis* simply by contacting *najasah*, whether its colour, taste or smell changes due to it or not.

Ruling 135: Unmixed water purifies everything it reaches and encompasses which has become *najis*, provided that the water is *tahir* itself, and that the original *najasah* (e.g. the blood or urine) has been removed as per the conventional view. If the water is little, then the following two conditions will also apply:

(1) The separation of the water used for purification from the object.

(2) The water must be poured over the *najis* object; so the purification will not occur if, for example, a *najis* ring is placed in a water container.

Ruling 136: If the purification is being done by immune water, such as *kurr* water, then it is sufficient that the water covers the body which has become *najis* once.

Ruling 137: If the purification is being done by little water,

then washing once will suffice, except in certain cases:

(1) If the cause of *najasah* is urine, so the washing must be done twice, with a gap in between the two washings.

(2) If a utensil has become *najis*, so the water will be placed in it and emptied out of it, three times. But if it is possible to make the utensil *tahir* without the water collecting in it, like a basin or sink, then it suffices to wash it once.

(3) If a pig drinks from a utensil, so it is purified by washing it with water seven times. This also applies to the case of a rat dying in it as an obligatory precaution.

(4) If a dog drinks from a utensil, so it is purified by washing it with water mixed with *tahir* earth once, and then washing it twice with little water. As an obligatory precaution, if the dog has licked it with its tongue or its saliva has fallen in it, it should be washed for a third time with little unmixed water.

If the water used is immune, the first washing with water mixed with earth is still required, but it is sufficient to wash it once with unmixed water afterwards.

(2) ***Dry earth:*** This makes *tahir* the bottom of the feet and also whatever is worn on one's feet, such as shoes. *Taharah* is achieved by walking on it, provided that the original *najasah* is removed and that it had become *najis* due to walking on the earth; as an obligatory precaution, such earth should be *tahir* itself.

(3) ***The Sun:*** This purifies the earth and whatever is fixed upon it such as buildings, trees, and plantations,

provided that the place is wet and is then dried by the sun, and that the original *najasah* which has a visible body, such as faeces and blood, are removed.

(4) ***Changing (Istihala)*** into another substance, such as the changing of wood into ashes and water into steam.

(5) ***Transformation (Inqilab):*** This purifies wine if it turns into vinegar or another non-intoxicating thing which is not called wine, provided that it does not meet another *najasah*.

(6) ***Transfer:*** This purifies a *najasah* that has been transferred, such as transfer of *najis* blood to the bedbug, mosquito, lice and the like. When the blood is conventionally regarded as being that of the latter, it will become *tahir*.

(7) ***Islam:*** If a disbeliever, who was, along with his sweat and the like, ruled to be *najis*, accepts Islam he will become *tahir*, even if he was an apostate.

(8) ***Succession:*** This means that if something has become *tahir*, something else will follow it in becoming *tahir*.

Ruling 138: *Taharah* by succession occurs in a number of instances:

(1) If wine becomes *tahir* by changing into vinegar, the container in which it is in also becomes *tahir*.

(2) If the clothes are washed by little water and made *tahir*, the utensil in which they are washed will also become *tahir* when it is emptied of the water used in the washing.

(3) When the deceased is given the *ghusl*, the hand used in washing the body as well as all other

equipment used in doing so will become *tahir* when the three *ghusls* are completed. The same applies to the clothing in which he has been washed, if it has been squeezed.

(9) ***Absolution (Istibra)*** of the animal that eats human excrement: This makes its urine, faeces, and sweat *tahir*. This is done by not allowing the animal to consume human excrement for a number of days, depending on the type of animal.

(10) ***Giving ghusl to the dead body:*** This makes it *tahir* after it became *najis* due to death. This only applies to when the completed *ghusls* are given, as opposed to the *ghusl* which is incomplete out of necessity (e.g. due to lack of *sidr* or camphor) or if *tayammum* is given instead.

(11) ***The stone:*** used to clean the anus after defecation: This purifies the anal exit from where the bowels are evacuated if the *najasah* is removed with it

Ruling 139: If a person knew that an object is *najis*, and then doubted whether it had become *tahir* or not, it is taken as remaining *najis*.

Ruling 140: If a person knew that an object was washed in order to make it *tahir*, but then doubted about whether the washing was correct or not, he will take it as having been correct.

Ruling 141: If one knew about the *najasah* of the body of a Muslim, or his clothing, utensil, or the like, and he left him for some time, he takes it as being made *tahir*, provided that:

(1) it was possible for the Muslim to have made it *tahir*,

(2) the Muslim knew about the *najasah*.

(3) he is dealing with it as he deals with a *tahir* thing, like if wears it during prayers, or he eats or drinks it.

Ruling 142: It is forbidden to use utensils of gold and silver in eating and drinking and for other purposes, even if the gold and silver is not completely pure. It is not forbidden to use them for decoration or to acquire them for saving.

Ruling 143: It is permissible to use a utensil consisting of some gold or silver, provided that the side with the gold or silver on it is not drunk from, as an obligatory precaution.

Ruling 144: If the body of an animal comes into contact with a *najasah*, like blood or urine, and then the *najasah* disappears from the body, it will be treated as a *tahir* body is treated, and it is not necessary to make *tahir* the part of the body which contacted the *najasah*. For example, if the beak of a bird becomes *najis* with blood and the blood disappeared later, beak will be treated as *tahir*.

(4)
PRAYERS

(4)

PRAYERS

Prayer is the first of the pillars of religion and its greatest after Faith, and it is the connection between the person and his Lord. If it is accepted all else is accepted, and if it is rejected all else it is rejected.

It is amongst the most important of the obligations ordained upon mankind; this obligation requires us to observe it abidingly, and we are encouraged to perform it at the start of the prescribed times; we must perform them with sincerity and fulfilling all the conditions. As the narration states: "The prayer is the pillar of Islam. If it is accepted, all else is accepted, and if it is rejected, all else is rejected." This means that if the prayer is not accepted from a person, due to his failure to fulfill any of its conditions, or him being negligent in respect to it, all of his other acts of worship will also be rejected; and if he performed the prayer in its correct manner, seeking greater proximity to Allah Almighty, all his action will also be accepted, and his rewards will be abundant.

In another narration from the Messenger of Allah (peace be upon him and his holy progeny), he said: "Allah, may His remembrance be elevated, swore on His own glory that He will not punish the performers of the prayers and the prostrations, and that He will not make them fear the fire of Hell, on the day that all mankind will be made stand for judgment before the Lord of the Worlds."

In a narration from Imam al-Baqir (peace be upon him) he said: "Do not be neglectful in your prayers, as the Prophet (peace be upon him and his progeny) said at the approach of his death: He who disregards prayer is not from me, and he will not come to me at the Pond (of Kawthar), by Allah he won't."

Imam al-Sadiq (peace be upon him) is reported to have said when death approached him: "Our intercession will not be obtained by the one who disregards the prayer."

So, if Allah Almighty does not accept our acts of worship, and the Prophet and the Imams (peace be upon them all) refuse to intercede for us on the Day of Resurrection, how will we obtain safety and salvation?

If this is the fate of the one neglectful and disregarding of the prayers, then what will be the state of the person abandoning the prayers? How great will be his punishment?!

We should contemplate about the difference on the Day of Resurrection between those who pray and those who do not pray, as expressed in the Holy Quran: "And those who guard over their prayers, they will be in the heavens honored," (Al-Ma'arij: 34-5) and in another verse: "In the heavens they will ask about the guilty ones (in Hell): What led you all to Hell? They will say: We were not amongst those who prayed." (Al-Muddatthir: 40-43)

In this era – i.e. the time of the Occultation of the Imam (peace be upon him) – the obligatory prayers as originally legislated are: the daily prayers (amongst which is the Friday prayer), the prayer of signs, the prayer on the dead, and the prayer of *tawaf*. The rest are recommended prayers, some of which become obligatory at times due to being hired to perform prayers, or as a result of a vow, and the like.

The Daily Prayers and their Timings

Ruling 145: The following five prayers are the obligatory daily prayers:

(1) **Fajr** prayer (2 units), and its time is from dawn break to sunrise.

(2) and (3) **Dhuhr** prayer (4 units), and **Asr** prayer (4 units), and their time is from *zawal* – the time halfway between sunrise and sunset – to sunset. On Friday, one can choose between performing Dhuhr or Friday prayers, as long as the conditions of the Friday prayer are fulfilled, as will be explained later.

(4) and (5) **Maghrib** prayer (3 units), and **Isha** prayer (4 units), and their time is from sunset until the middle of the night – which is half way between sunset and dawn break. And whoever is forced to delay them till after that – or does so on purpose or due to *haydh*, as an obligatory precaution – he should perform them before dawn break with the intention of fulfilling one's current obligation without specifying whether it is within time or beyond it (*qadha*).

Ruling 146: It is permissible to perform the two afternoon prayers and the two night prayers together, even in the beginning of their prescribed times. However, the Dhuhr prayer must be offered before the Asr prayer, and the Maghrib prayer must be offered before the Isha prayer.

Ruling 147: It is highly recommended to hasten to recite the prayers at the beginning of their prescribed times, and it is highly disliked to delay it.

Ruling 148: The setting in of the time of the prayer is

established by either one of three ways:

(1) One having sure knowledge himself;

(2) The testimony of two *adil* men who base it on sensory perception, i.e. by being direct witnesses to it, not on hearsay, prayer timetables, etc;

(3) The *adhan* of someone reliable and knowing.

Ruling 149: Whoever performs his prayer before the setting in of its prescribed time, his prayer is void, except if he believed the time to have set in and it happens to actually set in before he had completed the prayer – in which case it is valid.

Ruling 150: It is recommended to also perform the daily supererogatory prayers (*nawafil*), which are as follows:

(1) Supererogatory prayer of Fajr, (2 units) to be performed before the obligatory prayer of Fajr, and its time begins at the start of the last sixth of the night, until the rising of the redness in the east. Then once the redness rises, it is preferred to delay it till after the obligatory prayer.

(2) Supererogatory prayer of Dhuhr, (8 units) to be performed before the obligatory prayer of Dhuhr, and its time is from *zawal* until the length of the shadow of a vertical stick reaches approximately $^{2}/_{7}$ of the actual stick's length.

(3) Supererogatory prayer of Asr, (8 units) to be performed before the obligatory prayer of Asr, and its time begins from the completion of the Dhuhr prayer until the shadow of the aforementioned stick reaches approximately $^{4}/_{7}$ of the actual stick's length.

Note: It is permissible to perform the supererogatory

prayers of Dhuhr and Asr before *zawal*, although it is preferable to perform them as explained above except on Friday.

(4) Supererogatory prayer of Maghrib, (4 units) to be performed after the obligatory prayer of Maghrib until the middle of the night – which has been explained previously.

(5) Supererogatory prayer of Isha, (2 units) to be performed in the sitting manner after the obligatory prayer of Isha, until the middle of the night as an obligatory precaution.

(6) Supererogatory prayer of the night, which consists of eight units, then two units of *shaf'*, then one unit of *witr*, and its time is from the middle of the night until dawn break.

Ruling 151: It is permissible to perform recommended prayers if one is required to perform an obligatory prayer, whether the latter is within its time or the time has lapsed. But if the time for the obligatory prayer is constrained, then he must hasten to perform it.

Prerequisites of the Prayer

(a) Direction (*Qibla*)

The *qibla* for prayer is the sacred Ka'bah, and whatever is directly above it and below it from the earth to the heavens. It is obligatory to face the *qibla* in the obligatory prayers and whatever one is obligated to perform after it, such as the prayer of precaution, and similarly in the prostrations of forgetfulness based on an obligatory precaution. Recommended prayers can be performed while walking or riding or the like, but if one performs them standing still, then facing the *qibla* is required.

Ruling 152: The *qibla* is established by two ways:

(1) by knowing its direction oneself; or

(2) by the testimony of two *adil* men who base it on sensory perception.

If these two ways are unavailable, it is sufficient to rely upon the direction that the Muslims take when offering their prayers and slaughtering the animals, and the like. If one cannot obtain such evidence, he should exert his effort to obtain satisfaction, and if even this is not possible, it is sufficient to offer the prayer once to any probable direction; it is better in the latter case to offer the prayer in all the four directions.

Ruling 153: Whoever offers his prayer in a direction that he believed to be *qibla*, or it has been established by one of the ways mentioned above, and after he has completed the prayer he came to know that he did not pray in the right direction, then if his prayer was with a deviation of within

ninety degrees from the correct direction the prayer is valid. If he came to know of such deviation during prayer, he should correct his direction towards *qibla* and continue praying. However, if his deviation was more than this and the time for the prayer has not yet expired, then the prayer is invalid and he should repeat it. If the time has lapsed, then he is not required to repeat his prayer.

(b) Clothing of the Person Praying

Ruling 154: It is obligatory for men, during the prayer, to cover their private parts, which are the male reproductive organs and the anal opening. The woman must cover her entire body except the face, the two hands, and the two feet, and the obligatory precaution is that she covers her feet if there is a non-*mahram* person present. The girl who has not yet begun her monthly menstruations – even if she has reached the age of adulthood – can reveal her neck and head while praying. As an obligatory precaution, the material used to cover the body must be that of cloth and clothing, when possible.

Ruling 155: If a person does not fulfil the obligatory covering as explained above due to ignorance or forgetfulness, and then realizes after having finished the prayer, his prayer is valid. However, if he realizes during the prayer, and at that particular time he was covered sufficiently, his prayer is valid. However, if one was not sufficiently covered when he came to the realization, then his prayer is void as an obligatory precaution, and he should break his prayer and repeat it.

Ruling 156: For the prayer to be valid, the following conditions in respect to the clothing must be fulfilled:

(1) His clothing during the prayer must be lawful, i.e. not usurped. So, if a person knows that his clothing is usurped, then the prayer is void. However, if one does not know that the clothing by which he covers his body in prayers is usurped, and he comes to know of this after he has completed the prayer, his past prayers are valid, but he cannot wear the same clothing for any future prayers.

(2) His clothing should not be made from the skin of animals not slaughtered in accordance to the Sharia laws. This includes the leathers that come from non-Muslim lands. So, even the straps of the wrist watches, if they are made of such leathers, cannot be worn in prayers, and the same is the case for leather belts, and other clothing which have patches of leather sewn onto them.

(3) His clothing should not be from the parts of animals which are forbidden to eat, including their skins, hairs and furs. In fact, even if a few hairs from a cat, for example, stick to ones clothes and body, his prayer is invalid based on an obligatory precaution.

Ruling 157: If one does not know whether certain leather is natural or artificial, then he can pray wearing it, because he does not know it to be from an animal.

(4) and (5) Men's clothing should not include gold and natural silk, while this is permissible for women.

(6) His clothing should be *tahir*. Therefore, one's prayer in *najis* clothing is void. Similarly, the body should not be *najis* either. However, there are a number of exceptions to this, the most important being the following three:

(a) The blood of wounds and pus mixed with blood on the body and clothes, as well as medication applied on wounds – as long as the wound has not healed, it is permissible to pray with it, and it is not obligatory to remove the blood and to make the place *tahir*.

(b) A small amount of blood on the clothes – except for the blood of *nifas* and *haydh* as an obligatory precaution – if the amount of blood does not exceed the area of a circle of the diameter of 2.3 cm as an obligatory precaution. As for the small amount of blood on the body – apart from the case explained in the first exception above – the obligatory precaution is to make it *tahir*.

(c) The clothing and the small things worn which do not suffice in themselves to cover the private parts of the man, like a ring or a sock, as it is permitted to pray with them on if they become *najis*. However, it will not be permitted if it is made from a corpse of an animal not slaughtered according the laws of the Sharia, or from an originally *najis* animal like a pig. As an obligatory precaution, if it is from an animal that is not lawful to eat, it is not permitted either.

(c) The Place of Performing Prayers

Ruling 158: It is forbidden to pray in a place or space which is usurped and the prayer becomes void if one is aware of that, except for one who is confined to such a place, as long as his usage of the place for the prayer does not cause the place any damage more than what is usually

expected due to his confinement there.

Ruling 159: The mosques and the holy shrines are public places for all the Muslims, so one who reaches a place first has greater right to it and it is not permissible to remove him from it forcibly.

Ruling 160: It is permissible for a woman and man to pray in one place, whether she is adjacent, behind or in front of the man. However, it is highly disliked for her to do so, except in the following cases:

(1) She is behind him even if only to the extent of his chest – such that if they both are prostrating, her head is adjacent to his knees.

(2) If there is a barrier between them such as a wall.

(3) If there is a distance of five meters between them; then, the more closer she gets to the man, the more disliked it is.

Ruling 161: It is not permissible for one to pray while the grave of the Prophet (peace be upon him and his holy progeny) or one of the Imams (peace be upon them) is directly behind him. However it is permissible for him to pray with their grave behind him if it is to the side, such that he is not conventionally seen to be praying with the grave to his back. This ruling only applies to the building which houses the grave.

Ruling 162: The place where the forehead is placed in prostration – as well as being *tahir* – must be of earth or that which grows from it other than that which is eaten or worn. Therefore, prostration is permissible on paper which is made from that which is permissible to be prostrated upon. The prayer is not valid if one prostrates on something

which is not called earth, even if it is something which is mined – like tar.

Ruling 163: In the case of *taqiyyah* (dissimulation), it is permissible to prostrate on that which is not valid to prostrate upon in usual circumstances.

Ruling 164: If it is not possible to prostrate on that which prostration is valid, due to a reason other than *taqiyyah*, i.e. not having access to it at the time and place he wishes to pray, prostration can be done on the clothing; the obligatory precaution is to give preference to cotton and flax; if it is not possible on the clothing then on the back of the hand.

Ruling 165: If one prostrates on that which is not permissible to be prostrated upon, out of ignorance or forgetfulness, and he becomes aware of that after having completed the prostrations, his prayer is correct.

Ruling 166: The forehead in prostration must be placed in a manner that it is fixed and unmoving, and this is necessary for the place of prayer in general too, such that the stillness required in prayer can be attained.

Ruling 167: Prayer in the mosques is recommended, as well as at the graves of the Imams (peace be upon them); it is disliked to abstain from the mosque, especially for its neighbours.

Ruling 168: It is disliked to perform the prayer in the bathroom, in every place which is filthy, and in a room in which there is intoxicant, or there is fire in front of him or an open book even if it is the Quran, or a picture of something which has a soul. Similarly it is disliked to pray on the roads as long as it does not cause a problem for passers-by; otherwise, if it does cause them a problem, it is not permissible.

(d) The *Adhan* and *Iqamah*

Ruling 169: The *adhan* and *iqamah* are recommended in the daily obligatory prayers, especially for the men. However, they have not been legislated for the recommended prayers or for the other obligatory prayers.

Ruling 170: It is sufficient to recite the *adhan* once when one is performing two prayers together. In fact, it is not legislated for the Asr prayer in Arafat or for the Isha prayer in Muzdalifah during the pilgrimage, if they are performed together with the Dhuhr or Maghrib prayers.

Ruling 171: When the incontinent person is required to perform two prayers together with one *wudhu*, it is not permissible for him to recite the *adhan* for the second prayer. If he did, then he must repeat the *wudhu* for the second prayer. The same is the case for the woman in the state of major *istihadha*, based on an obligatory precaution.

Ruling 172: The *adhan* and *iqamah* are not legislated in a number of instances, for example:

(1) When one enters into a congregational prayer for which *adhan* and *iqamah* have already been recited.

(2) When one enters into a place in which there is a congregational prayer for which the *adhan* and *iqamah* have been recited, and the congregation has not yet dispersed, provided that the congregational prayer is valid. And the obligatory precaution is to limit this to the situation where one's prayer and the congregational prayer are both obligatory prayers being performed in their prescribed time.

(3) When one hears the *adhan* and *iqamah* of someone else, even if both of them pray individual prayers, provided that one is a male and the reciter of the *adhan* or *iqamah* is also a male, as an obligatory precaution.

Ruling 173: The parts of the *adhan* are eighteen:

(1) *Allahu Akbar* – Allah is the Greatest (4 times)

(2) *Ash'hadu anla Ilaha Illallah* – I bear witness that there is no god but Allah (twice)

(3) *Ash'hadu anna Muhammadan-Rasulullah* – I bear witness that Muhammad is the messenger of Allah (twice)

(4) *Hayya alas-Salah* – Hasten to prayer (twice)

(5) *Hayya alal-Falah* – Hasten to success (twice)

(6) *Hayya ala Khayril-Amal* – Hasten to the best of deeds (twice)

(7) *Allahu Akbar* – Allah is the Greatest (twice)

(8) *La Ilaha Illallah* – There is no god but Allah (twice)

And the parts of the *iqamah* are like those of *adhan*, except that '*Allahu Akbar*' is recited only twice, and that '*La Ilaha Illallah*' at the end is recited once. Also, '*Qad Qamatis-Salah*' (Prayer has been established) is added twice after '*Hayya Ala Khayril-Amal*'.

Ruling 174: It is preferable also to declare the guardianship and commandership of Imam Ali (peace be upon him) over the believers after the two testimonies, except that it is not a part of the *adhan* nor the *iqamah*.

Ruling 175: It is recommended for both the reciter and the listener to invoke the blessings of Allah on the Prophet

and his progeny (*salawat*) after the second testimony in the *adhan* and whenever his name is mentioned.

Ruling 176: The following conditions apply in the validity of the *adhan* and *iqamah*:

(1) One should form the intention to recite the *adhan* or *iqamah* with intending to obtain proximity to Allah Almighty, specifying the prayer for which he is reciting it as an obligatory precaution.

(2) The reciter should be sane and a believer.

(3) The reciter should be male, as an obligatory precaution, but a woman's recitation will suffice for women.

(4) The reciter should adhere to the correct sequence between the parts of the *adhan* and the *iqamah*, as well as reciting the *adhan* before the *iqamah*.

(5) As an obligatory precaution, there should be continuity between the parts of each of the *adhan* and the *iqamah* and between the *adhan* and the *iqamah* themselves, and between the *iqamah* and the prayer.

(6) They should be recited in the Arabic language. Its translation will not suffice.

(7) The time of the prayer should have entered before beginning the recitation, even with respect to the individual prayer in the case of Fajr as an obligatory precaution.

(8) Particularly for *iqamah*, one should be in *taharah* and standing facing the *qibla*, although the same is also recommended in the *adhan*.

Ruling 177: It is recommended for the one who forgot to recite the *adhan* and the *iqamah* to break the prayer in order to recite them.

Performing the Prayers

(a) The Intention

The intention is obligatory, and it is necessary in it to make the intention of obtaining proximity to Allah Almighty – as mentioned in the chapter on *wudhu* – and he must specify the prayer which he wishes to perform if there is more than one prayer which he is required to perform.

Ruling 178: The prayer which is performed with the objective of being praised or out of fear from the reprimand of people is invalid. One should pay attention to this issue and make sure that the intention is sincere.

Ruling 179: It is not permissible to change from one prayer to another except in certain cases, such as the following:

(1) If someone has started Asr or Isha, and then remembers that he had not offered the Dhuhr or Maghrib prayer; in such a situation one must change the intention;

(2) If someone started to perform a current prayer with plenty of time to perform it, and then remembered that he is also required to perform a lapsed prayer. He has a choice to either continue with the current prayer, or change the intention to that of the lapsed prayer.

One can only change the intention in these situations if he has not passed a point beyond which such switching is not possible. For example, if he has begun the fourth unit of Isha prayer, and remembered that he has not performed the Maghrib prayer, he cannot change the intention and his prayer has become void, and therefore he must perform Maghrib prayer from the beginning. But he can change his

intention to that of the Maghrib prayer if he is still within the first three units of the prayer.

(b) The *Takbirat-ul-Ihram*

This is one of the fundamental parts of the prayer, the absence of which makes the prayer void, whether deliberately or forgetfully; repeating it on purpose also makes the prayer void. Its form is '*Allahu Akbar*' in the proper Arabic manner. Some people recite it mistakenly as "*Allah wakbar*", which is wrong.

Ruling 180: The *takbirat-ul-ihram* must be said with clear sound, without going to extreme. It is sufficient if one would hear himself reciting it in normal circumstances, i.e. without load noises around him. It is not sufficient to simply move the tongue.

Ruling 181: As an obligatory precaution, one must be still and calm while reciting it, under normal conditions. However, the supererogatory prayers may be performed while walking or riding, as mentioned previously.

Ruling 182: As an obligatory precaution, one must be silent for a brief period before it and after it, and not adjoin it to that which is before it or after it.

Ruling 183: It is recommended to raise the hands during the *takbir*.

Ruling 184: Whoever doubts whether he recited it or not, or whether it was in a correct manner, and the doubt arises after he has begun the next part of the prayer – e.g. the recitation of *Suratul-Fatiha* – he should ignore his doubt and continue. If the doubt occurs before he starts the next part of the prayer, then he should recite the *takbirat-ul-ihram* before continuing.

(c) The Standing

This is an obligatory part of the obligatory prayers, provided that one is able to do so, unlike the recommended prayers. What is meant by it is that one should be standing on both feet during four situations in the prayer: when reciting the *takbirat-ul-ihram*, during the recitation of the chapters of the Quran – or the *dhikr* that is recited in its place –, before the bowing and after the bowing.

Ruling 185: It is necessary to stand up straight as much as possible, even by leaning on something else. If one is unable to do so, it is sufficient to stand in any way which is called standing. If he is unable to stand at all, he should pray in the sitting position. If he is unable to sit, he should lie down on his right side, and if that is not possible, then on his left side; in both cases the chest should be facing the *qibla*. If lying down on the left side is not possible, then one should lie on his back with the soles of the feet facing *qibla*, and he will make gestures for the bowing and prostrations – by gesturing more lower for the prostration than for the bowing. If he is unable to do this, he will signal with his eyes as an obligatory precaution, just as it is an obligatory precaution to place what is prostrated upon on his forehead along with the signals, even if the gesturing is with the eyes.

If one is capable of standing in part of the prayer and not in another part, he must stand as much as he can, and then sit. Then if his ability comes back he must stand again, and so on.

(d) The Recitation

This refers to the reciting of *Suratul-Fatiha*h (the first

chapter of the Holy Quran) and another complete chapter of the Quran – other than the four chapters containing the verses for which prostration is obligatory when recited. And the *bismillah* is a part of every chapter, except the ninth chapter.

Ruling 186: Recitation is necessary in the first and second units of every prayer, whether the prayer itself is obligatory or recommended. In the third and fourth units, one has a choice between reciting *Suratul-Fatihah* only and reciting the *dhikr* of "*Subhanallahi, wal-Hamdulillahi, wa La Ilaha Illallahu, Wallahu Akbar*". If the latter is chosen, it is better to recite it three times and to add the seeking of forgiveness ("*Astaghfirullaha Rabbi Wa Atoobu Ilaih*").

Ruling 187: It is obligatory to recite in the correct and proper Arabic language, and it is best when joining between words to use the diacritical marks, i.e. *the fat'hah*, the *kasrah* and the *dhammah*. Similarly, it is best to omit them when one stops at a word.

Ruling 188: It is obligatory to omit the *hamzat-ul-wasl* in the course of recitation if it is not separated by a pause from the previous phrase, and one should always pronounce the *hamzat-ul-qat'*.

Ruling 189: The obligatory precaution is to merge the *noon sakin* and *tanween* before one of the letters: *yaa, raa, mim, lam, wow* and *noon*.

Ruling 190: It is obligatory for the men to recite loudly the recitation of the Fajr prayer, and in the first and second units of the Maghrib and Isha prayers.

Ruling 191: It is obligatory to recite quietly in the first two units of the Dhuhr and Asr prayers, except the *bismillah*, and in the recitation or *dhikr* in the third and fourth units of all the prayers. One has a choice between reciting quietly

or loudly in other than this such as the *dhikr* of bowing, prostration, *tashahhud*, and *qunoot*.

Ruling 192: The 105th and the 106th chapters are treated like one chapter. If one chose to recite either one of them, he must recite both of them in sequence without omitting the *bismillah* of the second chapter. The same is the case for the chapters 93 and 94.

Ruling 193: If one forgets to recite loudly or quietly when required, then the prayer is not void unless this is done intentionally. Similar, this is the case with stillness during the recitation and *dhikr*.

Ruling 194: If the recitation or the substitute *dhikr* is forgotten until reaching the bowing position, then the prayer is correct; but if he remembers before that then he must perform it. If one doubts about it before entering the bowing position or the *qunoot*, he must perform them, and if the doubt occurs after having entered either one of them (the bowing or the *qunoot*) then his prayer is valid and he may continue.

(e) The *Qunoot*

The *qunoot* is the supplication that is performed in prayers by raising one's hands before his face and the palms facing the sky.

Ruling 195: The *qunoot* is recommended in all prayers once, whether the prayers themselves are obligatory or recommended, after the recitation of the second unit and before the bowing, except for the *shaf'* prayer. In the *witr* prayer – which consists of only one unit – it is recommended after the recitation and before the bowing. It is recommended more than once in the prayer of Signs, the Friday prayer, and the Eid prayers, as will be explained

later.

Ruling 196: It is recommended to recite the *takbir* before the *qunoot*, and to recite in the *qunoot* the supplications narrated from the Infallibles (peace be upon them).

Ruling 197: It is permissible to recite the *qunoot* in any language.

(f) The Bowing (*Rukoo'*)

This is a fundamental obligatory act within the prayer, performed once after the recitation in every unit, except for the Prayer of Signs. Omitting it in the obligatory prayer makes the prayer void, whether it was intentional or unintentional; similarly, adding it also makes it void, except in the congregational prayer where it does not invalidate the prayer if it was added in order to re-join the congregation, as will be explained in ruling 263.

Ruling 198: It is necessary in the bowing to bend from the standing position purposefully, keeping the legs straight, and to the extent that the tips of the fingers can reach the knees.

Ruling 199: It is necessary to recite *dhikr* in it, and it suffices to say '*Subhana Rabbiyal-Adheemi wa bi-Hamdih*' or three times '*Subhanallah*'. It is an obligatory precaution to be still during the bowing. If one forgets the *dhikr* during the bowing, it does not invalidate the prayer. Just as it is necessary to enter the bowing position from the standing position, it is similarly necessary to raise the head and stand up straight after the bowing.

Ruling 200: Whoever is incapable of bending to the required amount – even with depending on a stick or the like – he should sit down and bend to a similar degree. Then if he is incapable of that also, the obligatory precaution is

to bend to the amount that is possible while he is standing. Then if he is incapable of bending at all he must pray standing making a sign with his head instead of bowing. If even this is not possible, one should make a sign by closing his eyes.

Ruling 201: If one forgets the bowing until he has placed his forehead on the ground for the first prostration, then he must go back to the standing position, bow down, perform the two prostrations as usual and continue his prayer, and it is recommended to perform the two prostrations of forgetfulness after the prayer.

If he remembers after placing the forehead on the ground for the second prostration, the prayer is void as an obligatory precaution, and he should do one of the things that invalidate the prayer, like turning away from *qibla*h, before restarting his prayer.

All this applies to the obligatory prayers. As for the supererogatory prayer, it does not become void and one can go back to perform the bowing and then continue the prayer.

Ruling 202: Whoever doubts about having performed the bowing, he must perform it; but if the doubt arises after having descended for prostrations even if he has not placed his forehead on the ground, then he should consider the bowing to have been performed and continue with the prayer.

Ruling 203: It is recommended to recite the *takbir* before the bowing and after it, raising the hands, and it is recommended to place the hands on the knees while bowing, and it is disliked to raise the head or lower it more than the usual degree.

(g) The Prostration (*Sujood*)

This means the placing of the forehead on what is permissible to be prostrated upon – as explained in ruling 162 – in submission to Allah Almighty. It is prohibited to prostrate to other than Him, no matter who or what it is.

Ruling 204: It is obligatory to perform two prostrations in each unit. Both prostrations together are considered as a fundamental part of the prayer. Therefore, the prayer is void if both are omitted, whether intentionally or out of forgetfulness. The prayer is also void if they are added intentionally; as an obligatory precaution, the prayer also becomes void if they are added out of forgetfulness. The prayer is not invalidated by the increasing or decreasing of one prostration due to forgetfulness.

The criteria of what counts as a prostration – when considering the additions and omissions of prostrations – is the placement of the forehead, and not anything else.

Ruling 205: It is necessary in the prostration – in addition to what has been explained previously in regards to the place of prayer – that seven parts of the body are on the ground: the forehead, the two hands – specifically the inside of the hands based on an obligatory precaution – both knees, and the two big toes of the feet.

Ruling 206: It is necessary in prostration to recite the *dhikr* as was mentioned for the bowing, except that here the word '*al-adheemi*' is replaced by '*al-a'ala*'. It is necessary to be still during it as an obligatory precaution. It is also obligatory to raise the head and sit between the two prostrations, and as an obligatory precaution one should sit up after them as well.

Ruling 207: The place where one places his forehead in

prostration should not be higher or lower by more than the width of four joined fingers relative to the other parts placed on the ground in prostration; rather, the obligatory precaution is not to lower it by more than the said amount relative to the feet in particular, even if it is at the same level as the other parts of prostration.

Ruling 208: It is permissible to place the forehead in prostration on earth, such as stones, soil, bricks, cement, and plants provided that it is not commonly consumable, like spinach, or something that is commonly worn like cotton. The place of prostration must be *tahir*.

It has been narrated that there is a great reward in prostrating on the earth around the grave of Imam Hussein (peace be upon him) and surrounding earth of Karbala.

Ruling 209: If he is incapable of performing the prostration in the proper way, then the obligatory precaution is to bend to the amount possible while placing the forehead on something raised upon which prostration is valid, and placing the other parts of prostration in their usual places. If this is not possible, then he should indicate with his head by lowering it; and if that this not possible as well, then he should indicate with his eyes; and if even this is not possible then he should prostrate in his heart.

Ruling 210: Whoever has a boil or the like on his forehead, he should prostrate on the rest of the forehead, which may require making a space in the place of prostration so that the sound part of the forehead rests on the ground.

Ruling 211: Whoever forgets a prostration or two prostrations, and remembers before entering the bowing of the following unit, he must return to perform the forgotten prostrations. However, if he remembers after the said bowing and he had forgotten both prostrations, then the

prayer is void if the prayer is obligatory; and if he had forgotten one prostration then he will continue with the prayer and then perform the forgotten prostration as *qadha*.

Ruling 212: If one forgets both prostrations of one unit until he has performed the salutations and completed the prayer, then his prayer is void whether it is obligatory or recommended; if he forgot one prostration, he will perform it as *qadha* after the prayer. However, if he forgets one prostration or two in one unit and then performs the testimonies, he should return and perform the forgotten prostrations and repeat the testimonies.

Ruling 213: If he doubts about whether he performed the prostration before he reaches the standing position or before beginning the testimonies, then he should perform it. However, if the doubt arises after this, then he should ignore it and continue with the prayer.

Ruling 214: The following things are recommended: to recite the *takbir* while standing after the bowing, before the prostration and after it, to raise the hands during *takbir*, to include as much of the forehead in the prostrations as possible, to rest the nose on the ground too during prostration, to raise the hands adjacent to the ears when reciting *takbir*.

It is disliked during prayers to blow on the place where one prostrates on, to keep the hands on the ground between the two prostrations, amongst other things.

(h) The Testimonies (*Tashahhud*)

This is obligatory in the prayers, and is performed once in all prayers after raising the head from the second prostration of the second unit; and it is performed a second time in the prayers consisting of three and four units, after the second

prostration of the final unit. The prayer becomes void if it is omitted or added deliberately, not forgetfully.

Ruling 215: It is sufficient in it to recite the following: "*Ash'hadu Al-La Ilaha Illallah Wahdahu La Shareeka Lah. Wa Ash'hadu Anna Muhammadan Abduhu Wa Rasooluh. Allahumma Salli Ala Muhammadin wa Aale Muhammad.*"

Ruling 216: One who forgets the testimonies in the obligatory prayers and remembers it before entering the next bowing, he must return and perform it. However, if he remembers it after the bowing, he should continue on with his prayer and perform the prostration of forgetfulness. If he remembers it after the salutations, he should perform the testimonies as *qadha.*

Ruling 217: One who doubts about whether he performed it or not after the standing, or after beginning the salutations, he should consider it has having been performed; if he doubts before that then he should perform it.

(i) The Salutations (*Tasleem*)

This is obligatory once in every prayer, and this is the last part of every prayer, and with it one exits from the prayer.

Ruling 218: The salutation has two phrases:

(1) *'Assalamu Alayna wa ala Ibadillahis-Saliheen'*

(2) *'Assalaamu Alaykum',* and it is better to add to it *'wa Rahmatullahi wa Barakatuh'.*

If one begins with the first phrase then the second phrase is recommended, and not vice-versa. Furthermore, it is recommended to recite the following before the two mentioned phrases: '*Assalaamu Alayka ayyuhan-Nabiyyu wa Rahmatullahi wa Barakatuh*'.

Ruling 219: If one forgets the salutations until entering the post-prayer worships, he must return and recite it. If he remembers after the occurring of something that voids the prayer, such as *hadath* or turning one's back towards *qibla*, his prayer is void.

Ruling 220: One who doubts about it after having finished the prayer, his prayer is correct.

(j) Post-Prayer Acts

Ruling 221: After the prayer, it is recommended to engage in *dhikr*, supplication and recitation of the Holy Quran. Amongst such acts is the recitation of the *takbir* three times immediately after the prayer has ended, raising one's hands each time. It is recommended also to seek refuge with Allah from hell and ask for paradise. A highly recommended act is to recite the *tasbeeh* of Fatimah Al-Zahra (peace be upon her) as follows: *Allahu Akbar* (34 times), *Alhamdulillah* (33 times), and *Sub'hanallah* (33 times). Apart from this, there are supplications that have been taught by the Imams (peace be upon them) for us to recite after prayers, and they can be found in the respective books of supplications.

Ruling 222: It is recommended to perform a prostration of thankfulness to Allah after every obligatory or recommended prayer, and it is sufficient to recite in it '*Shukran Lillah*' three times.

Things Which Invalidate the Prayer

Ruling 223: There are several things which void the prayer, as follows:

(1) Failure to fulfil some particular conditions, such as *taharah*, as explained previously.

(2) The occurrence of major or minor *hadath*, except for the person who is incontinent, or cannot control his bowels or wind, or the woman in the state of *istihadha*.

(3) Facing the whole body away from the *qibla*, whether it is done intentionally, forgetfully or uncontrollably. As for just turning the face away, it voids the obligatory prayer if he did so purposefully and to a great degree.

(4) What conflicts with the form of the prayer according to the religious believers, as an obligatory precaution, such as jumping, clapping, eating, drinking to a substantial degree; so, for instance, if a person swallows some food that was stuck in his teeth it would not invalidate the prayer.

(5) Deliberately talking, even if it be necessary, with the exception of *dhikr*, recitation of the Holy Quran, and supplication, as well as returning a greeting if it is obligatory to do so.

(6) Deliberately laughing in a manner that consists of sound and reverberation; in fact, as an obligatory precaution, any kind of laughing which consists of sound.

(7) Deliberately crying which consists of sound, if it is for a worldly matter, as an obligatory precaution.

(8) Placing one of the hands on the other in humility – without being in the state of *taqiyyah* – if such causes the propagation of falsehood, or one makes it part of the Sharia knowing that it is not part of it.

(9) Saying "*Ameen*" after the end of the recitation of *Suratul-Fatiha*, purposefully, as an obligatory precaution, except for when one is in the state of *taqiyyah*.

The Friday Prayer

Ruling 224: The Friday Prayer is performed in two units, and is preceded by two sermons, in which it is obligatory for the speaker – who is the imam of the congregation – to praise and extol Allah, advise people to godliness, and to recite a chapter of the Quran, in the first sermon; and to praise and extol Allah, invoke blessings on the Prophet and his holy progeny (peace be upon them all), and – as an obligatory precaution – to name all the Imams one by one, and to seek from Allah the forgiveness of the believers, in the second sermon.

Ruling 225: The Friday Prayer is valid only if the following conditions are fulfilled:

(1) The time of the prayer – i.e. *zawal* time – must have arrived. However, it is permissible for the two sermons to be given before the time such that when they are completed the time has arrived.

(2) There should be a congregation of at least five people, and as an obligatory precaution they must be men, one of them being the imam.

(3) There should not be a distance of less than about six kilometres between the holding of one Friday Prayer and that of another.

Ruling 226: In the time of the Occultation of the Imam (peace be upon him), the duty-bound person has a choice between performing the Friday Prayer or the Dhuhr prayer. For this reason, it is not obligatory to go to the Friday prayer at the time of its calling, nor is it prohibited to carry out sale transactions at that time.

Ruling 227: It is recommended to perform the *qunoot* twice in the Friday Prayer, once before the bowing of the first unit, and again after the bowing of the second unit.

The Prayer of Signs

Ruling 228: The Prayer of Signs is performed when the following events take place: lunar eclipses and solar eclipses, even if they do not cause fear; and every celestial event that causes fear, like thunderbolts and black storms; similarly, during earthquakes as an obligatory precaution, as well as during every earthly event that causes fear, such as great destruction, landslides, etc.

Ruling 229: It is obligatory to perform the Prayer of Signs on every duty-bound person – except the women in the state of *haydh* and *nifas* – who is in the place in which the event takes place, or is conventionally associated with it.

Ruling 230: The time for the prayer for eclipses is from the beginning of the eclipse until the sun or the moon is fully visible. For all other causes, it is obligatory to hasten to pray it as soon as the event begins.

Ruling 231: If one did not know of the eclipse until the sun or the moon became fully visible, he is not obligated to perform the *qadha* prayer provided that the eclipse was partial. However, if the eclipse was total, or he knew of the event and was neglectful in performing the prayer, it is obligatory to perform the *qadha* of the lapsed prayer. In respect to other events, one must perform the *qadha* prayer as an obligatory precaution if he knew of its occurrence and did not pray, and it is not obligated upon him if he did not know of the event until it ended.

Ruling 232: The Prayer of Signs is prayed in two units. In each unit there are five bowings, whereby he will recite before each bowing *Suratul-Fatiha* and another chapter. Alternatively, one may divide the second chapter recited

into five parts and recite each part before each bowing without the need to repeat *Suratul-Fatiha*; after the fifth bowing, one will perform the two prostrations, and then rise again for the second unit and repeat what he did in the first unit, and end with the testimonies and the salutations as usual.

Ruling 233: It is recommended to recite the *qunoot* in it before the second, fourth, sixth, eighth and tenth bowing, and he may recite it in some of these five positions and not in others.

Ruling 234: The bowings of this prayer are fundamental parts of the prayer, and any addition or omission of the bowings will cause the prayer to become void, whether done so forgetfully or intentionally, just like the usual daily prayers. Similarly, the rules of doubts are alike.

Ruling 235: This prayer is to be repeated for each event that is a cause for it.

Ruling 236: Lunar and solar eclipses, as well as other events that obligate this prayer are established by having knowledge of their occurrence, or the testimony of two *adil* men. They are not established by the opinions of the astronomers and their like who have not confirmed it by sighting unless one is certain that they are correct.

Qadha Prayers

Qadha refers to the making up of missed worships.

Ruling 237: It is obligatory to perform the *qadha* of the daily prayers whose time has lapsed intentionally, forgetfully, out of ignorance, due to sleeping, or due to one's prayer lacking something making it void.

Ruling 238: The prayers missed by a child, an insane person, an unconscious person, a non-Muslim – other than apostates –, and a woman in the state of *haydh* or *nifas*, are not required to be made up as *qadha*. As for the apostate, he should make the prayers after his repentance as an obligatory precaution.

Ruling 239: It is obligatory on an intoxicated person to perform the *qadha* if the intoxication was due to him himself.

Ruling 240: It is greatly recommended to offer the *qadha* of the missed daily supererogatory prayers.

Ruling 241: If the lapsed prayers have an obligatory sequence, like the Dhuhr and Asr prayers of a single day, then the sequence must be followed in performing their *qadha*. Otherwise, it is not necessary to follow any sequence. Therefore, if one has missed prayers over a number of days, it is possible for him to offer the *qadha* of the lapsed Fajr prayers in the respective number, then those of the Dhuhr prayer, and so on. However, it is best to observe the sequence in which the prayers lapsed.

Ruling 242: If one offered prayers with substitute *taharah*, e.g. *tayammum* or *wudhu* with a bandage, due to a valid reason as mentioned earlier, it is not permissible to offer the *qadha* of lapsed prayers while the situation still subsists,

except when one becomes despondent in the situation ever ending. However, it is permissible to offer the *qadha* prayers while one expects the situation to continue; then, if it happens to continue, the *qadha* prayers are valid, otherwise — if the situation that caused him to undertake substitute *taharah* ends — he has to repeat the *qadha* prayers.

Delegation of Prayers

Ruling 243: It has not been legislated for one to perform obligatory prayers voluntarily or by delegation on behalf of those who are alive. In respect to the recommended prayers, one can perform them voluntarily or by delegation on behalf of the living. As for the deceased, voluntary prayers or delegated prayers are permissible on their behalf for all recommended and obligatory prayers.

Ruling 244: The delegated person must be a sane believer. As an obligatory precaution, he cannot be somebody who is weak in his faith, not affirming the guardianship of the Ahlul-Bayt (peace be upon them), nor denying it.

Ruling 245: It is obligatory on the guardian of the deceased – the male inheritor – to offer the *qadha* of the lapsed prayers and fasts of the deceased, whether they lapsed due to a justifiable excuse, or due to overlooking them, as long as the abandoning of it was not out of carelessness or defiance. If there is more than one guardian, the obligation is by way of *kifayah*, i.e. if one of them, or anybody else, undertakes this obligation, the obligation is dropped from the others.

Ruling 246: All actions which can be performed by delegation, it is also permissible to hire somebody to offer them. However, the liability of the deceased remains until the actions are actually performed, rather than by merely hiring somebody to perform them.

Congregational Prayers

The congregational prayers are amongst the emphasised recommended acts in respect to the daily prayers and the prayer of signs, and it is also recommended for the prayer of *istisqa* (for the seeking of rain) and the prayers of the two days of Eid. However, it has not been legislated for the supererogatory prayers.

Ruling 247: The least number of people that is required for other than the Eid and Friday prayers is two, one of whom will be the imam; and there is no problem if the person being led is a child or a woman.

Ruling 248: It is necessary for entering the congregational prayer that the one being led has the intention to be led by the imam. This is unaffected by the imam offering a different prayer than that offered by the follower, as long as both are from the daily prayers.

Ruling 249: It is permissible to change one's prayer from congregational to individual; however, it is not permissible to switch from one imam to another imam during a prayer, except if something happens to the first imam that does not allow him to continue leading the prayers, such as a *hadath* or the like.

Ruling 250: In order to join the congregational prayer, one must join the imam after the *takbirat-ul-ihram*, and before the salutations. Therefore, one may recite the *takbir* and join the imam in any point during the prayer. But the unit in which he joins will not be counted as his first unit of the prayer unless he joins the imam before the bowing or during it.

As an obligatory precaution, if one joins the imam in the first testimonies (*tashahhud*), he should recite the *takbirat-ul-ihram* standing and not sit, and when the imam stands for the third unit he will begin following him.

However, if one wishes to follow somebody who is praying individually, then he should not join with him except when he is standing or bowing, and this will be counted as the follower's first unit.

Ruling 251: It is necessary for the followers in the congregation to be connected to the imam, and for them to be connected to each other, such that there is no barrier between them like a curtain or a wall. There should not be a great distance between them, and as an obligatory precaution the distance between the imam and his followers and between the followers should not reach 1.25 meters. However, there is no problem with the presence of a barrier separating men from women.

Ruling 252: The imam should not be in a position higher than the position of the congregation by a considerable amount, and as an obligatory precaution the difference should not be more than the width of two joined fingers. This is so if the change in elevation between them is immediate or close to immediate. If it is gradual such that it is normally unnoticeable and the ground is regarded as being level, due to the vastness of the place, then there is no problem in such a difference.

There is no problem if the case is vice versa, i.e. the congregation's position is higher than the imam's, as long as the difference is not extreme, in which case as an obligatory precaution the congregation prayer will be invalid.

Ruling 253: The followers must not be positioned ahead of the imam, and as an obligatory precaution they should

not be positioned in level with him. The imam should be ahead of them even if by a small distance like the width of four fingers.

(a) Conditions of the Imam of the Congregation

Ruling 254: In order for the congregational prayer to be valid, the imam must meet the following conditions:

(1) He should be a sane believer.

(2) He should be of legitimate birth.

(3) He should not have been subjected to a legitimate Sharia-based punishment.

(4) He should have a conventionally-recognized jurisprudential insight of Islamic laws if there are those in the congregation who also do; however if no member of the congregation has such insight, any one of them may lead the rest in prayer.

(5) He should be an adult male. So a child cannot lead the prayers at all as an obligatory precaution, and a woman can only lead other women.

(6) As an obligatory precaution, he should have correct pronunciation, if the congregation does, except if the congregation is led by him in the third and the fourth unit, or in those prayers in which one can recite quietly like Dhuhr, in which case the congregation can follow him and recite for themselves.

(7) *Adalah*, which means that he should be so devout that he refrains from the major sins, and if he does commit them he hastens to repentance and regret.

Ruling 255: It is not permissible to pray behind somebody

whose *adalah* one doubts. Rather, it is necessary to be sure, through either one of two ways:

(1) by the testimony of two *adil* men which is based on their first-hand witnessing by being in his companionship;
(2) by his good appearance which is based on the manifestation of goodness from him and the absence of ill-deeds, in respect to those who accompany and socialize with him.

Ruling 256: If one realizes after the prayer that the imam did not fulfil all the criteria as mentioned above, or that the imam's prayer itself is invalid, it is permissible to deem his own prayer in the congregation to be valid.

(b) Rules of the Congregational Prayers

Ruling 257: The imam does not do anything in the prayer on behalf of the followers except his recitation of the first two units.

Ruling 258: In the first two units of the prayers in which the Quranic recitation is done aloud (e.g. the Fajr, Maghrib and Isha prayers), it is prohibited for a follower in a congregation to recite as well, if he hears the imam's voice or even his murmuring. As for the prayers in which the recitation is quiet (i.e. the Dhuhr and Asr prayers), one should not recite the two chapters with the intention that the Sharia has designated them to be recited, as an obligatory precaution, and it is best to resort to *dhikr* and supplication.

Ruling 259: If one is behind the imam in his prayer by one unit or more, he should perform his own recitation of the two chapters if the imam is in the third or fourth unit, unless he enters the prayer while the imam is in the state of bowing.

Ruling 260: Whoever joins the imam's congregation in other than the first unit, he must follow the imam as usual, but he should offer what is required from him and not what is required from the imam, such as the testimonies or the recitation. If the imam does not give him enough time for his recitation, what he has recited will suffice and he should continue to follow the imam.

If the imam is required to perform the testimonies but the follower is not, he should not perform it; instead, he should place his hands on the ground in front of him and raise his knees based on an obligatory precaution.

Ruling 261: It is obligatory for the recitations and *dhikr* to be rendered quietly behind the imam, whether they are obligatory or recommended.

Ruling 262: It is obligatory for each follower to follow the imam in all the acts, so he should not go ahead of him in the acts of prayer, nor should he be very behind; he may perform the acts simultaneously with the imam. As for what is recited, there is no problem in going ahead of the imam except for in the *takbirat-ul-ihram*, as it is necessary for the imam to complete it before the follower performs it, and it is permissible for the follower to delay it.

Ruling 263: If one fails to follow the imam as explained in the previous ruling intentionally, his prayer does not become void, nor does his participation in the congregation, but he commits a sin due to it. However, if he recites the *takbirat-ul-ihram* before the imam, he is no longer part of the congregation, and he should complete his prayer on his own.

Ruling 264: Whoever goes ahead of the imam in the bowing or the prostration or the rising to the standing position, if he was intentional in doing so, he should stay

in his position until the imam reaches the same position, as an obligatory precaution. If he was forgetful in doing so, it is obligatory to return to his proper position in following the imam.

Ruling 265: Whoever arrives at a congregation and does not know whether the imam is currently in the first two units – so the recitation of the two chapters is borne by the imam – or in the third and fourth units – so he is required to recite for himself – then he should recite the two chapters (*al-Fatiha* and another chapter) with the hope that it is required.

Ruling 266: If either the imam or a follower doubts in the number of units performed, each should refer to the other if he remembers.

Ruling 267: It is permissible to form a congregation if there is a difference between the imam and the follower in respect to the direction of the *qibla,* as long as the difference is not to a great degree.

Defects in the Prayer

(a) Additions and Omissions

Ruling 268: Whoever intentionally omits any parts or conditions from the prayer, his prayer is void, even if the omitted thing is a single letter or vowel sign in the recitations and obligatory *dhikr*. The same is the case if one adds any extra act to the prayer intentionally, whether such an act is of the same nature as an act in the prayer, like the *takbir* or the bowing, or not so, like raising the hands with the intention of it being a part of the prayer. The same is the case if one doubts between two courses of action and chooses one of them without referring to the measures prescribed by the Sharia in the particular case.

Ruling 269: Whoever adds a part, forgetfully or due to ignorance, his prayer will not become void, except if the addition is a bowing. The prayer is also void with the forgetfulness of both prostrations of one unit as an obligatory precaution.

Ruling 270: The loss of *taharah* will make the prayer void in all cases. The rulings in respect to the failure to fulfil the rest of the conditions of the prayers have been mentioned previously.

(b) Doubts in the Prayer

Here, doubt refers to when one is uncertain, whether the two sides of the possibility are equally probable, or one side is more probable than the other. However, when one reaches the level of obsessive scrupulosity (*waswasah*), his

doubt will not be taken into consideration in prayer or in any other situation.

Ruling 271: Whoever doubts whether he offered the prayer or not, if he is still within the prescribed time of that prayer then he should offer it, as long as he has not begun the next prayer which shares the same time (such as the Dhuhr and Asr prayers, or the Maghrib and Isha prayers); in the latter case he should consider the first of the two prayers to have been performed. If the doubt arises after the time of that prayer has expired, he should consider it to have been offered.

Ruling 272: Whoever doubts about the correctness of the prayer after having completed it, he should consider it as performed correctly, and the same applies for one who doubts about the correctness of a part of his prayer after having completed that part and moved on to the next parts of the prayer.

Ruling 273: Whoever doubts about whether he performed an act of the prayer, and he has continued on to the next parts of the prayer, he should consider it has having been performed.

Ruling 274: Whoever often doubts about a condition of prayer, such as *taharah*, before beginning the prayer, he should ensure that the condition has been fulfilled, except if it has reached the level of obsessive scrupulosity. Whoever often doubts in the conditions of the prayer after starting it, he should ignore his doubt, even if he hasn't completed his prayer.

Ruling 275: Whoever doubts much about an act of prayer before beginning the subsequent act, if he believes that obsessive scrupulosity caused him to favour one side

of the doubt, he should act according to the other side. For example, if he doubts about whether he performed the testimonies (the *tashahhud*), and he believes that the probability of him having performed it is due to obsessive scrupulosity, he should consider it as not having been performed. If he does not hold such a belief, he should – as an obligatory precaution – act as though he has performed it, as long as it does not make the prayer void; otherwise he should act as though he has not performed it.

Ruling 276: In deciding whether one doubts too much, convention is referred to; and convention states that a person is regarded as one who doubts too much if he has doubts in three consecutive prayers. Also, it is necessary that the excessive doubting is attributed to obsessive scrupulosity, and not to other causes such as illness or fear and the like which causes the mind to be disturbed.

(c) Doubts in the Number of Units

Ruling 277: Whoever doubts during the course of the prayer in the number of units performed, if one possibility of the doubt is most probable than the others – even if after deliberation – he should act according to that probability. If all the possibilities are equally probable, then if the prayer is of two or three units, or if it is of four units but one has not yet completed the *dhikr* of the second prostration of the second unit, his prayer has become void. Otherwise, he may remedy the prayer in the following five situations:

(1) If he doubts between 2 and 3 units, after completing the obligatory *dhikr* of the second prostration, he should consider it to be the third unit and complete his prayer. Then he should offer a precautionary

prayer of one unit. He should offer this precautionary prayer standing based on an obligatory precaution.

(2) If he doubts between 3 and 4 units, whichever position he may be in, he should consider it to be the fourth unit and complete his prayer. Then he should offer a precautionary prayer of one unit standing, or two units sitting.

(3) If he doubts between 2 and 4 units, after completing the obligatory *dhikr* of the second prostration, he should consider it to be the fourth unit and complete his prayer. Then he should offer a precautionary prayer of two units standing.

(4) If he doubts between 2, 3 and 4 units, after completing the obligatory *dhikr* of the second prostration, he should consider it to be the fourth unit and complete his prayer. Then he should offer two precautionary prayers: two units standing and then two units sitting.

(5) If he doubts between 4 and 5 units, after completing the obligatory *dhikr* of the last prostration, he should consider it to be the fourth unit, and after reciting the *tasleem* he should offer the two prostrations of forgetfulness, as will be explained later.

In a situation other than mentioned above, one must repeat his prayer. He is permitted to repeat his prayer in these mentioned situations as well, provided that he breaks the prayer with something which voids the prayer, such as turning his back to *qibla.*

Ruling 278: Whoever has a doubt in his prayer about the number of units, and he acted according to the greater number, and after he completes the prayer and before he offers the precautionary prayer he becomes certain that

how he performed the prayer was correct, then he does not need to perform the precautionary prayer.

Ruling 279: The precautionary prayer is offered by reciting only *Surat-ul-Fatiha* quietly. It should be offered after the main prayer, and as an obligatory precaution there should not be any act in between them that voids the prayer, nor should there be a gap which negates the continuity of the prayer.

(d) The Lapsed Forgotten Parts of Prayer

Ruling 280: It is obligatory to make up for the forgotten prostration and the final testimonies (*tashahhud*); rather, if a part of the *tashahhud* is missed, he should make up for that as well, if he remembers it after the salutations (*tasleem*). Based on an obligatory precaution one should also offer the prostrations of forgetfulness when the last *tashahhud* is forgotten. The making-up of lapsed forgotten parts does not apply to any other act.

Ruling 281: In respect to the first *tashahhud*, if one forgets it and does not remember until after the subsequent bowing, this is remedied by the prostrations of forgetfulness. The same is the case if a part of the first *tashahhud* is forgotten, as an obligatory precaution.

Ruling 282: In making-up for the said prostration and *tashahhud*, all that which is required in the original acts are required here, like *taharah*, facing *qibla*, etc.

(e) The Prostrations of Forgetfulness

Ruling 283: The prostrations of forgetfulness are required in the following situations:

(1) If one speaks intentionally thinking that he was not in prayer, or forgetfully.

(2) If one forgets the first *tashahhud*, and also the last one as an obligatory precaution.

(3) If one adds *tashahhud* and *tasleem* together, and even if the *tasleem* alone is added as an obligatory precaution.

(4) If one doubts between having performed four or five units, after the completion of both prostrations.

(5) If one performs something while sitting which is required to be offered while standing, and vice-versa, as long as no fundamental part of the prayer is affected.

(6) If, instead of reciting *dhikr* in the bowing and prostration, one recites the Quran as required in the standing position, or he recites the *tasbihat al-arba'a* in the standing of the first two units.

(7) If one knows generally that there has been an addition or omission which does not void the prayer, but he does not know exactly what it is.

Ruling 284: The prostrations of forgetfulness should be performed after the prayer, and as an obligatory precaution it should be offered immediately afterwards without any gap. However, if one is required to perform the precautionary prayer, then he should offer the prostrations of forgetfulness after it as an obligatory precaution. If one is required to make up for the lapsed prostration or testimonies, it is best to perform the prostrations of forgetfulness after them too.

Ruling 285: If the causes of the prostrations of forgetfulness are multiple, so will be the prostrations of forgetfulness i.e. the prostrations of forgetfulness are repeated for every

cause.

Ruling 286: The prostrations of forgetfulness consist of two prostrations, and – based on an obligatory precaution – they are performed consecutively, in which *dhikr* of Allah Almighty is recited, followed by the testimonies (*tashahhud*) and salutations (*tasleem*).

Ruling 287: The following conditions of the prostrations of forgetfulness must be met:

(1) One should have the appropriate intention of worship.

(2) The aforementioned seven parts of the body should be placed on the ground.

(3) The forehead should be placed on what is correct to be prostrated upon.

(4) The placement of the forehead should not be high, as explained in the rulings of prostration.

(5) As an obligatory precaution, the remaining conditions of prayer should also be observed, such as *taharah* and facing *qibla*.

Ruling 288: No particular *dhikr* is obligatory to be recited in the prostrations, but there are some recommended recitations, such as: "*Bismillahi wa Billahi, was-Salamu Alaika Ayyuhan-Nabiyyu wa Rahmatullahi wa Barakatuh.*"

(f) Defects in the Recommended Prayers

Ruling 289: The recommended prayers become void with any deliberate omission, and the same is the case with deliberate additions based on obligatory precaution, whether the act omitted or added is a fundamental part of

the prayer or not. Omission of a fundamental act forgetfully will void the prayer too, but a forgetful addition of a fundamental act won't.

Ruling 290: If a non-fundamental part of a recommended prayer is omitted forgetfully until one has performed a fundamental part of the prayer, he should go back to make up what he missed, even if this means repeating a fundamental part.

But, if the omitted part is the recitation of the two chapters of the Quran, then he should continue on.

Ruling 291: If one has omitted a whole unit from a recommend prayer and if it is possible for him to make it up before doing anything that invalidates the prayer, then he should do so; if this is not possible, the prayer is void.

If one adds a whole unit, his prayer is void based on an obligatory precaution.

Ruling 292: Whoever doubts in the number of units offered in the recommended prayers, if he finds one of the possibilities most probable than the others, he should act on it based on an obligatory precaution. Otherwise, he may choose any of the possibilities, other than in the prayer of *witr* which he should repeat as an obligatory precaution.

Ruling 293: If one doubts about a particular part of a recommended prayer, he should perform it if he is still in its position as an obligatory precaution. If he has moved on to another part, he should continue and complete the prayer.

Ruling 294: The prostrations of forgetfulness are not obligatory in recommended prayers, although it is best perform them.

The Prayer of the Traveler

The four-unit prayers become shortened to two units only when one is travelling, provided the following conditions are fulfilled:

(1) Travelling the total specified distance of 8 *farsakhs* (approximately 46 kilometers); so a total journey of a lesser distance will not permit shortening the prayer.

Ruling 295: If one is on a round journey, each of the outgoing and returning legs of the journey must be at least 4 *farsakhs* for the shortening of the prayers.

(2) The intention to travel the specified distance; so if one travels 8 *farsakhs* coincidentally without such an intention, he will perform the prayers in full.

For example, if one intends to travel a distance of less than the 46 kilometers, and then decides to travel a further distance of less than 46 kilometers, making the total distance travelled exceeding 46 kilometers, he will offer his prayers complete, because the necessary intention to travel the specified distance was not there during the journey. However, if he intends to travel further a distance of 46 kilometers, or 23 kilometers – with the intention to returning home – he will offer shortened prayers during the journey, because he will have the intention of travelling the specified distance then. He will offer shortened prayers also when he starts his journey home and the distance is 46 kilometers or more.

(3) Continuity of the intention to travel the specified distance without any change; so if he changes his mind before reaching 23 kilometers, and wishes to return home, he should pray in full. If he changes

his mind after reaching 23 kilometers, and wishes to return home by travelling a distance of at least 23 kilometers, he is still covering a total distance of 46 kilometers – including his return journey – so he is required to continue shortening his prayer.

(4) On the outset of his journey, he should not intend to pass through his hometown, or to stay at a place on the way for a period of at least ten days, before reaching the specified distance. The same is the case if one is not sure whether he will pass through his hometown or stay at a place for the said duration.

Ruling 296: The travel is considered to have ended by passing by one's hometown, as well as through a town in which one has been working or studying for a long period of time, so one is required to offer complete prayers in such a place. The same applies if one intends to stay at a place on the way for a period of at least ten days, or by staying in such a place continuously and indecisively for thirty days.

(5) The journey should be permissible; so it should not itself be unlawful to travel, such as a wife travelling without the permission of her husband, nor should the purpose of the journey be unlawful, such as to hurt a believer, whether the purpose is actually fulfilled in the end or not.

(6) The normal course of his life or work does not require him to travel frequently to the specified distance; so one should offer complete prayers if his job is to travel, such as a driver, or if one needs to travel in order to work, such as somebody who lives in a place and works in another place or a person who collects goods regularly from one place to sell in another, or if he has a particular purpose in repetitive travelling, like to visit, or to study, or for treatment, etc.

Ruling 297: Whoever travels a lot due to his work, such as a driver, simply taking on that job and beginning it will be sufficient for him to be required to offer the complete prayers. Therefore, he should offer the complete prayers in his first journey.

Ruling 298: Whoever travels a lot due for a reason other than work, such as visiting, it is necessary to allow a reasonable time to pass in order for the travel to be conventionally seen as a part of the normal course of his life. If one doubts whether this is the case or not, he should, as an obligatory precaution, offer both complete and shortened prayers during the time he is doubtful.

(7) He should pass the *hadd at-tarakhus*, which is the distance from his point of departure whereby he cannot be seen by the people of his town, nor can he hear the sound of the *adhan* from that town. If one of these two conditions is present and not the other, then one should act on the obligatory precaution to offer both complete and shortened prayers, or he should delay the prayer until he reaches a point where both conditions are satisfied.

Ruling 299: Just as the *hadd at-tarakhus* is the starting point of the shortening of prayers, it is also the last point of his travel in which he is required to shorten his prayer on his return journey.

Ruling 300: If all the conditions are fulfilled, the traveler is required to shorten his prayer, and his prayer is void if he does not do so, unless if he was ignorant of the obligation of shortening the prayer. Similarly, his fast is also void, unless he erroneously believes that the Sharia recognizes the fast of a traveler.

Ruling 301: The time one actually performs the prayer is taken into consideration when establishing whether one needs to perform shortened prayers or not, rather than when the prayer time begins. So if the time of prayer begins while one is travelling, and he does not pray until he reaches his hometown, he should offer complete prayers. Similarly, if one was at home when the prayer time arrived and he does not pray then, but then travels and decides to pray then, then he should shorten his prayers. When one's prayer is lapsed, his situation during the final portion of its designated time is taken into consideration. So if he was travelling at that time, he will offer its *qadha* by shortening the prayer, even if he is now at home; and if he was not travelling at that time, he will offer its *qadha* in full, even if he is presently travelling.

Ruling 302: One has a choice in performing his prayers completed or shortened in four specific places if he is a traveler: Makkah, Madinah, Kufah and the shrine of Imam Husain (peace be upon him) in Karbala. In the latter case, the choice applies only to one praying under the dome of his shrine as an obligatory precaution.

However, this choice only applies to praying, and not fasting, so the general rules will apply in respect to one's fast.

Ruling 303: The supererogatory prayers of the Dhuhr and Asr prayers are not recognized by the Sharia when one is travelling.

Some Recommended Prayers

(a) The Eid Prayers

The prayers of Eid (*Eid-ul-Fitr* and *Eid-ul-Adha*) are obligatory in the time of the presence of the Imam (peace be upon him) with the relevant provisions, and they are recommended during his occultation, whether they are performed in congregation or alone.

Ruling 304: Its designated time is from sunrise until noon (*zawal*) time.

Ruling 305: It consists of two units; in each unit *Surat-ul-Fatiha* and a second chapter is recited, then one should, based on an obligatory precaution, perform the *qunoot* preceded by *takbir* five times in the first unit, and four times in the second unit. After the prayer has been completed, as an obligatory precaution, the imam of the congregation should deliver two sermons separated by sitting briefly.

(b) The *Ghufaila* Prayer

This is a two-unit prayer offered between Maghrib and Isha prayers.

Ruling 306: In the first unit the 87th verse of the 21st chapter (*al-Anbiya*) should be recited after *Surat-ul-Fatiha*. In the second unit the 59th verse of the 6th chapter (*al-An'am*) should be recited after *Surat-ul-Fatiha*.

Ruling 307: One should recite the following in the *qunoot*:

"Allahumma Inni As'aluka bi-Mafaatihil-Ghaibil-lati la Ya'lamuha illa Anta An Tusalliya Ala Muhammadin wa Aali

Muhammad, wa An Taf'ala bee..." and then one should express his wishes and continue reciting: "*Allahumma Anta Waliyyu Ni'mati wal-Qadiru Ala Talibati, Ta'lamu Hajjati, Fa'as'aluka Bihaqqi Muhammadin wa Aalihi Alaihi wa Alaihimus-Salam Lima Qadhayta'ha lee*." And then one should seek his wishes.

Ruling 308: This prayer substitutes for two units of the supererogatory prayers of Maghrib.

(c) The Prayer of the Night of Burial

Ruling 309: This prayer consists of two units and is offered during the first night after the burial of a deceased believer. It is commonly called the prayer of *Wahsha.*

Ruling 310: In the first unit, *Ayatul-Kursi* is recited after *Surat-ul-Fatiha*, and in the second unit the 97th chapter '*al-Qadr*' is recited ten times after *Surat-ul-Fatiha*. After the *tasleem*, the following is recited: "*Allahumma Salli Ala Muhammadin wa Aali Muhammad wab'ath Thawabaha ila Qabri...*" and then the name of the deceased is mentioned.

Ruling 311: It is recommended to give to charity on behalf of the deceased during this night.

(d) The Prayer of *Istikhara* (Seeking the Best Option)

Many narrations have expressed encouragement to do *istikhara* whenever embarking on any matter. The purpose of it is to supplicate to Allah Almighty that He chooses the best course of action for His servant in the matter; so if in taking a particular path there is good, He may cause it to become available and easy, and if not, He may take him away from that path

Ruling 312: Different ways of *istikhara* have been narrated; amongst them is the prayer of *istikhara* which consists of two units, in which one recites *Surat-ul-Fatiha* followed by any other chapter – while the chapter *Al-Ikhlas* has been especially preferred in the first unit, and the chapter *Al-Kafiroon* in the second unit. After completing the prayer one should praise Allah and invocate for the blessings and mercies of Allah on the Prophet and his progeny (peace be upon them all), and then recite: "*Allahumma In Kana Hadhal-Amru Khairan lee fee Deeni wa Dunyai fa-Yassir'hu lee wa Qaddir'hu, wa In Kana Ghaira Dhalika Fasrif'hu Ann*i."

Ruling 313: After completing this it is necessary to bind oneself to what Allah has decided for him, so it is not an insult to Him in His judgement.

(5)
FASTING

(5)

FASTING

The duty of fasting is one of the pillars upon which the religion of Islam has been founded, and for this Allah has chosen the best of the months – the month of Ramadhan – in which He revealed His holy Book, and He blessed it with the Night of *Qadr*, which is better than a thousand months.

Ruling 314: The new moon (*hilal*) is established for the month of Ramadhan – like all other months – through the following ways:

(1) Sure knowledge which is obtained through:

(a) one actually sighting it himself;

(b) reports of numerous sightings of the moon in such a number that makes one sure that they are true; or

(c) the passing of 30 days since the beginning of the previous month..

(2) The testimony of two *adil* men that they have seen the new moon, as long as there is no evidence that they have made an error.

(3) Seeing the new moon before noon, if that is possible. If seen, the previous night will be regarded as the first night of the month, and the day in which it is sighted

will be the first day of the month.

Ruling 315: If the new moon is established by any of the above-mentioned ways in any parts of the continents of Africa, Asia, Europe and Australia, then the first of the month is established for all parts of these continents. If the new moon is established in any part of the Americas, it is established for all other parts of the Americas too, but not for the aforementioned four continents.

Things Which Invalidate the Fast

Ruling 316: The fasting person invalidates his fast by deliberately doing any of the following eight things:

(1), (2) Eating and drinking. As an obligatory precaution, the fast is also invalidated by anything reaching the stomach, even if through other than the throat.

(3) Vomiting.

(4) Using liquid enema. Similarly, using solid suppositories which liquefy after entering the body also invalidates the fast as an obligatory precaution.

(5) Entering the state of *janabah*, whether by discharging semen or sexual intercourse from the vaginal passage, and as an obligatory precaution from the anal passage as well.

(6) Remaining in the state of *janabah* until dawn. This will only invalidate obligatory fasts. The same applies to staying without *ghusl* after *haydh* or *nifas*, if there is enough time to perform *ghusl* before dawn. As an obligatory precaution, the obligatory fast is also invalid for one who does not perform the *ghusl* of *janabah*, *haydh* or *nifas* out of forgetfulness.

(7) Lying about Allah, the Prophet (peace be upon him and his progeny) and the Ahlul-Bayt (peace be upon them)

(8) Smoking, as an obligatory precaution.

Conditions of the Fast

Ruling 317: The following conditions must be fulfilled for the fast to be valid:

(1) Islam; rather, true belief. Therefore, the fasting of a non-believer and one who denies the *wilayah* (guardianship) of the Ahlul-Bayt (peace be upon them) is invalid.

(2) The intention that the fast is undertaken for the sake of gaining proximity to Allah Almighty.

(3) Not being in the state of *haydh* or *nifas* for the duration of the whole day, i.e. between dawn break and sunset.

(4) Not traveling a journey which requires shortening the prayers. If the traveler fasts out of ignorance of this rule, then it is valid.

(5) Not being ill, such that the fast will cause him harm; in fact, fasting of a person who is not ill is not valid if it will cause him to become ill.

Ruling 318: It is not valid to undertake a recommended fast if one has lapsed fasts of the month of Ramadhan which he has yet to make up for.

Ruling 319: For one to be obligated to undertake the fasts of the month of Ramadhan, and its lapsed *qadha* fasts, and vowed fasts, the following conditions must be fulfilled: one must be adult (as defined by the Sharia), sane, not ill, free from *haydh* and *nifas*, and one should not be travelling whereby he is required to shorten his prayers.

Concessions from Fasting

Ruling 320: Fasting is not obligated on certain people and it is permissible for them to abstain from fasting:

(1) An elderly person, if fasting causes hardship or he is not able to fast. For each missed fast he has to give a *fidya* payment of one *mudd* of food such as wheat, dates, rice, lentils and the like, but not fruits, vegetables and meats. One *mudd* equates to approximately 870 grams, or 900 grams as a precaution. He is not required to make up the fast as *qadha*.

(2) One who gets extremely thirsty due to an illness, and the ruling of the elderly applies to him.

(3) A pregnant woman who is close to delivery, and fasting is a strain for her; she is required to make the *fidya* payment as explained above, as well as making up for the lapsed fast later.

(4) A breastfeeding woman, if the fasting will adversely affect her milk by reducing it or not being produced at all. She is required to make the *fidya* payment as explained above, as well as making up for the lapsed fast later.

Ruling 321: If a pregnant woman's fasting will be harmful to her or her child, it is impermissible for her to fast, and she should make up for the lapsed fast later without any *fidya*, as is the case with an ill person. The same applies to breastfeeding women if the lack of milk will cause a forbidden harm.

The Expiation (*Kaffarah*)

Ruling 322: The expiation will be obligatory if one breaks the fast of the month of Ramadhan deliberately by eating, drinking, having sexual intercourse, the discharging of semen, and remaining in the state of *janabah*. As an obligatory precaution, the expiation will also be required for failing to perform the *ghusl* of *haydh* or *nifas*, and for smoking. The expiation is not necessary for any of the other things which invalidate the fast.

Ruling 323: The expiation is either the fasting of two consecutive months, or the feeding of sixty poor people, or the freeing of a slave. Some further details are mentioned in the chapter on Expiation.

Ruling 324: The expiation is obligatory if one intentionally has sexual intercourse after the *zawal* time during the *qadha* fast of the month of Ramadhan. As an obligatory precaution, the same applies to all the other things which necessitate the expiation in the fast of Ramadhan as explained above.

Ruling 325: The expiation is obligatory if one breaks the fast of a vow, oath or promise if the time for fulfilling them is constrained, regardless of which of the aforementioned eight invalidators of the fast he broke the fast with.

The *Qadha* Fasts

Ruling 326: *Qadha* fasts are not necessary for those fasts lapsed during childhood, insanity, unconsciousness, or original disbelief, i.e. as opposed to disbelief resulting from apostasy.

Ruling 327: *Qadha* fasts are obligatory for those fasts lapsed due to *haydh*, *nifas*, sleep, intoxication, illness, traveling, etc. As an obligatory precaution, the same applies to the fasts lapsed due to apostasy.

Ruling 328: Whoever misses the fasting of the whole month of Ramadhan due to a valid excuse, and this excuse continues until the next month of Ramadhan, then:

(1) if the matter was beyond his control, such as illness, he is not required to undertake the *qadha* fast, but must make the *fidya* payment.
(2) if the matter was within his control and he had a choice, such as unnecessary traveling, he is obligated to make the *fidya* payment for each lapsed fast, and as an obligatory precaution he is required to make up for the lapsed fast as *qadha* in the coming years.

Ruling 329: It is obligatory, if possible, to hasten to undertake the *qadha* fasts of the previous month of Ramadhan before the start of the next month of Ramadhan. If he neglects to do so, he is required to make the *fidya* payment as well as the *qadha* fast.

Ruling 330: The *fidya* payment of every fast is a *mudd* of

food (as explained in ruling 320). This should be given to a poor person, and it does not suffice to give its price in money instead.

Recommended Fasts

Ruling 331: It is recommended to fast on every day, except on those days on which it has been forbidden to fast, such as the two days of Eid, and the 11th, 12th and 13th days of the month of Dhul-Hijjah for those who are in Mina during the pilgrimage – even if one is there for a part of the day as an obligatory precaution – and the day in which one doubts whether it is that of the month of Ramadhan or not, etc.

Ruling 332: It is disliked for a son, a daughter and a guest to undertake a recommended fast without the permission of the father or the host. The same is the case for the wife who fasts without the permission of her husband, provided that it does not oppose his rights. Otherwise, it will be prohibited.

(6)
ZAKAH
(CHARITY TAX)

(6)

ZAKAH

(CHARITY TAX)

Zakah is one of the fundamental pillars of the religion, and one of its greatest obligations, as Allah has often paired it with the prayer.

Zakah is of two types: the *zakah* of wealth, and the *zakah* of *fitrah*.

The *Zakah* of Wealth

Ruling 333: This is obligatory in respect to the following items: gold, silver, camels, cows, goats and sheep, wheat, barley, dates and raisins.

Ruling 334: It is obligatory only if the following conditions in the owner are all fulfilled:

(1) Adulthood – as defined by the Sharia;

(2) Sanity;

(3) Ownership of the mentioned items;

(4) Religious permissibility in disposing of the items;

(5) Physical ability to dispose of them, e.g. they are not lost, stolen or the like.

For the *zakah* on some of the items to be obligatory, it will be mentioned below that the passing of a year is required, in which case these aforementioned conditions must be fulfilled for throughout the year. And where the passing of the year is not stipulated, the aforementioned conditions must be fulfilled after the taxable limit is reached, as will be explained.

(a) The *Zakah* of Gold and Silver

Ruling 335: There are three further conditions in respect to the *zakah* obligation on gold and silver:

(1) *Zakah* is due only when the prescribed taxable limits are reached. In gold, the taxable limit is 20 dinars, and the amount due for it is half a dinar; then one-tenth of a dinar is due on every subsequent 4 dinars. In silver, the taxable limit is 200 dirhams, and the amount due for it is 5 dirhams; then a dirham is due on every subsequent 40 dirhams.

(2) The gold and silver must be coined as tender and used in transactions. If they cease to be used as tender in transactions, *zakah* is no longer obligatory on them.

(3) The passing of a lunar year, and it is sufficient in establishing the obligation of *zakah* with the arrival of the twelfth month.

(b) The *Zakah* of Livestock (Camels, Cows, Sheep and Goats)

Ruling 336: Apart from the general five conditions mentioned above, for the obligation of *zakah* on the mentioned livestock it is also necessary that a year passes, and that they graze by themselves, i.e. they are not fed, and that they are not used for work and labor, and that they reach the taxable limits, which are mentioned in more detailed books of Islamic Law.

(c) The *Zakah* of the Crops (Wheat, Barley, Dates and Raisins)

Ruling 337: Apart from the general conditions mentioned above, for the obligation of *zakah* on the said crops they should also reach the taxable limit, which is approximately 1,044.25 kilograms. Once these conditions are fulfilled, the prescribed *zakah* is 10% of the total quantity if they were watered naturally, e.g. by rain, river or moisture naturally present in the earth. If they were watered by artificial irrigation, such as by buckets and irrigation equipment, then the due *zakah* is 5% of the total quantity. If both natural and artificial watering means are used, then 7.5% is due.

There are further rulings which are mentioned in the more detailed treaties of Islamic laws.

(d) The Categories of the Beneficiaries

The beneficiaries of the *zakah* are of eight categories:

(1) The poor.

(2) The destitute.

(3) The collectors of *zakah* on behalf of the Imam (peace be upon him) or his specifically appointed deputy.

(4) Muslims whose faith is weak but their hearts are inclined towards religion on receiving such charity.

(5) For the freeing of slaves.

(6) An indebted person who is unable to repay his debt.

(7) In the way of Allah.

(8) To a stranded traveler.

Ruling 338: The beneficiary must be a believer (i.e. a Shia Ithna-Ashari), and as an obligatory precaution a non-believer should not be given from the portion of the fourth category. Also, the beneficiary should not be a drinker of alcohol, and as an obligatory precaution he shouldn't be a committer of major sins which are worse than drinking alcohol, like the abandoning of prayer. If the payer of *zakah* is non-Hashimite (a descendant of Hashim), the beneficiary cannot be a Hashimite.

Ruling 339: It is not obligatory to pay one's *zakah* for all the categories; rather, it is sufficient to pay it all to one person from one of the categories. However, one should not pay the poor person more than his yearly expenses.

Ruling 340: It is obligatory to hasten in paying the *zakah*, and it is not permissible to delay it except with a reasonable cause, and as an obligatory precaution it should then be

separated and earmarked.

Ruling 341: It is permissible to pay the value of the taxed items in money instead.

Ruling 342: It is permissible to transport the *zakah* from one's town to another, even if there are beneficiaries available in the former. However, in such a situation if any part of the *zakah* is lost in the transportation, he will be liable for it.

Ruling 343: *Zakah* is amongst the worships which require intention; as an obligatory precaution, the intention should accompany both the separation of *zakah*, and also the payment of it to the beneficiary.

The *Zakah* of *Fitrah*

This is also amongst the obligatory *zakah*, and with it the fasting of the month of Ramadhan is completed. It is narrated that whoever does not pay it, he should apprehend death in the following year.

(a) The Conditions of Its Obligation

Ruling 344: The following conditions apply in establishing the *zakah* of *fitrah* as obligatory:

(1) One should be an adult, as defined by the Sharia.

(2) One should be sane.

(3) One should actually or potentially have sufficient funds for his yearly expenses.

(b) The Time of Its Payment

Ruling 345: It becomes obligatory for all those who have fulfilled the above-mentioned conditions at the time of sunset on the night of *Eid-ul-Fitr*. Its payment becomes due on the day of *Eid-ul-Fitr*, from the time of Fajr – the break of dawn – until noon time, as an obligatory precaution, but its best to pay it before one performs the Eid prayer for those who offer it.

Ruling 346: If noon has passed and one has still not paid it, he must hasten to pay it before sunset as an obligatory

precaution. If one still hasn't paid it before sunset, then he will remain liable until he pays it, however long it may be. If he dies it will be necessary to pay it on his behalf.

Ruling 347: It is permissible to pay it in advance during the month of Ramadhan.

(c) What is Paid and its Quantity

Ruling 348: The quantity to be paid for each person is one *saa'* – approximately 3.48 kilograms – of dates, raisins, wheat, barley or other major staples.

Ruling 349: One should pay on behalf of himself and all others who he provides for, whether he is obligated to provide for them or not, and whether they are young or old, near or far, Muslim or non-Muslim; even guests are included who are counted as amongst those who he is temporarily providing for. Those guests are not included who have merely come for dinner, for example.

(d) The Beneficiaries

Ruling 350: The beneficiaries are the same as mentioned for the *zakah* on wealth, except that one can pay it to a non-Shia Muslim who neither accepts nor denies the authority of the Ahlul-Bayt (peace be upon them) if a believer is not available, and this has priority over transferring it to another city.

Ruling 351: As an obligatory precaution one should not pay a poor person less than one *saa'*, and it is permissible

to pay one poor person between one and two *saa'*, such as dividing three *saa'* between two persons.

Ruling 352: As in the *zakah* of wealth, a non-Hashimite's *zakat-ul-fitrah* is not lawful for a Hashimite. In this respect, the provider's ancestry is considered rather than those who he provides for; so if the provider is Hashimite and he is paying on behalf of a non-Hashimite member of his family, it is lawful for a Hashimite to receive it as *zakah* of *fitrah*.

Ruling 353: It is recommended to give priority to one's relatives and neighbors, and one should give priority in respect to their knowledge, virtue, and adherence to the religion.

(7)

KHUMS

(ONE-FIFTH TAX)

(7)

KHUMS

(ONE-FIFTH TAX)

This is a right that Allah has imposed on us for Him and His trusted Messenger (peace be upon him and his progeny) and his pure progeny (peace be upon them), as well as Hashimites, their close kin.

This is a means for the believer for purification, to make lawful his wealth, and for growth in his sustenance.

What *Khums* is Payable On

The five most important categories of properties and gains on which *khums* is obligatory are the following:

(1) Mined minerals, such as gold, silver and petroleum

Ruling 354: For *khums* to apply on mined minerals, the value of the mined goods should reach the value of 20 *mithqal* of gold – which is approximately 85 grams – after deducting the costs of extracting them from the earth.

(2) Treasure, which is wealth that has been buried in the earth a long time ago and its owner is not known and it is also unknown whether he is a Muslim.

Ruling 355: Buried treasure is liable for *khums* only if it consists of gold and silver coins minted as currency. Its taxable limit for gold coins is 20 dinars, and for silver coins is 200 dirhams.

(3) What is taken from the seas and rivers by diving or by using tools, such as jewels of the sea and the like, if the items found are not owned by anybody. As an obligatory precaution, the same applies to what comes out of the sea by itself and emerges on the surface or is left by the sea on the coast. This does not apply to animals.

Ruling 356: For *khums* to be payable on it, the taxable limit must be reached after deducting the costs of extraction, and this is the value of one dinar. As for ambergris, *khums* is due on it if it is taken from the water surface, even if it does not reach the taxable limit, as an obligatory precaution.

(4) Wealth that has become mixed with unlawful wealth.

Ruling 357: *Khums* is due on such wealth if the unlawful wealth cannot be distinguished from the lawful wealth, and the actual owner of the unlawful wealth is unknown. Paying the *khums* from this will then make the remaining wealth lawful for him.

(5) What remains in one's wealth after deducting his yearly expenses for himself and his family from the earnings from his business, trade, farming, leasings, and anything else he obtains, such as gifts, dowry, wealth received in lieu of a *khula'* divorce, wealth that has been bequeathed in a will besides the set legislated inheritance, and inheritance

received from a distant relative; if the inheritance is from a close relative, there is no *khums* on it.

Ruling 358: For something to be regarded as his earnings it is not sufficient that he has become its owner according to the law of the land; rather, it is necessary that he becomes its owner according to the Sharia.

Ruling 359: Wealth from which *khums* has already been paid, or that on which no *khums* is due, if it grows and the growth is conventionally seen as directly attached to the original, such as the growth of a tree and an animal becoming fatter, then there is no *khums* due on it. However, if the growth is seen to be different from the original by convention, like wool from a sheep, milk from a cow and fruit from a tree, *khums* is obligatory on it, even if it is not separated from the original.

Ruling 360: If the market value of wealth – from which *khums* has already been paid or *khums* is not due on it – increases, *khums* is not obligatory on the increase, except if it is sold and it was previously owned by purchase; so, if something was a gift or inherited and then sold, *khums* is not payable on the increase of its market value.

Ruling 361: If an item is liable for *khums*, then it increases by something attached to it such as an animal becoming fatter, or by something separated from it such as giving birth to a baby animal, *khums* will be due on both the original item and the addition.

Ruling 362: If one bought an item with money on which *khums* is due, it is obligatory on him to pay the *khums* of the price paid, whether it is equal to the value of the item

bought, or less than it or greater than it.

Ruling 363: The yearly expenses – which are deducted from the total earnings of the year before the payment of *khums* – refer to all those expenses of the earner for reasonable purposes in order to fulfill the requirements of himself and his family, such as food, drink, clothing, housing, vehicle, fulfilling particular desires, hosting guests, fulfilling obligatory or recommended duties, etc. There is no difference whether the expenses are incurred for a benefit in which the item perishes, such as food and drink, or whether it is spent, such as a loan, or whether they are incurred for a benefit while the item subsists, such as a house.

Ruling 364: The deductible yearly expenses do not include capital for business, nor what is spent on tools and equipments by which one will make an earning, such as a work vehicle or décor for a shop.

Ruling 365: If the earning of profit depends on certain expenses, such expenses are deductible from the profits earned, such as the rent for the shop, protection of merchandise damage, taxes, etc.

Ruling 366: The yearly expenses refer to the deductible expenses for the lunar year, and the beginning of the year will be from the day a person earns his first profit in his life. The year-end does not differ if the earnings and profits are from different sources. If a person does not know the year-end in his calculations he should refer to the *hakim shar'i* in specifying it.

Ruling 367: At the year-end it is obligatory for a

duty-bound person to look at what extra unused cash, commodities, items, clothing, books, etc. he has, and they will be included in the profits on which *khums* is due.

Ruling 368: If the items are benefitted from and they subsist, such as jewelry and clothes, and if they have been used by the person for a period of time usual for such items, and then they are no longer required, one is not obliged to pay *khums* on them. This is so, unless the person acquired it by buying it and then sells it for a profit, in which case he is liable to pay *khums* on the profit he makes.

Ruling 369: Just as the yearly expenses and the expenses incurred in making the profit are both deducted from the profit, similarly the losses and damages incurred by the person during the year are also deductible. And it is not necessary that the expenses were paid from the profits themselves; rather, if they are paid from loans, or money on which *khums* has already been paid, or other sources, the amount will be deductible from the profits.

Ruling 370: When a *khums* year ends and one has not paid *khums* from the profits of that year and decided to pay it from the revenues of the following year, then *khums* is due on the amount that he paid as *khums* for the previous year, so he should pay it with the rest of the *khums* on the current year's profits. This is the case if the previous year's profits still subsist. If they do not subsist, *khums* is not due on the said amount.

Ruling 371: *Khums* becomes payable on profit if it is greater than the year's expenses as soon as it appears, but the owner may delay its payment until the end of the *khums*

year.

Ruling 372: It is obligatory to hasten in paying *khums* after the year-end, if the property on which *khums* is liable on is in his possession, or it is possible for him to take its possession. It is not permissible to delay the payment or to use it, except with the permission of the *hakim shar'i*, otherwise he will have sinned and will be liable for it.

Ruling 373: *Khums* is payable on the property, and the owner has the choice of paying its *khums* from the property itself or paying the value of *khums* from cash. It is not permissible to pay it from other property, except with the permission of the *hakim shar'i*.

Ruling 374: If the owner of property on which *khums* is due makes use or disposes of that property without paying its *khums*, by selling it or buying with it or giving it as a gift, etc. then his disposal (e.g. the selling, purchasing, gifting) will not be effective, except with the permission of the *hakim shar'i*. However, if the other party of such dealings is a believer, then it is permissible for him to consider such dealings and transactions as effective and the burden of liability will remain on the person not paying *khums*.

The Beneficiaries of *Khums*

Ruling 375: The *khums* is divided into two equal portions:

(1) The share of the Imam (peace be upon him)

(2) The share of the Hashimites

Ruling 376: The share of the Imam (peace be upon him) is to be passed over to the *hakim shar'i* who is acquainted with the general interests of the religion and the needs of the believers, as well as having the means to spend it in these affairs, even if it is through trusted intermediaries who have such acquaintance. The person paying it cannot take it upon himself to spend it.

Ruling 377: The share of the Hashimites is given to anybody whose paternal ancestry goes back to Hashim, the great-grandfather of the Prophet (peace be upon him and his progeny), as long as they are needy believers or believers who are stranded in a journey. As an obligatory precaution, such travelers should not be committing a sin by their travelling. It is not permissible for one to give this share of the *khums* to somebody who he is obligated to provide for, such as a wife or son. It is necessary to pass over ownership to the beneficiary or his agent by giving him actual possession.

Ruling 378: If somebody claims such ancestry, he is not to be believed unless there are two *adil* witnesses who confirm it, or it is so well-known amongst the people that it causes satisfaction that it is the truth.

(8)

ENJOINING THE GOOD AND FORBIDDING THE WRONG (*AL-AMR BIL-MA'ROOF WAL-NAHI 'ANIL-MUNKAR*)

(8)

ENJOINING THE GOOD AND FORBIDDING THE WRONG (*AL-AMR BIL-MA'ROOF* AND *AL-NAHI 'ANIL-MUNKAR*)

Introduction

These two acts are amongst the greatest religious obligations; through these two deeds society is corrected and corruption is curbed and evil is pushed away. Allah Almighty said: "You are the best of nations raised up for mankind, enjoining what is good and forbidding what is wrong." (3:110) The Holy Prophet (peace be upon him and his progeny) said: "If (the members of) my nation leave the enjoining of good and the forbidding of wrongdoing for each other to undertake, they should expect the punishment of Allah."

In a narration of the Prophet (peace be upon him and his holy progeny): "Do not abandon the enjoying the good and forbidding the wrongdoing, lest the wrongdoers amongst you become your leaders. And then you supplicate and your supplications will not be answered."

Just as the individual is required to adhere to the obligations and refrain from the prohibitions, he must also enjoin those who do not fulfill their obligations and he must forbid sinners from committing prohibited deeds.

We will mention a number of obligations and good traits, and also some prohibited acts and negative traits which one should rise above.

For the believer there are two necessary inter-related positions which he must hold:

(1) The psychological position: one should be amiable and affectionate with good deeds and righteousness and be in harmony with them, and one should be troubled and disapproving of wrong and evil, psychologically. This is what is meant by rejecting the wrong with the heart, and this is obligatory on everybody; its obligation does not depend on anything except knowledge of the good and the wrong.

(2) The practical position: this refers to the attempt to change something by motivating towards good deeds when they are neglected, by enjoining it and encouraging it; and by deterring and discouraging from bad deeds when they are committed. This is what is meant by enjoining the good and forbidding the wrong.

In respect to the second position, there are three levels which are obligatory by way of *kifayah*, i.e. all duty-bound persons are obligated to do so, but if a sufficient number of persons do act accordingly, the obligation no longer applies

to the rest. If nobody acts, all relevant persons have sinned.

(1) The silent level, by showing one's anger and hurt caused by the sinner, and avoiding him and abandoning him in society, and not doing for him any favours, etc.
(2) The verbal level, by verbally enjoining the good and forbidding the wrong, by preaching to him and reminding him of the rewards and punishments of Allah Almighty, etc.
(3) The physical level.

The Conditions of the Obligation

Ruling 379: These aforementioned three levels of enjoining good deeds and forbidding bad deeds are obligatory subject to the following two conditions:

(1) The possibility of this benefitting somebody, whether in favour of the sinner who will then refrain from committing the sins, or anybody else who emulates the sinner in committing the sins.

(2) That one does not fear harm for himself, his wealth and his dignity or for that of the sinner or any other believer.

Ruling 380: Once these two conditions are fulfilled, the first two levels of enjoining the good deeds and forbidding the bad deeds become obligatory. As for the third level, it is not permissible without the permission of the *hakim shar'i*, and for further information the detailed books should be referred to.

Ruling 381: The obligation of enjoining the good and forbidding the wrong is not limited to certain types of people to the exclusion of others. All are slaves of Allah and they must abide by His orders.

Ruling 382: It is necessary for one who is enjoining good deeds and forbidding the wrongdoing to know what is meant by good and wrong. This does not mean that it is not obligatory unless one knows what is meant by them, but it means that the obligation remains, as does the obligation of understanding them as a pre-requisite.

Enjoining the good and forbidding the wrongdoing is especially emphasized in respect to oneself and one's family, as Allah Almighty said: "Oh you who believe, save yourselves and your families from a fire whose fuel is people and stones, over which are angels stern and severe, who do not flinch in obeying Allah in what He commanded, and they do as they are commanded." (66:6)

If he did not fulfil the said obligation negligently or out of extreme love, then this would be a cause for his misery and Allah's wrath.

Ruling 383: The enjoining of the 'good' refers to enjoining what is obligatory, although enjoining the recommended acts is also recommended.

Examples of the 'Good'

The following are examples of good acts which should be enjoined:

(1) Reliance on Allah Almighty, and seeking help from Him. He said in the Holy Quran: "And if anyone puts his trust in Allah, He will suffice." (65:3)

(2) Prayers, fasting, *khums*, and all other obligatory acts known as the 'branches of religion', and it is obligatory to enjoin those who neglect them to adhere to them.

(3) Patience and perseverance: there are various categories of patience, as follows:

(a) Perseverance during misfortune: one should be patient if he is afflicted with misfortunes such as illness, imprisonment, poverty, etc. One should remain steadfast in his patience and not talk in an inappropriate way which may result in losing the reward designated for the patient ones, as Allah said: "Only the patient will be paid their reward without measure." (39:10)

By being patient, it does not mean that one should not attempt to alleviate the misfortune; rather, he is required to do so, by seeking treatment from the doctor, or working hard to alleviate poverty. If the alleviation of these problems do not occur or are delayed, one should not lose his patience nor talk or act in a way inappropriate for a Muslim.

(b) Being patient in obedience: one should be

patient in his obedience to Allah, such as during fasting one feels thirsty or hungry, but he remains patient and completes his fast.

(c) Being patient in avoiding sins: one should be patient and not follow what his desires sometimes incite him to do; for example, one may feel very inclined towards somebody else's possession, and he may want to steal it from him; he should be patient and remind himself that this is a sin.

(4) Good manners: a Muslim should have good manners and etiquettes with this relatives and others; so he should respect the elders and be affectionate with the young, he should not insult or harm anybody. The Prophet (peace be upon him and his progeny) said: "You should take to good manners, as one who has good manners is undoubtedly in Paradise, and one who has bad manners is undoubtedly in the Fire." He also said "The closest seat to mine on the Day of Judgment is for the one who has the best of manners, and who is the best with his family."

(5) Helping the needy believers: the poor, the orphans and others who require help should be helped, so that Allah may also act affectionately with you and be pleased with you. The Holy Prophet (peace be upon him and his progeny) said to Imam Ali (peace be upon him): "Oh Ali, whoever cares for an orphan's expenses with his money until he no longer is needy, Paradise will definitely be for him." It has been reported from Imam Al-Baqir (peace be upon him) that he said: "If four traits are found within a

person, Almighty Allah will make for him a house in Paradise: whoever shelters the orphan, acts kindly with the weak, acts compassionately with his parents and provides for them and treats his slave softly." Also the Prophet said: "The believers are a brotherhood; they fulfil the needs of each other ... I will fulfil their needs on the Day of Judgment."

(6) ***Respecting the parents:*** a Muslim should listen to his parents with respect and good manners, and he should not cross the limits in violating the sanctity of his parents, as Allah Almighty said: "And your Lord has commanded that you: do not worship except Him, and goodness to the parents. If either or both of them reach old age with you, do not say to them "ugh", nor chide them, and speak to them generously." (17:23) and the Prophet (peace be upon him and his progeny) said: "Heaven is beneath the feet of the mothers." So if you respect your parents and they are pleased with you, you will – God willing – enter Paradise.

(7) ***Cleanliness:*** Islam has greatly emphasized on cleanliness in all its forms, and forbidden filth and dirt. The Prophet (peace be upon him and his progeny) said: "Clean all that you can, as Allah has founded Islam upon cleanliness, and nothing will enter Heaven except every clean one."

Imam Ali (peace be upon him) said: "One whose clothes are clean will destroy the troubles and griefs, and he is cleansed for prayer." Imam al-Baqir (peace be upon him) said: "Sweeping the house removes poverty."

There are many other good deeds and virtuous traits that are mentioned in other detailed books.

Examples of the 'Wrongdoings'

The following are examples of wrongdoings and sins which should be discouraged and forbidden:

(1) Oppression (Dhulm): this means transgression and wrong-doing against others, and this is amongst the greatest sins. Imam al-Baqir (peace be upon him) said: "Oppression in this world will lead to darknesses in the Hereafter." Imam Hussein (peace be upon him) said advising his son Imam Zainul–Abideen on the day of Ashura: "Oh my son, beware of oppressing he who does not have a helper to protect himself from you save Allah". In addition to this, the prayers of the oppressed against the oppressor are accepted by Almighty Allah, as the Prophet (peace be upon him and his holy progeny) said: "The supplication of the oppressed Muslim is accepted".

This also applies to what may occur within families, like the transgression of the father against his children, or the transgression of the children against their parents, or the transgression of the husband against his wife, and vice-versa, etc. as all this is forbidden wrongdoing which Islam rejects.

(2) Supporting the oppressor: any kind of support or help, however small it may be, is forbidden, as a tradition states: "The least that Allah will do to the supporters of oppressors is that He will put them in a large tent of fire until He finishes the reckoning of all His creation." Allah has said: "Help one another

in goodness and piety, and do not help one another in sin and aggression." (5:2)

(3) Lying: this is prohibited, especially in respect to Allah and His Messenger and the Imams (peace be upon them). This includes giving a religious edict without knowledge, as it is forbidden. Lying can become a habit and a psychological illness, leading to one's disgrace and disrespect amongst people, who do not trust him even when he is speaking the truth. Such is not suitable for a Muslim.

Imam Al-Baqir (peace be upon him) said: "Lying is a destruction of faith". So if a believer is concerned about his faith, he would not lie.

(4) Backbiting (gheebah): this means revealing a defect in a believer who is not present, in order to belittle him and expose his defect. For example, if your friend makes a mistake, do not tell others about it so they may defame his nobility and reputation; rather, you should advise him not to commit the mistake again, and if he does not listen speak to his father or elders, without exposing him amongst the people.

Ruling 384: Backbiting is permissible in specific circumstances, such as the following:

(1) When the person openly commits sins, his personal sanctity is no longer recognized and his backbiting in respect to those sins is allowed.

(2) The oppressed person can reveal the transgressions against him, even if this necessitates backbiting against the oppressor.

(3) When exposing the people of innovations (*bid'ah*) in religion, backbiting against them is permissible, so that people may beware of them and not be affected by them.

Ruling 385: It is prohibited to listen to backbiting if it is based on agreeing with the backbiter and satisfying his objective; similarly, it is obligatory to object to the backbiting and to defend the victim, provided that there is no religious or conventional obstacle from doing so.

(5) Keeping bad company: bad company are those people who do not adhere to the religion or morals. One should advise them and enjoin them towards good deeds and forbid them from bad deeds. If this does not work, one should leave them so that one does not become affected by their bad behaviour. Imam Ali (peace be upon him) said: "A Muslim should avoid the companionship of three types of people: the shameless sinner, that is, the one who is busy with feeding his lust, who practises evil deeds; the fool, that is, the stupid one who does not understand; and the liar."

(6) Using bad language: it is improper for Muslims to use bad language and obscene words. The Prophet (peace be upon him and his progeny) said: "Allah has surely forbidden Heaven for all obscene shameless people," i.e. those who are habituated to use obscene words. One should leave the companionship of such people if advising them is of no use, so that one is not affected by them.

(7) Anger: we find in many situations some people commit some improper acts with the justification that he was angry, but this is not an acceptable excuse in the perspective of the Sharia. Imam al-Sadiq (peace be upon him) said: "Anger is the key to all evil." This is so because an angry person will not use his intellect and is prepared to commit bad deeds in allowing himself to be overwhelmed by his anger.

(8) Greed: this means that one is not satisfied with what Allah has blessed him with, and he seeks what others have, for example. This does not befit a Muslim, as both the good of this world and the next can be lost. He may lose the good of this world by not enjoying the bounties which Allah has blessed him with as he always seeks more. He may also lose the good of the Hereafter by resorting to transgressing against others or cheating them or committing crimes, in order to satisfy his greed.

(9) Masturbation: this is prohibited whether it results in the discharge of semen or not. This also applies to women.

(10) Lewdness: A woman who does not abide by modesty and *hijab* will be subject to harsh punishment on the Day of Judgment.

(11) Showing-off (riya): this means that a person in his worships aims to achieve the praise of the people, rather than closeness and obedience to Allah. This is amongst the greatest sins. The Prophet (peace be upon him and his progeny) said that the following will be called out to such a person on the Day of

Judgment: "Oh infidel! Oh open sinner! Oh traitor! Oh loser! Your deed has become useless and your reward is annulled, so there is no deliverance for you this day, so seek your reward from whom you acted for the sake of."

(12) Cheating a believer: this means misleading him about a matter contrary to its reality; for example, he will present rotten fruits as good fruits. The Prophet (peace be upon him and his progeny) said thrice: "Whoever cheats us is not from us."

(13) Despair from the merciful grace of Allah and despondence of His mercy.

(14) Ingratitude to parents, as Allah Almighty said: "And your Lord has commanded that you do not worship except Him, and goodness to the parents. If either or both of them reach old age with you, do not say to them "ugh", nor chide them, and speak to them kindly." (17:23)

(15) Killing a believer, even the unborn child of a believer, and assisting in this; rather, any form of transgression against a believer is amongst the greatest sins, such as hitting him, insulting him, and humiliating him.

(16) Defaming a pious believer with accusations of adultery.

(17) Taking the money of orphans wrongfully; rather, taking the money of any believer. Allah Almighty said: "Surely those who take the money of the orphans unjustly, they are not but swallowing fire

into their bellies, and they will soon enter burning fire." (4:10)

(18) Taking and giving interest, as well as recording its transaction and being a witness in it.

(19) Adultery and similar sins, as well as their facilitation.

(20) Magic.

(21) Soothsaying.

(22) Preventing the payment of zakah, and any other rights of Allah and people.

(23) Drinking alcohol and all intoxicants.

(24) Abandoning obligatory acts of worship such as prayers, fasting, *zakah* and pilgrimage.

(25) Breaching a covenant.

(26) Breaking family ties.

(27) Expatriation leading to ignorance (*al-Ta'arrub ba'dal-Hijrah****):*** this refers to migrating to places where one's religious knowledge will decrease and his ignorance about his religion will increase.

(28) Theft, usurping and taking wealth unlawfully.

(29) Eating forbidden things, such as meat of animals not slaughtered as prescribed by the Sharia, blood, pigs, etc.

(30) Gambling – even if it is without any actual wager – such as cards and chess.

(31) Tampering with weights on scales.

(32) Being one whose evil actions and tongue is feared by other believers.

(33) Vanity and narcissism, in wanting to be superior over people.

(34) Squandering: this means being excessive in spending in a way that wastes wealth for an unreasonable purpose.

(35) Fighting against the friends of Allah, and siding with His enemies.

(36) Singing, as well as listening to and playing forbidden music.

(37) Insistence on committing small sins

(38) Sowing discord, i.e. telling somebody what others are saying in belittling him.

(39) Hiding one's testimony, even if one is not sought to bear it as an obligatory precaution.

(9)
REPENTANCE

(9)

REPENTANCE

"Say: Oh my servants, who have transgressed against their own souls! Do not despair of the mercy of Allah; surely Allah forgives all sins; surely He is the All-Forgiving and the Most Merciful. And turn to your Lord and submit to him before the punishment comes to you; thereafter you shall not be helped."

(The Holy Quran, 39:53-54)

As established by divine verses, traditions of the Infallibles and sound intellect, repentance is necessary for every believer after committing any sin. In fact, one should hasten to it and grab the opportunity to do so before the time expires by death, or the blackening of the heart and it being sealed due to the great number of sins. If the believer then returns again to the sin, then he should return again to repentance, as the door of repentance is open and never closed. Therefore, one should beware of despondence and despair from the mercy of Almighty Allah, as this is amongst the strongest means of Satan to take control over a servant of Allah and drag him to annihilation.

In order to ensure that one's repentance is sincere, two main conditions should be fulfilled:

(1) Regret and remorse in committing the sin.

(2) Resolution and determination to never commit it again.

Furthermore, if the sin consists of infringing the rights of others, it is obligatory to hasten in amending the damage or conciliating with him, as far as possible. If it is not possible, he must resort to seeking forgiveness from Allah.

(10)
TRADE

(10)

TRADE

Earning and seeking sustenance is one of the emphasized recommended acts, as the Prophet (peace be upon him and his holy progeny) said: "Worship has seventy parts, and the best of them is the seeking of lawful sustenance."

However, one should protect himself from the unlawful directions and be cautious about them, and one cannot do so except by studying the religion and learning the laws of the Sharia. The believer should ask before any action, and he should learn before being entangled.

Forbidden Earnings

Ruling 386: It is forbidden to sell wine and all intoxicants, and the price received in lieu of it is unlawful and is regarded as ill-gotten property.

Ruling 387: It is forbidden to sell dead bodies, even if they are *tahir*, based on an obligatory precaution. It is permissible to sell those parts of their bodies which did not possess life, like fur and bones, while it is impermissible to sell an animal without religious evidence that it is slaughtered in accordance with the Sharia.

Ruling 388: It is forbidden to sell pigs and dogs – other

than hunting dogs – as well as monkeys based on an obligatory precaution. It is permissible to sell predatory animals and other animals which are unlawful to eat if their benefit is not restricted to unlawful purposes.

Ruling 389: It is permissible to sell the originally *najis* things except those which have been mentioned above, if they have a lawful benefit.

Ruling 390: The aforementioned items, even if making earnings from them is unlawful, they are owned by the proprietor; however, he is not allowed to make earnings from them, even if it is through means other than selling, such as leasing them.

Ruling 391: Those things which have become *najis* and can be made *tahir* are permissible to sell, but it is obligatory for the seller to inform the buyer of it being *najis* if it is something eaten or drunk, or if it is water which is used for *taharah*.

Ruling 392: It is forbidden to produce and sell tools and objects which have been prepared in its current form for unlawful acts, such as idols, crucifixes, misguiding books, and instruments used for unlawful enjoyments, e.g. music and gambling.

Ruling 393: Cheating is forbidden. Using counterfeit money comes under this category, but it is not obligatory to destroy it.

Ruling 394: It is permissible to buy and sell copies of the Holy Quran, but it is disliked to do so.

Ruling 395: It is forbidden to lease out property for

unlawful benefits, such as leasing out a shop for selling wine. Rather, such leasing is void.

Ruling 396: Bribery is forbidden, whether it is paid to influence the decision of a judge or in any other situation, except if saving the right of the payer of the bribe or alleviating injustice against him rests upon it. Although it is lawful to give the bribe in the said case, it is unlawful for the person being bribed to take it.

Ruling 397: It is forbidden to earn money through wagering bets in gambling and the like, except in *al-sabq* and *al-rimayah*, as is explained in more detailed books of Islamic law.

Ruling 398: It is permissible to deal in lottery tickets, except if it is actually betting between participants in order for the winner of a random draw to claim the wagered money, in such a way that the money remains in suspension and without owner until the winner of the draw takes ownership of it; in such a situation, it will become unlawful.

Ruling 399: There is no problem with life and accident insurance contracts if they are based on mutual contraction and exchange between the two parties, the insurer and the insured.

Ruling 400: It is permissible to take fees in return for teaching the Holy Quran, and it is best to not stipulate it as a condition. Similarly, it is permissible to take a fee for performing the verbal pronouncements of contracts and Sharia-defined unilateral declarations.

Ruling 401: Leasings on unlawful benefits and hirings for unlawful work are prohibited and void, and so is the

case with all kinds of earnings obtained from them; if the transaction is prohibited, it is also void, and that which has been exchanged between the parties is also unlawful, such as the rent for the leaser and the benefit for the lessee.

Ruling 402: It is prohibited for a man to shave his beard, and it is prohibited for a person to make an earning in shaving the beards of others. This is so unless the man fears considerable harm in not having his beard shaved. It is permissible in all cases to shave the cheeks.

Ruling 403: It is forbidden to make a picture of humans and animals, and it is permissible to draw a part of the body, as it is also permissible to create a photographic picture. As for acquiring pictures, it is lawful but disliked, as it is also permissible to buy and sell them as long as it does not involve its manufacture.

Ruling 404: It is forbidden to print, distribute and circulate books of misguidance and vice if it involves the strengthening of falsehood or if one fears misguidance from it, or the like.

Ruling 405: It is forbidden to report information from the unseen by way of certainty, and it is forbidden to earn by doing so.

Ruling 406: It is forbidden to summon Jinns and spirits if they will harm a believer or if it is done so by means of magic.

The Sale Contract

Ruling 407: The sale takes place by whatever way that indicates that both parties to the contract intend to abide by it, whether it's verbal, written, by sign, or physical delivery of the items to be exchanged.

Ruling 408: It is a necessary for the validity of the contract that it be completed and discharged, i.e. the contract's application should not be dependent upon a non-acquired matter at the time of contract. In fact, based on an obligatory precaution, it should not be dependent upon a matter about which it is doubted by either of the parties of the contract whether it is acquired or not. This does not apply to the provisions and conditions within the contract itself.

Ruling 409: It is not necessary that one should address the other directly, or that it be consummated in one meeting or that the offer be immediately followed by acceptance.

Conditions for the Validity of the Contract

(a) The Conditions for the Parties of the Contract

Ruling 410: Both parties should be adult (as per the Sharia), sane, entering into the contract by choice, and that they have the right of disposal over the item being sold or the money being paid, such that one is the owner of it or his agent, or he is given permission to deal with it, or he is a guardian of the owner.

Ruling 411: If somebody sells something without having the right of disposal over it, the sale is valid if it is subsequently followed by the permission of whoever does have the right of disposal over it, as long as the other party remains abiding to the transaction.

(b) The Conditions for the Items of Exchange

Ruling 412: It is not necessary that both items of exchange (the item being sold and the money paid for it) are material wealth i.e. that which reasonable people would wish to acquire. For example, one can sell insects which reasonable people would not generally wish to have if there is a specific purpose in taking ownership of them.

Ruling 413: The items of exchange must be specified. So the contract that is based on selling one of a number of items is not valid; similarly, the contract that is based on buying something for one of a number of prices is also invalid; for example, the sale of either food or clothes for a specific price

or the sale of food for ten dollars or nine euros.

Ruling 414: For the sale contract to be valid, the weight of the sold goods must be known during the sale contract if the item is commonly sold by weight; similarly, if it is commonly measured by a specific scale, like a scoop or a bucket, such measurement should be known. As an obligatory precaution the same is the case for the paid price. In fact, as an obligatory precaution, the quantity of both of the exchanged items by their common scales of measurements – such as their weight, volume, number, any other scale or measurement, and observation – as well as their locations, must be known. However, in certain circumstances if something is usually sold without such certain specifications, such a sale is valid in such situations.

Ruling 415: If one knows the quantity of the sold items and the amount of the agreed price, it is not necessary to see them for the contract to be valid. If it is not possible to know the quantity of the item, even by observation – such as milk in the udder – it is permissible to sell it if the soundness of some of it is known. Otherwise, it is necessary to add something specific and known to the sold item so that its sale is valid.

Ruling 416: It is also a condition of the sold goods that the buyer can actually acquire it, so it should not be, for example, lost property or a stray animal. Also, both items in exchange should be free to be disposed with, so it is not permissible to sell an item that is subject to *waqf*, or an item that is subject to a specific vow (*nadhr*) and selling it will contravene the vow, or an item that has become associated with somebody else' rights – like if it is was kept as security against a loan

– with the exception of particular circumstances which are mentioned in the detailed books of Islamic law. As for the sale that contravenes an oath (*yameen*) or a promise (*ahd*), it is forbidden and expiation (*kaffara*) will become obligatory, but the sale itself is valid and effective.

The Right of Withdrawal

Contractual obligations arising out of a sale cannot be annulled except with the agreement of both parties, or by establishing the right of withdrawal for them both or one of them. Such a right is of ten types:

(1) The right of withdrawal at the immediate meeting:

This right is established for both parties as long as they are still physically together after the contract is consummated, and they have not parted.

(2) The right of withdrawal in the sale of animals:

This right has a term of three days, and it is established for the one who has received the animal, as the item being sold or as payment for an item bought.

(3) The right of withdrawal as stipulated:

This is a right which has been stipulated within the contract in favour of the seller or the buyer or both of them.

(4) The right of withdrawal due to inequity:

This right is established for the buyer if he bought an item for a price higher than the market price, or for the seller if he sold it for less than the market price, with the condition that it was by inadvertence and inattention towards it, or that it was agreed that the transaction would be made according to the market price.

(5) The right of withdrawal due to delay:

If the contract did not qualify the sale with time of exchange, it would require the expeditious delivery of the sold item and its receipt. Delay of this for over three days will grant the seller the right of withdrawal if the buyer has delayed in receiving the goods, or to the buyer if the seller has delayed in delivering them. As an obligatory precaution, the same is said for the payment of the goods being sold as well, so the right of withdrawal is not established until three days have passed.

All this is the case if it is not stipulated in the contract that the deadline of delivery is less than three days or in the delay of delivery for more than three days. With such provisions in the contract, it is necessary to abide by them.

Items which perish or are harmed by a delay of a night – such as meat, and some types of vegetables – are excluded from this if the goods and the payment have not been exchanged, as the right of withdrawal in such cases is established at the arrival of the following night, except if provisions are made in the contract contrary to this.

(6) The right of withdrawal by visual inspection:

As mentioned before, it is not necessary to see the two items of exchange if knowledge of their quantity does not depend on it. As for the attributes of the sold goods, if knowledge of them depends on seeing them the sale is valid without seeing them, but the right of

withdrawal is established for the one who does not see the goods. Similarly, as an obligatory precaution , the right of withdrawal is also established for the one who did not see the payment made, if knowledge about its attributes depends on seeing it, which is in the form of a particular specific item, rather than general money.

(7) The right of withdrawal for faulty goods:

An item is faulty if it is not as it commonly should be. So, if a person bought a commodity and it was faulty, he has the right to either be satisfied with the transaction as it is, or to return it, provided that he did not know about the fault beforehand. If it is not possible to return it, he has the right to compensation in proportion to the difference in value between the item in sound condition and the item in its current faulty condition.

(8) The right of withdrawal for misrepresentation:

Misrepresenting the integral description of the actual items of exchange will result in the annulling of the contract. However, if a non-integral attribute of the item is misrepresented, and if it was made a condition of the sale that the item will possess such an attribute, the right of withdrawal will be established.

(9) The right of withdrawal for partial exchange:

If the sale is incomplete in some of the sold goods, whether it is due to the sale of such goods not being valid – such as alcohol – or if it is due to the lack of proprietorship over the goods – such as it being under

waqf – the buyer will have the right to either annul the whole contract, or to agree to how the exchange stands now – with the sale being incomplete – with the repayment of the portion of the price paid in respect to the part of the goods not delivered. In the latter case – i.e. if the buyer chooses to annul part of the exchange – the seller will then have the right of withdrawal in respect of the remaining part, i.e. he can annul the whole contract.

(10) The right of withdrawal for violating a condition:

Details of this right will follow under the section on the contractual conditions of sale.

Ruling 417: All the aforementioned rights of withdrawal will be inapplicable in the following situations:

(1) If it has been made a condition of the contract of sale that such rights do not apply;

(2) If the rights have been dropped after the contract;

(3) If the contract has been executed and has been affirmed and adhered to, by any way that indicates it, such as dealing with the bought item in a way that does not show that he is thinking of returning it while knowing that he has such a right.

The Conditions in the Contract

A condition in a contract is a part of the contract that must be observed and adhered to if the following provisions are met:

(a) the contract is based on it, by being mentioned explicitly or it is implied by context;

(b) it does not contravene the Quran or the Sunnah;

(c) it does not negate the purpose of the contract; the contract in its entirety is void if this provision is unmet;

(d) it is possible for the party concerned to abide by it.

Delivery and Receipt

Ruling 418: Each party is required to give to the other party what is due when the other party does so and to allow each other possession in doing so, provided that there is no condition in the sale contract to the contrary. Therefore, if the sold item grows in value before possession is given to the buyer, the growth in value is for the buyer, and if it is damaged the seller is liable. However, if the buyer refuses to take possession while being able to do so, he is liable for the damage.

Ruling 419: It is permissible for the buyer to sell the item before taking possession over it, although it is disliked, with the condition that he sells it for no profit or loss, and that it is not something that is weighed or measured, based on an obligatory precaution. However, these conditions do not apply if one partner is selling his share of the partnership to another partner. As an obligatory precaution, the above applies to the price paid for the bought item in respect to the seller, as well.

Ruling 420: In a sale of gold for silver, or vice-versa, it is necessary to exchange possession together, otherwise the sale is void.

Cash and Deferred Payment

Cash payment refers to payment of the price of an item being bought without deferral or delay, and all sales – which are not qualified by any provisions to the contrary – are based on this.

Deferred payment refers to payment of the price of an item being bought with deferral or delay. In such a case it is necessary that there are terms in the contract that allow this, and that the payment is generic money – rather than any specific items – for which the buyer is liable for.

Ruling 421: There is no limit to the set period of deferment so it can be for a short or a long period, but as an obligatory precaution, it is necessary that the time limit is known and precise. If the buyer makes the payment before the end of the deferral period, the seller is not obligated to take it.

Ruling 422: It is permissible in a sale where payment is deferred to set a higher price – than the normal cash price – due to the delay in payment. However, it is not permissible to allow the deferral of payment a second time for another increase in price, as this will be considered interest. Immediate cash payment for a decrease in the price is permissible, such that the seller will release the buyer of any liability over the remainder of the price.

Ruling 423: A sale contract with a deferred payment is invalid if it is stipulated that the buyer will then sell it back to the seller for a lower price, and – based on an obligatory precaution – vice-versa. In fact, as an obligatory precaution,

nothing should be sold with the condition that the buyer sells it back to the seller in any circumstance.

Sale Margins (*Musawama*, *Murabaha*, *Muwadha'a* and *Tawliya*)

Musawama refers to a sale in which the price at which the item of sale was bought by the buyer is not taken into consideration in the contract of sale, and this is the most preferred type of sale.

Tawliya refers to a sale in which the price of the item being sold is the same price at which it was bought by the seller, i.e. the contract is based on the seller breaking even.

Muwadha'a refers to a sale in which the price of the item being sold is less than the price at which it was bought by the seller, i.e. the contract is based on the seller making a loss.

Murabaha refers to a sale in which the price of the item being sold is more than the price at which it was bought by the seller, i.e. the contract is based on the seller making a profit. For a trade to be considered as *murabaha,* the increase in the price should be mentioned as a 'profit' rather than 'an increase' as an obligatory precaution

Ruling 424: In the latter three types of sales, it is necessary to specify the price at which the item was bought by the seller, as an obligatory precaution. If the seller does not mention it correctly, the sale is valid, but the buyer has the right of withdrawal due to the misrepresentation of the attribute of the item sold to him.

Ruling 425: If the seller bought the sold items for a deferred payment – in the latter three types of sales – it is

obligatory for him to inform the buyer of the deferment. If he does not do so, the same deferment will be passed to the buyer.

Ruling 426: If the owner of the property specifies a price to a broker (who will sell it on his behalf), and said to him, "Whatever exceeds this price is yours," this will be permissible, but it is not permissible for the broker to sell the property in a *murabaha* sale, such that the amount specified by the seller is regarded as the buying price and anything above that is profit, because he did not buy it from the seller.

Interest

Interest is amongst the strongly forbidden things and one of the cardinal offences, and it has been regarded as one of the greatest of the major sins.

It is divided into two categories:

(1) Interest of loan

(2) Interest of transaction: this occurs when one side of the exchange is greater than the other in quantity, whether the exchange is by a sale or anything else, if the exchange is based on the said addition.

Ruling 427: The prohibition of the second type of interest is based on the following two conditions:

(1) That both sides of exchange should be something weighed or measured. As an obligatory precaution, this also includes items quantified by counting while their attributes are the same, if one side of the exchange is deferred and is greater in number than the side of the exchange to be delivered first.

(2) That both sides of exchange should be of one kind, even if they are different in attribute; it should be noted that wheat and barley are regarded as one kind.

Ruling 428: As an obligatory precaution, it is not permissible to sell meat in exchange for live animals, or vice-versa, whether the meat is of the same type of animal or not.

Ruling 429: It is permissible, although disliked, to sell dried goods in exchange for fresh goods if they are of the same kind and their quantity is the same, like selling raisins for grapes. However, if one is greater than the other in quantity, then it is not permissible.

Ruling 430: In the prohibition of increase (as explained above) it makes no difference whether the increase is of the same type as the rest of the goods of exchange, or whether it's something else. In fact, this is so, as an obligatory precaution, even if it is labour or an extra condition, such as extra time given for the delivery of one side of the exchange.

Ruling 431: The rules about the prohibition of interest do not apply to transactions between a father and his children (whether they are his sons or daughters), nor between husband and wife, nor between a Muslim and non-Muslim who is at war with Muslims as long as the addition is for the Muslim.

Ruling 432: It is permissible to deposit money in a private non-Muslim bank if they pay interest to the Muslim, and this is not permissible in respect to private Muslim banks.

Ruling 433: It is permissible to deposit money in government banks - other than that of governments that are based on religious authority - without the intention of making it a condition that one will receive the interest, and one should deal with it on the basis that it is money whose owner is unknown, i.e. one should receive it with the intention of being on behalf of his Eminence Sayyid Mohammed Saeed Al-Hakim (may Allah prolong his life) and then intend to own it.

Ruling 434: Whoever takes interest in ignorance of its

prohibition, and then came to know that it is forbidden and he repented, what he has already taken will be permissible for him, and he must leave what he has not already taken. As for the one who has taken it knowing that it is forbidden, his repentance will not make what he took as interest permissible for him, and he must return it.

Ruling 435: Whoever inherits wealth from somebody who took interest, and if he knows exactly what items they are, he should return them to their rightful owner; if he does not know the rightful owner, it will be regarded as wealth whose owner is unknown. If the interest has become mixed and indistinguishable from the rest of the wealth inherited, it will become lawful for the inheritor, and the deceased will have the burden of the sin.

Advance Payment and Deferred Delivery (*Salaf*)

Salaf refers to a sale in which the payment is made in advance and the sold goods – which are not particular specified items – will be given later. This will require a provision in the contract.

Ruling 436: This type of sale has a number of conditions:

(1) Specification of the attributes and characteristics of the sold goods in general, in such a way that will not allow any great differences in the items.

(2) The price is paid before the parties part; otherwise, such a contract will not allow for delayed delivery of the sold items. In fact, as an obligatory precaution, the whole sale will become void.

(3) Exact specification of the deferral period of the goods.

(4) That the sale contract itself is valid; e.g. it does not include interest, and it does not involve the sale of gold for silver or vice-versa, and any other matters that will invalidate the contract.

Ruling 437: It is not obligatory on the buyer to take possession of the goods he has bought before the deferral limit. If the seller is unable to pass possession of the goods before the deferral limit, the buyer has a choice of either voiding the contract or waiting.

The Sale of Fruits, Crops and Vegetation

Ruling 438: If fruit that hasn't appeared is to be sold, then there are two scenarios:

(1) If the fruit of one year is sold: then something else must be added to the sale for it to be valid as an obligatory precaution.

(2) If the fruit of more than one year is to be sold: then such a sale is valid without the need to add anything to the sale.

Ruling 439: It is disliked to sell fruit before they begin to ripen. The beginning of the ripening of dates is when it begins to become red or yellow, and of grapes is when they become a bunch. The beginning of the ripening of anything other than dates and grapes is when they become edible or usable, as an obligatory precaution.

Ruling 440: It is not permissible to sell the fruit of date palms and the cultivation of wheat crops in exchange for anything else from the same, and the same is the case for all other fruits as an obligatory precaution.

Ruling 441: It is permissible for one who has bought fruit to sell it, before or after he gets possession over it, with or without profit, and the previously mentioned rule in regards to delivery and possession does not apply to them.

Ruling 442: It is permissible to buy the roots of crops before they give fruit; thereafter the buyer will own the fruits when they appear.

Ruling 443: If what is intended in a purchase is fruit, then before the fruits appear its greens cannot be sold, whether they are lathed or picked or sheared. As for after the fruit appear, the pickings, cuttings or shearings can be included.

Ruling 444: Those produce which do not appear, like potatoes and carrots, they can be sold if one knows the production of some of them, and it is best to conciliate on this, and it is permissible to sell their roots in any case.

Ruling 445: It is permissible for one of two partners who own date palms or trees or crops to accept to take the other's portion of his produce in exchange for a specified amount. If they agree to this, the partner has the right to the specified amount from his co-partner, whether this amount turned out to be greater than the produce or less than it or equal to it. The same ruling applies if the partners involved are more than two.

(11)

LEASING

(*IJARAH*)

(11)

LEASING

(*IJARAH*)

Introduction

Leasing is a contract which consists of passing the benefits of assets to the lessee, by giving possession of the asset to the lessee in exchange for a specified fee.

Note: Here, a lease also includes the hiring of people for work and the lease payment will be their wages.

Ruling 446: The benefit should be independent from the asset, such that it is possible to gain the benefit from the asset while the latter still remains. Therefore, it is necessary that the asset is capable of being leased. There a number of other conditions in respect to the benefit, as follows:

(1) Specification, such that it is not confused between two things or more.

(2) That the benefit is permissible, so – for example – the leasing of places in order for prohibited deeds to take place is invalid.

(3) That its handing over and delivery does not involve an impermissible act, such as the hiring of a woman in her menses to clean a mosque.

(4) Actual ability to receive the said benefit, as an obligatory precaution.

(5) Knowledge of the approximate quantity of the said benefit, as an obligatory precaution. However, one can lease land in exchange for a specified portion of its produce, such as a third or a quarter. As for the lease payment – which is paid in lieu of the benefit received – as an obligatory precaution one should know it in the same way as explained previously about the price of items sold (see Ruling 414).

The Rules of Leasing

Ruling 447: Leases are one of the binding contracts, so they cannot be cancelled except with the agreement of both parties, or with the establishing of the right of withdrawal for either or both of them.

Ruling 448: If the lessee finds a defect in the item leased to him, and was unaware of it at the time of entering into the lease agreement, and if this defect results in him not being able to fully benefit from the leased item – such as some rooms of a leased house being unusable – he will revert to the lessor and obtain from him a refund of the lease payment proportionate to the lost benefit. If it results in a defect in the benefit itself – such as an animal being cripple – he has the option to cancel the lease.

Ruling 449: If the lessor finds a defect in the lease payment (e.g. the rent), he has the option to cancel the lease if the payment is a specific item. If it is a non-specific item – such as currency – he can demand a replacement.

Ruling 450: If the owner of the leased item sells it before the end of the lease period, the lease does not become void by this; rather, the item's ownership will pass to the buyer, although he will not have the right of utilizing it during the lease; if he did not know about the lease, he will have the right of withdrawal from the sale agreement.

Ruling 451: When the lease contract is consummated, it is obligatory upon both parties – the lessee and the lessor – to pass over to the other what is obligated upon them in

the manner stipulated in the terms of the agreement. In the event of the contract being silent on this issue, they will act according to what is customary and usual.

Ruling 452: If either of the parties withholds what is due upon them for the other party as per the agreed terms, the other party has the right to void the contract. If one party has handed over what is due upon them and the period of the lease has ended, then if it is the lessee the contract is annulled and the lease payment will be returned to him; and if it is the lessor, he has the right to demand the lease payment.

Ruling 453: If the benefit which is the subject of the lease is limited to a particular time, it is sufficient that it be surrendered during this time to the lessee – hence executing the lease – such as the surrendering of the keys to a house or a car, or the presence of workers at their workplace, at a particular period of time, even if the lessee does not actually benefit from it.

Ruling 454: If it is not possible to obtain the benefit from the leased asset before it is passed to the lessee, the lease becomes void. The same is the case if the subject of the benefit is no longer present; for example, if a doctor is hired to treat a patient, but the patient has been cured before his treatment, the contract becomes void. However, if the lessee in particular is unable to use it for a specific reason – for example, if he cannot use a hired car because the government does not allow him to drive it or due to his ill health – and it has not been made a condition that he himself should be able to use the leased item, the lease is valid and the lessee may pass the item to somebody else for

free or for a lease so he may benefit from it.

Ruling 455: The leased asset is given in trust to the lessee, as is the item given to the hired person, such as a hired tailor who is given cloth to work on, or a hired repairman who is given the item to be repaired. Therefore, there is no liability on any of them – the lessee or the hired person – for any loss or damage, except if he transgresses or acts negligently or it is an agreed condition in the contract.

Ruling 456: Whoever is hired to work on the property of somebody else or on his person, such as a tailor, a butcher, and a doctor, – even if he is working voluntarily – if he was requested to work well without specification of what work he will do, he will be liable if he causes damage or loss. The same applies if the work is specified and he exceeds the limits of his specified work.

Ruling 457: Doctors – whether they are actually treating the patient or overseeing his treatment – are liable if the patient is a child or insane or the like; rather, they are liable as an obligatory precaution even if the patient is not so. However they are not liable by just advising medications if it is merely to give his medical opinion, not in order to arrange actual treatment. The doctor is also not liable if the patient or his guardian waives his liabilities, provided that the doctor was not negligent. If he was negligent, he will remain liable. All this also applies to veterinary doctors.

Ruling 458: If a doctor is treating a patient or ordering his treatment, his assistant who follows the doctor and applies his directions – such as a nurse – will be liable if the patient is a child or insane or the like, in two situations:

(1) when the patient or his guardian has not given permission in applying the orders of the doctors;

(2) when he exceeds the guidance and directions of the doctor without the permission of the patient or his guardian.

Ruling 459: If a person is hired to carry and transport something, and he drops it and damages it, he will not be liable except if this was due to his shortcoming, e.g. by not walking in a normal way, or by walking faster than usual, or by knowing that he is unable to carry it, etc.

Ruling 460: If a hired person claims that the item that was given to him in trust has been lost or damaged in such a way that does not make him liable, such as theft, being burnt or sunk in water, he will be believed if he is reliable and trustworthy, or if he comes with two *adil* witnesses, or if there is something there that is consistent with it – such as if his whole shop was burglarized. The same is the case if he testifies to this, as an obligatory precaution. Without this, it is permissible to hold him liable.

Ruling 461: A lessee can lease out the leased item to another party, such as the reservation of a coach seat, unless it has been expressly or implicitly agreed that only the lessee himself may benefit from it, even if such implication may be derived from the fact that such leases generally have such a term.

However, if the lease agreement conventionally restricts the passing of the leased item to the lessee in particular, then the sub-lease will not be valid without the permission of the lessor. If the lessor gives permission to the lessee to

lease the item to a third party, or the original lease contract conventionally allows such subleasing, then the lessee must ensure that the sub-lessee is trustworthy in his eyes.

It is not permissible for the lessee to lease the item out to somebody who he does not believe to be trustworthy except with the express permission of the lessor who owns the item.

Ruling 462: If the lease contract of an item allows it to be sub-leased, it is permissible to do so for the same or a lower lease payment; he may also lease it for a higher lease payment if some change has occurred on the lease item, such as repair, painting, etc.

Ruling 463: Whoever is hired for a particular work, such as to build a house or to sew a garment, for a specified wage, in such a way that he is allowed to hire someone else to do it, he cannot hire somebody else to do that work for a lower wage than he is to receive, except if he has done part of the work himself, such as the laying of the foundation of the house, or the cutting of the cloth.

Ruling 464: If one is hired for a particular work subject to a particular agreed condition in respect to time, place, usage of tools or anything else, and he undertakes it without complying with the agreement made, then there are two possible scenarios:

(1) The work now is not possible, even if it's due to the passing of the stipulated time. The hire agreement is annulled and the hired person will not need to be paid for his work.
(2) The work is still possible. He is required to repeat the

work according to the agreed conditions in some cases. Further details of this scenario can be found in the detailed books.

Ruling 465: If one is hired for a particular work subject to an agreed condition in respect to something other than the work, and he undertakes it without complying with the condition, the hiring is valid and the hired person has the right to the wage, but it is also permissible for the hirer to annul the hire contract and to give him the conventional wage according to the work undertaken only.

Ruling 466: If one is hired for a particular work, and is then unable to undertake it and does not complete it, he has the right to receive a portion of the agreed wage in proportion to the work he has completed.

Ruling 467: The lessee does not have the right of possession over the leased asset after the period of the lease has expired, and he must return it to the owner if he wants it, except if there is a condition within the lease agreement or another contract which establishes such a right, and this is discussed in greater depth in other detailed books of Islamic law.

Ruling 468: Anybody who seeks from somebody else labour or benefit – which have a customary monetary value – and the other provides him with what he seeks, he must pay the provider remuneration for what he has provided, with the following conditions:

(1) That the seeker is capable of disposing of his affairs, so he should not be a child, or insane, or whose wealth has been frozen.

(2) That there is no indication from the perspective of the provider that the seeker wanted what he sought for free.

(3) That the provider did not intend to do so for free.

Ruling 469: If the seeking of the benefit and its provision as mentioned in the previous ruling is based on a specified payment – such as the hotel-owner who writes on a sign a specific nightly rent, or the doctor who offers treatment for a specific price – that specified payment should be paid. If there is no specified price, he should pay a conventionally appropriate amount.

This also applies for tangible owned items, such as somebody asking for food at a restaurant, and he eats it; he is obligated to pay its price as long as there is no intention of this being for free from both parties.

Rewards (*Ju'ala*)

This is when a person obligates himself to pay another person in return for work done. This is one of the unilateral contracts, so it is sufficient that the person who wants something done to merely make the offer. For example, one would say: "Whoever returns to me my stray horse, I will pay him such-and-such amount," or "Whoever repairs this equipment, I will pay him such-and-such amount."

Ruling 470: It is necessary for the offeror to be able to dispose of his property, and that he is not impaired in his dealings due to foolishness, or being a child, or insane, otherwise the permission of his guardian will be required.

Ruling 471: For the acceptor to deserve the payment, it is necessary that he completes the work with the intention of deserving the payment. It is permissible to withdraw the offer before the work is commenced upon; however it is problematic to withdraw from it after it has begun or if it is in preliminary stages, and the details of these issues have been dealt with in more detailed books of Islamic law.

(12)
SILENT PARTNERSHIPS
(*MUDHARABA*)

(12)

SILENT PARTNERSHIPS

(*MUDHARABA*)

Mudharaba is a contract between two parties: the owner of money (the silent partner) and another person (the active partner) who trades with it in lieu of a certain proportion of profits. It is necessary that the contract consists of an offer and an acceptance by any way that indicates it, whether by words or conduct. The contract comes into effect by handing over the money with the intention of silent partnership.

Ruling 472: It is necessary in silent partnership that the money stays in the ownership of its owner, so the active partner acts as his agent. This money can be gold, silver or bank notes. It may also be other tangible assets if it is agreed that its like or its worth be preserved as capital.

Ruling 473: A transaction will be valid if it is based on handing over a certain benefit to the active partner in exchange for a specific portion of the profit, but this will not be considered to be *mudharabah*; for example, giving a vehicle to someone to use for transport with the income divided between them. Similarly, a transaction is also valid if it is based on giving both benefit and money; for example, one party provides a factory and another party provides money, for the third party to use both for his business, with the division of the profits between them.

Ruling 474: A contractual agreement will not be regarded as silent partnership unless the profits are shared amongst them both in specified undivided portions, such as splitting it fifty-fifty, or a third for one and two-thirds for the other.

Ruling 475: If the silent partner stipulates limitations and restrictions on the active partner, with respect to the type of items to be traded, the timeframe of the business, the place, etc., then if the active partner violated any of those terms as a result of which he incurred a loss, then he will be liable for that loss.

If he violated any of those terms, and a loss was incurred due to another reason, then it will be problematic to deem the active partner to be liable; therefore, the partners should conciliate with each other.

If no such limitations were stipulated and the disposal of the money was delegated to the active partner, he will not be liable for loss except if he transgresses or acts negligently.

Ruling 476: Loss will be made up by the gains obtained in the partnership, so the active partner will not receive anything except after the losses are made up. However, if the money invested into the partnership – or some of it – perishes before trading with it, any subsequent gains will not make those losses up.

Ruling 477: If the active partner abided by the conditions of the partnership and then incurred a loss without any negligence on his part, then he is not liable. Furthermore, the owner of the money cannot make it a condition that the active partner will be liable for any losses, even if they arise without any negligence.

(13)
SHARECROPPING CONTRACTS
(*MUZARA'AH* AND *MUSAQAAH*)

(13)

SHARECROPPING CONTRACTS

(*MUZARA'AH* AND *MUSAQAAH*)

Muzara'ah

This is a contract between two parties: (i) the owner of land, or somebody who possesses the benefit of it such as a tenant or a beneficiary, and (ii) another person who takes on the responsibility of cultivating the land, in exchange for a proportion of the gains.

Ruling 478: There are several conditions for such contracts:

(1) That the gains are divided between them both in specified undivided portions, like a half or a quarter.

(2) The period should be specified and it should be appropriate for the cultivation and farming, whether it is specified in terms of months, seasons or years.

(3) The land should be identified in such a way that there is no ambiguity.

(4) The division of the responsibilities in regards to the seeds, tools, labourers, etc. should be specified.

(5) The land should be capable of being cultivated.

Ruling 479: Once they have agreed amongst themselves

the type of cultivation or the specified time or method, it is not permissible to contravene the agreement, and neither party can suppose anything further to be part of the contract.

Ruling 480: If the contract is silent on the matter of government taxes, then the government tax on the land will be borne by the land-owner; as for the tax on the farming and cultivation, it will be taken out of the gains arising out of the cultivation before it is divided.

Musaqaah

This is a contract between two parties: (i) the owner of cultivated plants, such as date trees and grapevines, or the person who owns their fruit in any way, and (ii) another person who takes on the responsibility of watering the plants, as well as maybe caring for them, tending to them and fertilizing them, and the like.

Ruling 481: There are several conditions for such agreements:

(1) The fruit should be divided amongst them both in specified undivided portions, as an obligatory precaution.

(2) The period and the plants to be watered should be specified, as well as what responsibilities both of them bear in regards to the work, the tools, and the like.

(3) The plants must be rooted in the land.

(4) This contract must take place before the plants bear fruit, or after they bear fruit but before they mature provided that their maturation requires watering.

(5) There should be capability in watering the plants to the level sufficient to achieve the desired fruits.

Ruling 482: Both *muzara'ah* and *musaqaah* are binding contracts, formed by offer and acceptance by any way that indicates it, and they are not annulled except if both parties agree or by one party who has an established right of withdrawal. Therefore, it is necessary that the two parties

are capable of contracting with one another, and that neither of them have restrictions on dealing with their own affairs by reason of insanity, childhood or foolishness.

(14)
BORROWING
(*'ARIYAH*)

(14)

BORROWING

(*ARIYAH*)

Borrowing (*ariyah*) is a contractual arrangement by which one hands over possession of a specific tangible item to another person in order for the latter to derive some benefit from it for free, with the subsistence of the borrowed item – i.e. it does not perish by being borrowed and used. This is formed by any means that indicates it, whether by word or conduct.

Ruling 483: It is necessary for the lender to have discretion in his affairs and have the right of disposal.

Ruling 484: The borrower can benefit from the borrowed item only in the manner authorized. Therefore, he is not liable for any loss except in the following cases:

(1) If the borrowed items are gold or silver, as they will be guaranteed by the borrower in all cases, unless otherwise agreed.

(2) If the borrower uses the borrowed items in a way beyond what has been authorized, or he acts negligently with regards to them.

(3) If both parties agree that the borrower is liable.

Ruling 485: As the contract of borrowing is not binding,

either of the borrower or lender can leave it at any time, unless there is an agreed condition stating otherwise, and unless the item borrowed would require a specific time period for its proper usage and the usage has actually begun. For example, if a person has borrowed a pot to cook some food which requires a certain time, the lender cannot take it back once the cooking has begun and until the cooking is completed in the expected time-frame.

(15)
ENTRUSTED CUSTODY

(15)

ENTRUSTED CUSTODY

This is a contract between: (i) the owner of the item – the depositor – and (ii) the trustee, who is entrusted to keep the entrusted item – the deposit – safe. This is formed in any form which indicates it, whether by word or conduct. It is necessary for both parties to have discretion over their affairs and free choice in the matter.

Ruling 486: It is not permissible to treat the deposit in a way that would expose it to danger or harm.

Ruling 487: If no specific manner of protection is stipulated, it is obligatory on the trustee to protect the deposit in a usual manner, such that it is not regarded as negligence. If the depositor specifies a particular manner of protecting the deposit, the trustee must act upon it.

Ruling 488: It is obligatory on the trustee to undertake the upkeep and maintenance of the deposit, such as the provision of food and drink, the allowing of the circulation of air, or exposing it to the sun, etc. If he fails to do so, he will be regarded as being negligent. All this is applicable if there are no terms in the contract to the contrary.

Ruling 489: The trustee, like in all cases of trusteeship, is not liable for any loss unless he transgressed or acted negligently, or it was mutually contractually agreed that he

will be liable even without transgression or negligence.

Ruling 490: The contract is not binding, so either party may exit it at any time, except if there is a condition that requires continuity, in which case it will be necessary to adhere to it.

Ruling 491: It is prohibited to act with transgression and negligence in respect to the entrusted item, whether its depositor is a believer or a non-believer, and whether he is a Muslim or a non-Muslim.

Ruling 492: It is obligatory on the trustee to return the deposit to its owner or his agent whenever he requests it, and whenever it is exposed to danger.

Ruling 493: If the depositor – the owner of the entrusted item – dies, the deposit must be returned to his heir. If the trustee does not know his heir and is despondent about discovering him, he should give the deposit away as *sadaqah* on the depositor's behalf. However, if the heir subsequently appears and is not satisfied with it being given as *sadaqah*, the trustee will compensate for it; the divine reward of the *sadaqah* will then be for the trustee.

(16)
JOINT OWNERSHIP
(*SHIRKAH*)

(16)

JOINT OWNERSHIP

(*SHIRKAH*)

This is when more than one person share in the ownership of property. The ownership of each is such that he owns an undivided portion of it. However, if the property is divided into portions and each is given ownership of specified divided portions, then this is not joint ownership. Joint ownership may be in respect to tangible assets, such as a house or clothes, or it may be in respect to liabilities, such as a debt.

Joint ownership may be formed without choice, such as in inheritance, and sometimes one does have a choice, such as in contractual agreements.

Ruling 494: Contractual joint ownership refers to a mutual agreement on the co-ownership of wealth, but it is usually also based on using the wealth in trading, as companies, to create a profit. Therefore, the parties may have agreed on the particulars of the trade beforehand, so they do not mention these details in the contract of joint-ownership; therefore, they must use the property as has been authorized by all parties, and the business will end if one party exits this agreement or dies. Alternatively, the agreement on the particulars of the business may be included within the

contract of joint ownership – as is usually the case – so the contract will be referred to and will need to be adhered to; however, there will be no effect on the business if some parties leave the contract.

Ruling 495: It is permissible to buy shares in companies which have structure and rules, and the buyer will be bound to the company's structure and rules. However, if the business takes earnings from unlawful sources, then one is not permitted to buy the shares in exchange for the illegitimate profits of the company.

Ruling 496: It is necessary in contractual joint ownership that all parties have agreed to it and to the particularities of the apportionments and restrictions, so there is no ambiguity and risk.

Ruling 497: Every party will receive the share of the profit or loss in proportion to the amount of money he has invested, except if there is a clause in the contract which provides otherwise, in which case such a clause will need to be followed.

Ruling 498: A co-owner may make it a condition that he is to receive more than the due profits as remuneration for his work or services.

Ruling 499: If one or more of the co-owners demand the division and distribution, it is obligatory to accept it, except in the following situations:

(1) If this opposes a mandatory term in the contract of joint ownership or in any other mandatory contract;

(2) If the division will be harmful for the jointly-owned property;

(3) If the division is not proportionally allocated and requires some of the co-owners to pay in order to make up the difference.

Ruling 500: If the co-owners agree on how to divide the property, then they may divide it how they please. But if they disagree on this, the case should be raised to the *hakim shar'i*.

Ruling 501: A co-owner, who is authorized to use and deal with the property, is not liable for the jointly-owned property in his possession, except if he acts with transgression or negligence, or if there is a term in a mandatory contract which makes him liable.

(17)
LOANS AND DEBTS

(17)

LOANS AND DEBTS

A loan is a contract which consists of assigning ownership of some wealth to another who has agreed to return it.

A debt is any liability that one has taken on, whether it is by contract – like a deferred dowry – or without a contract, such as compensation for negligent damage of entrusted property.

Ruling 502: The same conditions apply in contracts of loans that apply in all other contracts, such as the competence of both parties in terms of adulthood and sanity, as well as there being no obstacles in the disposal of one's wealth and there being no compulsion.

Ruling 503: It is necessary in order for the contract to be completed – and for the ownership of the loan to pass to the debtor – that the loaned amount be received by the debtor. Once this has happened, the contract becomes binding and neither party can withdraw.

Ruling 504: The contract of loan is applicable in respect to items such as money, gold or grains, those which can be replaced by an equal amount of similar money, gold or grain. As for items those values are determined by their distinct characteristics, such as hand-made products and animals, they can be loaned provided that their like are

easily available. If they are not easily available, it will be considered as a sale if the conditions of sale are fulfilled, as mentioned in detailed books of Islamic law.

Ruling 505: It is disliked to take a loan while one doesn't need it, whereas it is recommended to loan to a believer.

Ruling 506: It is obligatory to have the intention of returning the loan when receiving it.

Ruling 507: It is not permissible to stipulate an increase for the creditor, whatever it may be, as it is prohibited interest.

Ruling 508: In regards to interest, what is prohibited is that there is a condition of something extra in a loan. The opposite is permissible, e.g. giving an item to somebody with the condition that he gives a loan.

Ruling 509: If the loan repayment – rather, the repayment of any debt – has become due, it cannot be deferred in exchange for increasing the sum owed.

Ruling 510: If a debt is not deferred, it is obligatory upon the debtor to pay the debt when the creditor requests it, or when there are signs that the creditor is not agreeable with the delay. If there is no provision in the agreement to defer the payment, the debtor should not defer the payment of an overdue debt, even if the creditor is agreeable to it. However, it is not obligatory to rush in paying it as long as the creditor accepts the delay.

Ruling 511: If the debtor hasn't paid a debt whose payment is due, while he was able to do so, it is permissible to demand the payment from him. If he refuses to pay, he can be forced to do so, even if this means raising the case

to the courts of the land as a final resort. However, if it is possible to recover the debt through the *hakim shar'i*, then it is not permissible to refer to the courts.

If it is difficult for the debtor to make this payment, it is obligatory to give him respite; in fact, it is recommended for the creditor to abandon his right or part of it.

Ruling 512: If the debtor wishes to pay the debt whose payment is now due, it is obligatory for the creditor to accept it. If he refuses to take it, it is permissible to force him to do so. Failing this, one can turn over the debt to the *hakim shar'i* and he will become free from any liability in this debt.

Ruling 513: In order to become able to repay the debt, it is obligatory on the debtor to earn the money, if it is appropriate for him in respect to his circumstances. However, it is not obligatory to seek gifts and charity. For him to be obliged to pay the debt, it is sufficient that he has some property that he does not need, and it is obligatory to sell it in order to pay the debt, even for less than its value, as long as the difference is not great or harmful for him.

Ruling 514: If the debtor dies, the debt becomes attached to his estate, with priority ahead of his will; any agreement of deferment will also be annulled, so his heirs cannot delay the payment.

Ruling 515: If the debtor cannot get hold of the creditor or anybody who represents him, in order to pay the debt, it is obligatory on him to make a firm intention to pay off the debt whenever possible, and to make a will in respect to the debt, and continuous endeavour to get hold of the

creditor as much as possible, however long this may take. His liability will not be cleared if he pays the debt off to a charitable cause (as *sadaqah*) on behalf of the creditor.

Ruling 516: If the creditor disappears and there is no news of him, then if the debtor knows of his death, he should pay the debt to his heirs. If he is not sure of his death while it is a possibility, he will pay the debt to the heirs after four years of searching, or after ten years without searching.

Ruling 517: It is recommended to pay off the debts of one's parents, especially after their death; it is also recommended to absolve the debt of a believer, whether he is alive or dead.

(18)
MORTGAGING, GUARANTY, PERSONAL SURETY AND DEBT TRANSFER

(18)

MORTGAGING, GUARANTY, PERSONAL SURETY AND DEBT TRANSFER

Mortgaging (*Rahn*)

This is an agreement whereby some property is placed as security for a loan, so that the lender can collect the payment from it. The property is called the mortgaged property, and the debtor is called the mortgagor, and the lender is called the mortgagee.

Ruling 518: Such an agreement is formed by any way that indicates it, whether verbally or by conduct. It is necessary for the mortgagee and the mortgagor to be able to enter such contracts by the Sharia, just as in all contracts.

Ruling 519: The contract becomes valid and complete by merely an agreement, and it is not necessary for the mortgagee to actually take possession of the mortgaged property.

Ruling 520: It is not possible to withdraw from the contract, except with the agreement of both parties, and it becomes annulled by the mortgagee denying his right over the mortgaged property or by the debtor becoming relieved of his debt upon which the mortgaged property was presented as security.

Ruling 521: If the mortgaged property is damaged or it can no longer be used, then if it was guaranteed its replacement will take its place, otherwise the mortgage will become void. It is not obligatory on the mortgagor to replace the mortgaged property except if there is a condition in the contract which obliges him to do so.

Ruling 522: If the mortgagor mortgaged his property on somebody else's loan, and it was used to clear the debt, the mortgagor may go to the debtor to be reimbursed except if the mortgage was done without the debtor's request or permission; otherwise, he cannot demand it from the debtor.

Ruling 523: A mortgage contract is valid for any type of debt liability, whether it is cash, food or anything else. However, it is not valid if it is used to secure an expected debt for which he is not liable yet, such as the wage of a labourer before he begins work.

Ruling 524: Unless there is a clause in the contract of not giving possession of the mortgaged property to the mortgagee, it is obligatory for the mortgagor to hand it over to him. Once it has been passed to the mortgagee, it will be considered to be entrusted to his custody as *amanah*, which he will not be responsible for except if there is damage due to his negligence or wrongdoing. If it is not to be passed to the mortgagee, he will still have a right over it, so the mortgagor cannot use it or dispose of it in a way that will violate the mortgagee's right.

Ruling 525: The benefits and proceeds of the mortgaged property – such as the residence in a house or the milk of an animal – is the property of the mortgagor. If the mortgagee

stipulated that the benefits and proceeds will belong to him, and this stipulation was in the loan contract, this clause is void because it is prohibited interest; if he stipulated this in a mortgage contract which is independently formed or any other contract, it is apparently permissible.

Ruling 526: If the mortgagee dies, his right over of the mortgaged property will be passed to his heirs. If the mortgagor dies, the mortgage will not be annulled.

Ruling 527: If the payment of a debt is due, the mortgagee cannot autonomously seek its payment from the mortgaged property; rather, it is necessary for him to refer to the mortgagor to seek the payment, either from his wealth or from the mortgaged property. However, if there is a condition in the contract that the mortgagee may directly seek to clear the debt from the mortgaged property without referring to the mortgagor, then he may do so. However, if the mortgagor becomes bankrupt or he dies with a debt that his estate cannot cover, it is problematic for the mortgagee to independently from other creditors seek the payment of the debt owed to him from the mortgaged property, and it will be necessary for him to conciliate the matter with the other creditors.

Ruling 528: If the mortgagor dies, and the mortgagee does not have confirmation of the debt by two *adil* witnesses and he fears that the heirs will take the mortgaged property and deny his debt if he attests to the mortgage, it is permissible for him to clear the debt owed to him from the mortgaged property, and whatever is extra will be handed to the heirs, without him having to attest to the mortgage.

Guaranty (*Dhaman*)

This is a contract between a guarantor and a creditor, whereby the guarantor will undertake to bear an established debt which is the liability of a third person, the debtor. Both parties, as in all contracts, must be able to enter into such contracts, so they must be adults, sane, un-coerced, etc.

Ruling 529: This is one of the binding contracts, so neither party has the choice to withdraw, nor can there be a provision for the right of withdrawal, and the right of withdrawal is not established for violating a condition. However, if the guaranty agreement was with the permission of the debtor, such conditions are valid.

Ruling 530: When the guaranty agreement has been formed, the liability of the debt will be transferred to the guarantor. The guarantor then has the right to revert to the debtor to demand reimbursement of the money he paid to clear his debt, if the guaranty was with his permission or request.

Ruling 531: It is permissible to guaranty a debt which was overdue and granted deferral – such that the creditor does not have the right to demand payment until after the deferred period – just as it is also permissible to guaranty a deferred debt with immediate payment.

Personal Surety for Bail (*Kafalah*)

This is when one person – the assuror – promises and assures another person that a third (bailed) person will appear for any case against him, such that if the bailed person does not show up the assuror will force him to appear.

The details of this are given in the more comprehensive books of Islamic law.

Debt Transfer (*Hiwalah*)

This is when a debtor transfers his debt to another person, such that the latter now becomes the debtor, and the original debtor becomes free of any liability.

Ruling 532: It is necessary for the original debtor and the creditor to be adults, sane and not coerced; it is necessary for the original debtor and the second debtor both to not be barred from disposal of their wealth due to foolishness or bankruptcy.

Ruling 533: If the second debtor is not indebted to the creditor and he did not volunteer to be liable for the debt, the original debtor will still be liable to pay the amount of the transferred debt to the second debtor.

Ruling 534: *Hiwalah* is similar to guaranty in regards to it being binding and the invalidity of any conditions of withdrawal, etc, except if it was with the agreement of the new debtor.

(19)
RESTRICTION IN DISPOSAL (*HAJR*)

(19)

RESTRICTION IN DISPOSAL

(*HAJR*)

This refers to the prevention and barring of a person in disposing of his affairs, whether in respect to his person or his property, due to shortcoming in his authority as will be explained.

Ruling 535: This may be caused by a number of reasons, the most common of which are as follows:

(1) Childhood: a child cannot dispose of his own affairs, even if he is perceptive and discerning, until he is an adult in the eyes of the Sharia. Some dispositions are excluded from this, like the communication of a will, or disposing of the property of another person with the latter's permission, and the like.

(2) Insanity: such that he cannot discern between good and bad, nor between harm and benefit, and he does not make good decisions as those with normal intellect do.

(3) Foolishness: this is a psychological state whereby one has a shortcoming in understand things, such that he may act in a way that will expose his wealth to loss, corruption or abuse.

(4) Bankruptcy: this is when one's total wealth is less than

the debts he owes, and when his matter is raised to the *hakim shar'i* to resolve who will demand all his debts to be settled. If his total wealth is insufficient to do so, the *hakim shar'i* will assume the role of settling all the debts in a manner by which there is a shortfall in the payments to all creditors. As such, the *hakim shar'i* will effectively disallow the bankrupt person to use his wealth in any way that will hinder or prevent the repayment of the debts.

The Guardians

Ruling 536: The father and the paternal grandfather have the guardianship of the child in respect to the child's person and his wealth, except in the matter of divorce and some branches of the matter of marriage. Both may appoint a custodian in the event of their deaths; however the custodian cannot override the right of the guardian. The father and the paternal grandfather also have the guardianship of an insane person until he becomes adult, at which point guardianship will be turned to the person closest to him in inheritance.

Ruling 537: As for somebody who is foolish in his affairs, if he is a child his guardianship will be with the guardians of children as explained above. If such foolishness came to him after he become an adult, as an obligatory precaution the guardianship belongs to the *hakim shar'i* along with the father and paternal grandfather, and then the closest to him in inheritance if he wishes so.

(20)
DISPUTE RESOLUTION

(20)

DISPUTE RESOLUTION

This refers to a contract which is formed when regular contracts fall short in actualizing what is sought by the two parties or to resolve a dispute between them.

Ruling 538: The usual conditions of the two parties apply here, such as their being competent to enter into contracts, out of their own choice and without having any restriction on their right of disposal over their property.

Ruling 539: The contract is formed by any means that indicate it, whether by words or by conduct, on the condition that it does not make the unlawful lawful and vice-versa, and it does not violate any laws of the Sharia.

Ruling 540: It is a binding contract, so it cannot be annulled except by exercising one's right of withdrawal if stipulated.

Ruling 541: This contract is valid in the case of a quarrel or dispute or in the case where this is feared, in order to divide the property disputed over between the parties, or to assign it to one of them, or to do anything else that will settle the dispute or prevent it from occurring.

Ruling 542: It is permissible to enter into a dispute resolution agreement by which jointly-owned properties in undivided portions are divided and specified for each party; for example, two joint-owners of a goat and sheep,

who own an unspecified 50% each, come to an agreement of one of them taking ownership of the goat and the other taking ownership of the sheep.

Ruling 543: It is permissible to enter into a dispute resolution agreement when the parties are uncertain about their rights, such that specification of what each party owns is required.

Ruling 544: It is permissible to enter into a dispute resolution agreement by a person who believes that he holds a right, or his guardian, when it is doubted whether such a right is established for him, in such a way that clears any doubt.

Ruling 545: It is permissible to enter into a dispute resolution agreement of surrendering a part of one's established known right to the other party, with the following two conditions:

(1) that the owner of the right knows the amount that he is entitled to;

(2) that the compromise is based on the true and good intent to absolve the other party from that part of the amount owed to him.

(21)
AGENCY
(*WAKALAH*)

(21)

AGENCY

(*WAKALAH*)

This is a contract by which a person (the principal) nominates his representative (the agent) to act according to the agency contract. The contract will have immediate effect, and it is sufficient in forming the contract anything that shows the intention to abide by it.

Ruling 546: It is necessary for both the principal and the agent to be adult and sane, and to not be restricted in the disposal of their affairs, except that one can permit a discerning child in the disposal of his property, and such disposal will be valid, even if the child's guardian does not give permission for the child to act as an agent.

Ruling 547: In order for the agent's dealings to be valid, the principal himself should have authority over such dealings.

Ruling 548: Agency is a contract that is non-binding, so it is possible to dismiss the agent at any time, except if there is a clause that excludes the right to dismiss him forever or for a specified period, and such a clause is valid.

Ruling 549: The nomination of an agent is valid in respect to all those acts for which the Sharia does not require the

principal to be directly involved in.

Ruling 550: The agent should abide by what the contract restricts him to if there is a restriction. If there is no restriction and he is given absolute agency, he is free to make his choices.

Ruling 551: If the agent enters into any transaction, he will be answerable to it and any of its consequences, except if there is a context which excludes him from responsibility, or if there is anything explicit which indicates it.

Ruling 552: It is possible for an agent to take payment from the principal, for him taking the role of his agent, or for the work which he does as an agent.

(22)
GIFTS

(22)

GIFTS

This refers to an agreement by which the ownership of a tangible item of one person is passed to another, for nothing in return, but not by way of charity.

Ruling 553: The giving of a service or a benefit, rather than a tangible item, is not regarded as a gift.

Ruling 554: Both the giver and the recipient must be adult and sane, otherwise if either is a child or not sane, his guardian can stand in his place. For the giver of the gift in particular, it is also a condition that he is not restricted in his dealings due to foolishness or bankruptcy.

Ruling 555: In order for the gift to be considered valid – i.e. for the ownership to pass – it is necessary for the recipient to take possession of the gifted item with the permission of the giver. It is not sufficient for the passing of ownership for one to leave the gift somewhere for the recipient to take.

Ruling 556: A gift of an undivided portion of a property is valid, for example, gifting somebody one-tenth of the ownership of a house.

Ruling 557: It is valid for one to give a gift of something that is owed by him, to the person whom he owes or anyone else. In the former case, it will result in the clearing of that amount of debt.

Ruling 558: If the gifting takes place and is completed by the recipient taking possession of it, it is not binding, and it is possible to withdraw from it, except in the following cases:

(1) That there is a blood kinship between them both;

(2) That the giver has been given something in exchange for the gift; for this to be binding, as an obligatory precaution the exchange should have been given by the recipient of the gift, not anybody else;

(3) That the gifted item has changed;

(4) That the gifted item is no longer the property of the recipient;

(5) That one of them have died.

Ruling 559: It is possible for the gift to be given with the condition of receiving something in return, and it is not necessary for that to be something tangible; rather, it can be some other kind of benefit or service. If the gift is given with any condition, it is obligatory to abide by the condition, and the agreement will be binding.

(23)
RELIGIOUS ENDOWMENTS (WAQF)

(23)

RELIGIOUS ENDOWMENTS

(*WAQF*)

Introduction

Religious endowment – *waqf* – refers to taking a tangible property out of one's ownership and to tie it up inalienably for its use, by its benefits and profits, for a general or specific purpose .

Waqf is divided into two categories:

(1) That the endowment is bestowed without the particular beneficiaries in mind who will make use of it, such as the *waqf* of mosques and that of holy shrines.

(2) That the endowment is bestowed with the particular beneficiaries in mind, whether by a general reference, such as the *waqf* of a religious school for its students, or by a specific reference, such as the *waqf* of a shop in order to use the rent income for a mosque, or the *waqf* of a house for one's children.

Establishing *Waqf* and Its Conditions

Ruling 560: *Waqf* is established by any means that indicates it, whether by word or by conduct, by the endower or his agent. This is a unilateral declaration, which means that the beneficiary is not required to reciprocally accept it.

Ruling 561: The following conditions apply for the validity of the *waqf*:

(1) The endower should have the intention of *qurbah* – gaining proximity to Allah Almighty – as an obligatory precaution;

(2) The endowed item should be taken possession of from the endower, and if he dies before this the endowed item will be passed to his heirs as inheritance. As an obligatory precaution taking possession should be with the endower's permission;

(3) The endowed item should be used by the beneficiaries if the endowment is general in nature, as an obligatory precaution;

(4) The endowment should be perpetual;

(5) The endowment should be unconditional.

Ruling 562: The endower should fulfil the following conditions:

(1) He should have the right of disposal over the endowed item;

(2) He should be sane;

(3) His right of disposal should not be restricted due to foolishness or the like;

(4) He should be an adult, as an obligatory precaution;

(5) He should make the endowment freely, by his own choice.

Ruling 563: The endowed thing should be a tangible item, rather than a service or benefit; it should exist and be specified, and it should have a lawful benefit which is possible to obtain.

Various Rulings on *Waqf*

Ruling 564: It is permissible for the endower to appoint himself or another person as a custodian over the endowment, whether it is in respect to investing it, or building it, or using it, etc. In such a situation, nobody will have the right to deal with it without the custodian's permission.

Ruling 565: It is permissible to appoint more than one custodian, and such endowments are of two types:

(1) Joint-custodianship, where all the appointees are collectively custodians over the endowment, such as the scholars or the relatives.

(2) Successive custodianship, where one or some of the appointees are custodians at a given time, such as one's offspring where each generation have custodianship, one after the other.

Ruling 556: It is permissible for the endower to set payment for the appointed custodian in lieu of his work, from the yields of the endowed property.

Ruling 567: The appointed custodian for any period of time is obligated to observe and consider the interests of the endowment in respect to all generations and eras, not just the period of time in which he is the custodian.

Ruling 568: Once the endowment is completed and all the conditions are fulfilled, it becomes binding, and neither the endower can annul it, nor his heirs.

Ruling 569: It is not permissible to sell a mosque or the like which are the subject of endowments of the first category (mentioned at the beginning of the chapter). As for endowments of the second category, like that of a house for one's offspring, it may be sold provided certain conditions are met – which are mentioned in detailed books of Islamic law – or if the endower explicitly allowed for it to be sold when certain circumstances arise, such as a dispute amongst the beneficiaries or the like.

Ruling 570: A religious endowment is proven to exist by any of the following ways:

(1) coming to know of it by any way;

(2) with the testimony of two *adil* men;

(3) the informing of the person who holds it;

(4) the way the people deal with it which indicates that it is a religious endowment, such as praying in a mosque.

Similarly the particulars of the endowment are also proven by these ways, such as the purpose or the type of endowment.

Semi-Endowment by Alienation of Property (*Tahbis*)

This type of endowment is similar to *waqf* as explained above, whereby the beneficiaries may benefit from the usage of the given property, but differs from it in that the alienated property – the proceeds and yields of which are given to the beneficiaries – still remains in the ownership of the endower.

Therefore, such endowment is a charitable bequest based on restricting the usage of an owned item for a certain person or persons or cause, such as for pilgrims or for the poor.

Ruling 571: It is necessary for such endowment to be established by anything that indicates it, by word or conduct, and that it consists of the intention of *qurbah*, as explained above.

Ruling 572: It is a binding declaration for the period specified by the endower, and neither he nor his heirs can annul it. If no specified period has been stipulated, then if it is understood that he desired it to be *waqf*, then it will be considered as *waqf*, and if this is not understood then the endowment and alienation of the property will end on his death.

Ruling 573: Such alienation includes the scenario where one alienates a part of a house for the residence of a particular person, whether it is for a certain number of years or until his death.

Ruling 574: The alienated property can be sold by its owner; however, the buyer will not be able to use it until the endowment period ends.

(24)

CHARITABLE GIFTS

(SADAQAH)

(24)

CHARITABLE GIFTS

(*SADAQAH*)

There are two types of *sadaqah*:

(1) Where it is *sadaqah* before it is assigned to any beneficiary; this can be either obligatory, like the *zakah* of wealth and the *zakah* of *fitrah*; or this can be recommended, like separating money for general good causes or as donations for particular good causes, such as to spend it on special religious occasions or for a group of believers.

(2) Where it is regarded as *sadaqah* when it is actually assigned to the beneficiary, such as the obligatory and recommended expiations (*kaffarahs*) which are given to a specific person. This also includes the highly recommended almsgiving to the needy.

Ruling 575: The first type is a unilateral declaration which does not require acceptance from the recipient. The second type is a bilateral agreement, requiring acceptance.

Ruling 576: *Sadaqah* requires the intention of *qurbah*, i.e. seeking to get closer to Allah.

Ruling 577: Hashimites (descendants of Hashim, the grandfather of the Holy Prophet) and non-Hashimites may

receive the *sadaqah* of Hashimites, whether it is obligatory or not. It is not permissible for a Hashimite to receive *zakah* of a non-Hashimite; but other charitable gifts of a non-Hashimite, whether they are obligatory or recommended, can be received by a Hashimite. As for minor alms given for the purpose of repelling hardships and the like which is generally considered to be lowly for the recipient, its permissibility is questionable; it is best for the non-Hashimite to give it to the Hashimite as a gift rather than charity, in order to avoid depriving him of it and humiliating him, although the intention of *qurbah* may still be present.

Ruling 578: It is not permissible to take the *sadaqah* back after giving it to the recipient, even if he is a stranger.

Ruling 579: *Sadaqah* is not permissible for a person who is not in need, or for the *nasibi*s – those who bear animosity with any of the fourteen Infallibles (peace be upon them) – and it is permissible for Muslims of other sects and non-Muslims, provided that they are in need of it, such as to satisfy their hunger or to quench their thirst. Similarly, it is permissible for those whose situation is not known.

Ruling 580: If the recipient of *sadaqah* refuses to accept it and returns it, the owner cannot retake ownership of it; rather, he is obligated to spend it on other good causes.

Ruling 581: Spending money generously, without immoderation, on one's family is better than *sadaqah*.

Ruling 582: Giving *sadaqah* to one's relatives – especially those who are hostile – is more preferable than giving *sadaqah* to others.

Ruling 583: It is recommended to be an intermediary in delivering the *sadaqah* to the beneficiary, and it is disliked to ask for *sadaqah*, even if he is conventionally regarded to be needy.

(25)
WILLS

(25)

WILLS

A will is a testament made by a person – the testator – during his life about what he desires after his death.

Introduction

There are two types of wills:

(1) The will for the assignment of ownership: this is when the person transfers an item in his estate to the ownership of another person or cause, so it is a transfer of ownership subject to his death.

(2) The will for the assignment of guardianship: this is when he appoints a particular person to act as the guardian over his young children, or over a part of his estate, giving him the right of implementing what he has willed.

Ruling 584: It is sufficient for a will to be effective that it is expressed verbally, by conduct, by writing, by sign, etc., as long as it is understood that he wishes it to be his will.

Ruling 585: It is not necessary for a beneficiary of a will for the assignment of ownership to accept it. As for the appointee in the will for the assignment of guardianship, he is not required to execute what has been willed, especially

if he declined the nomination during the testator's lifetime. However, if he makes a will that a particular person is to perform the funeral prayers for him, or any other of the obligatory rites of the funeral, then as an obligatory precaution he should fulfil this with the permission of the deceased's guardian, unless this causes hardship for him. If the nominee is the son, and the nominator is his father, then he cannot refuse and decline.

Conditions for the Testator, Beneficiary and Appointee

Ruling 586: The testator should be adult – as defined by the Sharia – although if he is at least ten years old and he apprehends the will and his will is for good causes and deeds, it is valid. In fact, as an obligatory precaution, a seven-year-old's will also be valid if he wills that a small amount go to such good causes.

Ruling 587: The testator should also be sane and he should have made the will through his own choice.

He should not have killed himself, in which case his will will not be valid in respect to his property and money; as for his will in respect to other issues such as the guardianship of his children, it is not effective based on obligatory precaution.

The will of a foolish person is not valid particularly in respect to matters pertaining to property and money, unless it is for the benefit of good causes and deeds.

Ruling 588: The beneficiary or the appointee of the will – whether it is for the assignment of ownership or assignment of guardianship, respectively – should not be non-existent. If it is in favour of a child in the womb, it is valid provided that the child is born alive and cries after his birth. The will is valid if it is in favour of an heir, or a Muslim of other sects, or a non-Muslim, as long as this does not consist of propagation of falsehood; otherwise, such a will is invalid.

Ruling 589: If the beneficiary or appointee dies, his heir will take his place, except if he died before the testator who reverted from his will and annulled it.

Conditions for the Executor of the Will

The executor of the will (the *wasi*) is the person who is entrusted to implement the will, and the executor of a will may be one person or more.

Ruling 590: The *wasi* should be adult and sane.

Ruling 591: The executor is a custodian who is not liable unless he acts with transgression or negligence.

The Subject of the Will

In a will for the assignment of ownership, the subject of the will is any property which has a considerable lawful benefit, whether it exists, or currently does not exist but will probably do so later, or it is a right which is capable of being transferred.

In a will for the assignment of guardianship, the subject of the will is the guardianship over his non-adult children, or any lawful dealing and disposition from the estate, such as if he wanted grains that he owned to be used to feed the pigeons of the shrine of Imam Ali (peace be upon him), or if he wanted to hire somebody to pray or undertake the pilgrimage on his behalf.

Ruling 592: The deceased cannot make a will on more than a third of his estate, and it is better to restrict it to a quarter of it, rather, a fifth of it. However, if he makes a will which requires more than a third of his estate, the will on the part that exceeds the third will be effective only if the inheritors agree. If only some of them agree to it, the part of the will which exceeds the third will be executed from the shares of the agreeable inheritors.

Ruling 593: The third of the estate will be calculated after deducting the expenses from the main estate, like the expenses on the funeral rites, arranging the pilgrimage on his behalf if it was obligatory on him, any *khums* and *zakah* payments still due, repayment of debts, etc.

Ruling 594: If the testator specifies the third of his estate

to be a particular property, then that is what it will be. If he delegates the specification of the third from his estate to the executor, then it will be regarded to be what the executor decides. In any other case – when neither the testator nor the executor has specified the third of the estate – it will be considered to be a third of the total undivided estate.

Other Rulings about the Will

Ruling 595: The testator can annul his will during his life, and if he annuls a part of it, only that part of it will be void. Annulment of the will by the testator occurs by any words or conduct that indicates it.

Ruling 596: If the testator makes a will for a particular matter, and then subsequently makes a will for another matter which contradicts the first, this will be regarded as an annulment of the first will, and the second will will be effective.

Ruling 597: If the testator makes numerous wills – or a will of numerous matters – not consisting of any contradiction, but the funds from the estate cannot cover all of them, then if all the matters are obligatory or all of them are recommended, the shortfall will be spread proportionately on all of it, as long as he did not imply any priorities amongst them. If some matters are obligatory and some are recommended, then the recommended matters only will be subjected to the shortfall, and all of the obligatory matters will be acted upon in full.

Ruling 598: If the testator makes a will for the payment of obligatory financial dues from the third of his estate, it will be done so, but if the third does not cover it, the remaining dues will be covered from the main estate.

Ruling 599: Wills on matters that are unlawful will not be effective, but this does not mean that it will be completely void; rather it will become obligatory to spend that part of the estate on good causes.

The Establishing of a Will

Ruling 600: If the existence of a will is doubted, and there is no proof to affirm it, it will be regarded as not existing.

Ruling 601: A will's existence will be established by one of the following ways:

(1) Sure knowledge of it;

(2) Admission by the testator;

(3) The testimony of two *adil* witnesses;

(4) Admission of the inheritors, if the subject of the will is financial, rather than like the appointment of a guardian over his children, for example, in which case their admission will not be regarded as proof.

Ruling 602: The annulment of a will will be established by any of the ways mentioned above too, except for the admission of the inheritors if they are not *adil*.

Ruling 603: The will for the assignment of ownership in particular will be established also by the testimony of one *adil* male witness and two *adil* female witnesses. In fact, the testimony of one *adil* male witness or two *adil* female witnesses is sufficient provided that the beneficiary swears to this before the *hakim shar'i*.

Ruling 604: The will for the assignment of ownership will be established in its entirety by the testimony of four *adil* female witnesses. Three-quarters of it will be established by the testimony of three *adil* female witnesses. Half of it will

be established by two *adil* female witnesses. A quarter of it will be established by one *adil* female witness. The same will apply to the will for the assignment of guardianship, provided that it can be divided as so, unlike the guardianship of young children for example.

Ruling 605: Every human has the right to deal with his property during his lifetime with lawful fully-implemented disposals, like the waiving of a debt owed to him, or the giving away of something for free, or the like, whether he is on his death bed or not. However, he may not make his dealings, whatever they may be, subject to the condition of his death, except in a will.

(26)
MARRIAGE

(26)

MARRIAGE

Marriage is a noble bond which Allah Almighty has legislated as a mercy to His servants, in order to build humankind and to regulate the impulses that He has entrusted within us.

Marriage is one of the emphasized recommended acts; rather, it is disliked to abandon it.

Introduction

Ruling 606: It is prohibited for a man and woman to have sexual enjoyment, except with one's husband or wife.

Ruling 607: It is forbidden for one to take sexual enjoyment from his sexual organs with another part of his body or with something else, unless it is as a prelude to permitted sexual intercourse.

Ruling 608: It is permitted for a woman to reveal her face and hands to non-*mahram* men, but she must veil the rest of her body, including her feet as an obligatory precaution.

Ruling 609: It is not obligatory for a woman to cover herself in the presence of *mahram* men (i.e. those she is forbidden to marry), who are:

(1) her father, grandfathers and forefathers;

(2) the brothers of her father, mother, grandfathers and forefathers;

(3) her sons and their offspring;

(4) her brothers;

(5) the sons of her sisters and their offspring;

(6) her brothers' sons and their offspring;

(7) the sons of whom she married, and their offspring;

(8) the fathers and forefathers of whom she married;

(9) those whom her daughters and grand-daughters married;

(10) those whom her mother, grandmothers and foremothers married, provided that their marriage was consummated.

Similar female relations of a man are considered as *mahram* women for him.

However, as an obligatory precaution, a woman should not reveal those parts of the body which may entail arousal and sedition in the presence of *mahram* men.

Ruling 610: It is forbidden for a man to look at those parts of a woman's body which are required to be veiled, unless the woman is heedless in her *hijab*. It is permissible for a woman to look at a non-*mahram* man without staring at him as an obligatory precaution.

Ruling 611: Men and women who are non-*mahram* for each other are forbidden to touch each other, even if it's a handshake. However, when necessary, a doctor may look at and touch the body of a patient of the opposite sex as much as is necessary for his treatment.

Ruling 612: It is permissible for a man to listen to the voice of a woman, and vice-versa, if it is without sexual enjoyment.

Ruling 613: It is disliked for men and women to mix in a gathering; rather, it is prohibited if it is likely that it will cause seduction and corruption.

Etiquettes of Marriage

Ruling 614: It is recommended for a man who intends to marry to perform a prayer of two units, and recite the supplication which has been narrated and mentioned in the detailed books.

Ruling 615: A man may look at the woman he intends to marry, and as an obligatory precaution he should look at only those parts of her body which are normally left uncovered when at home.

Ruling 616: It is disliked to choose a woman for marriage because of her wealth or her beauty, just as it is disliked to marry a beautiful woman with a bad background.

Ruling 617: Islam has emphasized the discarding of divisions based on different ethnicity and ancestry, and that the believing man is compatible for marriage with a believing woman; therefore, it is disliked to refuse a proposal from a believer who is religiously-minded and of good character.

Ruling 618: The delaying of answering a proposal for marriage until after doing an *istikhara* has no basis in the Sharia.

Ruling 619: It is disliked to marry a person who drinks alcohol, has bad character and who is womanlike, and anyone who does not abide by the religion.

Ruling 620: It is recommended to hasten in the marriage of one's daughter.

Ruling 621: It is permissible for each of the husband and wife to obtain sexual pleasure in any way from the body of the other, by all means of enjoyment. It is obligatory on the woman, when able to do so, to allow her husband to engage in sexual intercourse with her and all other forms of permissible enjoyment, whatever situation she may be in and at whatever time.

The Marriage Formula and the Patrons of the Marriage

The marriage may either be permanent or temporary. The following rules apply to permanent marriage:

Ruling 622: It is necessary to form the marriage contract verbally in a manner which is indicative of it, in any language, and marriage does not occur in a non-verbal contract.

Ruling 623: The contract consists of an offer from any of the two parties and acceptance from the other, or their guardian or appointed agent can do so on their behalf. For example, the bride will say as the offer: "I marry myself to you for the dowry of such-and-such." Then the groom will accept by replying in the affirmative, by saying "I accept", or the like. Alternatively, the groom may present the offer and the bride will reply. It is not necessary to mention marriage; it is sufficient to mention any word which indicates it.

Ruling 624: The father and the paternal grandfather have the guardianship over the virgin adult daughter, even if she is mature and rational, on the basis of collaboration with her; therefore it is necessary for the guardian as well as the daughter to agree to the marriage. If both the father and the grandfather are present, the agreement of either one of them is sufficient. But if they disagree, then it is preferable for her to give precedence to her grandfather's view.

Temporary Marriage

This type of marriage is limited to a specified period of time, and on the expiry of this period the marriage ends without the need for a divorce.

Ruling 625: The marriage contract is similar to that of permanent marriage, except that the time duration must also be mentioned. For example, the bride would say: "I marry myself to you for such-and-such duration and for a dowry of such-and-such." And the groom will reply in the affirmative.

Ruling 626: It is necessary to mention the dowry in the temporary marriage contract. If it is not mentioned, the marriage is void.

Ruling 627: It is necessary to mention the duration in the contract, and if it is not mentioned it will be regarded as a permanent marriage, so the time should be known and specified. As an obligatory precaution, the duration should be mentioned with the actual marriage contract.

Ruling 628: There is no divorce for this type of marriage. It ends with the end of the specified duration, or by the husband surrendering the remaining duration.

Prohibited Matrimony

There are several causes for the unlawfulness of matrimony between a man and a woman:

(a) Relation by Blood

Ruling 629: A man cannot ever marry the following women:

(1) his mother and grandmothers, however far removed;

(2) his daughters and all female offspring, however far removed;

(3) his sisters;

(4) the female offspring of his brothers and sisters, however far removed;

(5) the sisters of his parents and his grandparents however far removed;

A woman is prohibited to marry similar male relations.

(b) Relation by Marriage, and Related Issues

Ruling 630: A man cannot ever marry the following women due to his relation to them by wedlock:

(1) the wives of his father and grandfathers, however far removed;

(2) the wives of his sons and grandsons, however far removed;

(3) the mother of his wife, however far removed;

(4) the daughters and granddaughters of his wife (i.e. his step-daughters), however far removed, provided that the marriage with this wife was consummated.

Ruling 631: A man cannot be married to two women who are sisters at one time – i.e. he cannot marry his wife's sister while she is still his wife, or even while she is in the waiting period of a revocable divorce.

Ruling 632: A man cannot marry the niece of his wife (her brother's or sister's daughter) without his wife's permission.

Ruling 633: If an adult man commits sodomy with another male, the latter's mother, sister and daughter become forbidden for him to marry.

Ruling 634: Whoever marries a woman who is already currently married, his marriage is void, and she becomes permanently forbidden for him to marry. However, if he did not know that she was married, he will not be permanently forbidden to marry her unless his invalid marriage was consummated. The same applies to a man marrying a woman during her waiting period (*iddah*).

Ruling 635: It is disliked to marry a woman known to be adulterous, before her repentance.

Ruling 636: Whoever fornicates with a married woman – whether the marriage is permanent or temporary – or if she is within the revocable waiting period of a divorce, she

becomes forbidden for him to marry forever as an obligatory precaution, even if he was ignorant of her situation.

Ruling 637: It is forbidden for a person in the state of *ihram* to marry, and such a marriage is void. If a man in the state of *ihram* did so intentionally and knowing this, she will become permanently unlawful for him to marry. The same is the case of a woman in the state of *ihram*, as an obligatory precaution.

Ruling 638: It is unlawful for a man to have more than four wives at a time, by way of permanent marriage.

Ruling 639: The wife is permitted to stipulate in the marriage contract on her husband not to marry again. If he did, the marriage is invalid.

(c) Wet-Nursing

Ruling 640: All those relations that are unlawful by blood relationships will become unlawful through wet-nursing, provided that the following conditions are fulfilled:

(1) The child should suckle directly from the breasts of the wet-nurse, rather than through any other means;

(2) The breastfeeding should be complete, such that the child is fully satiated.

(3) That the wet-nurse breastfeeds in a sufficient quantity, and this can be achieved in one of three ways:

   (a) That the child is breastfed fifteen times successively, without a gap in which somebody else breastfeeds him. If the child is fed in some other way during this period, then this will not

cause a gap between the fifteen breastfeeds, as an obligatory precaution.

(b) That the child is breastfed for a day and night whenever the child requires it. During this period the child should not require any further breastfeeding, nor should he be breastfed by any other woman and fed in any other way.

(c) That the child is breastfed in such quantity that due to it his bones become fortified and his flesh and blood grows, and the child develops and grows by it in a noticeable manner. It is of no consequence if the child is breastfed by another woman or is fed by another means, unless it is of such great quantity that it cannot be conventionally said that the aforementioned development is due to the wet-nurse's breastfeeding.

(4) The afore-mentioned quantity of breastfeeding that creates such relationships – e.g. the wet-nurse becoming his *mahram* – should be from that wet-nurse only, and the breastfed milk should be entirely due to the birth of a child of one particular father only, if the production of her milk is due to pregnancy; therefore, for example: if the child is breastfed fifteen times by two women who are married to the same man, then neither breastfeedings will make them *mahram*. The same will apply if, for example, one woman breastfed a child fifteen times over the course of the child's first two years, but the milk was the produce of two pregnancies from two separate marriages.

(5) That the milk should have been produced due to a legitimate birth; if it was due to adultery it does not form any *mahram* relationships as an obligatory precaution. If the milk has been produced without a birth, then it has no effect in creating any *mahram* relationships.

(6) The breastfeeding should occur before the child becomes two years old. Rather, as an obligatory precaution, it should be before the child stops suckling and before the passing of two years after the wet-nurse has given birth.

Ruling 641: It is prohibited for the father of the wet-nursed child, as well as his grandfathers however far removed, to marry the female offspring of the wet-nurse's husband – who is the father of the child whose birth produced the milk for the wet-nursed child – whether they are his offspring by way of blood relation or by breastfeeding. The same prohibition applies with marrying the wet-nurse's female blood offspring from other marriages.

Ruling 642: Wet-nursing may be proven by having knowledge of it, or by two *adil* male witnesses.

(d) Other Obstacles to Matrimony

(1) *Li'an*

Li'an refers to a sworn allegation of adultery without the necessary number of witness. The details of this are given in the more comprehensive books of Islamic law.

(2) Divorce

This is if the divorce is pronounced nine times. The details of this will be mentioned in the chapter of Divorce.

(3) Non-belief

Ruling 643: It is not permissible for a Muslim woman to marry a non-Muslim; and it is not permissible for a Muslim man to marry a non-Muslim except a woman from the People of the Book.

Ruling 644: It is not permissible to marry a *nasibi* – one who bears animosity with the Imams of the Ahlul-Bayt (peace be upon them) – as an obligatory precaution. Similarly, if a person belongs to another Muslim sect and if misguidance is feared, one should not marry him or her, even if such a marriage is not void.

Defects and Conditions

Ruling 645: A marriage is a binding contract, which cannot be annulled by mutual agreement, or by a clause in the marriage contract, or by a violation of a condition. However, the option to annul the marriage is available in particular cases.

Ruling 646: A wife has the right to annul the marriage due to her husband's insanity, whether he became insane before or after the marriage, even after the marriage was consummated.

Ruling 647: A wife has the right to annul the marriage if her husband is unable to have sexual intercourse with her, provided two conditions are fulfilled:

(1) That he never had sexual intercourse with her, not even once.

(2) That he is unable to have sexual intercourse with any other woman besides her from the beginning or after having been able to do so.

If these two conditions are fulfilled, she cannot hasten to annul the marriage; rather, she has to raise her matter to the *hakim shar'i* who will give him a period of one year. During the year, if he has intercourse with her or with any other wife, she will not have the right of annulment; otherwise, she will.

Ruling 648: A wife also has the right to annul the marriage if her husband is emasculated since the marriage.

Ruling 649: If a woman married a man on the basis that he was from a particular tribe, but it appeared later, whether the marriage was consummated or not, that he is not from that tribe, she also has the right to annul the marriage.

Ruling 650: A husband has the right to annul his marriage if he finds his wife to have any of the following defects, provided that they existed before the marriage:

(1) She is insane;

(2) She has leprosy;

(3) Her body is mutilated;

(4) She has any other defect which obstructs him from having sexual intercourse with her or makes it difficult for him;

(5) Her vaginal and anal passages have combined;

(6) She is blind;

(7) She is a cripple;

(8) She commits adultery.

Ruling 651: It is not necessary to exercise the right of annulment for either of the spouses immediately, but this right is dropped if the spouse waives it, or by being satisfied with the marriage after knowing of the defect. It is sufficient for the husband to show his satisfaction by engaging in sexual intercourse with his wife after knowing of the defect, and for the wife – as an obligatory precaution – by allowing him to do so after knowing the defect.

Ruling 652: If the marriage is annulled before

consummation, the dowry is also annulled, and the husband has the right to have it returned to him, except if he is impotent in which case the wife will keep half of the dowry, and the same is the case if he is castrated as an obligatory precaution. If the marriage is annulled after consummation, the wife will keep the whole dowry if there was no misrepresentation or deception; otherwise, he may seek the return of the dowry from whoever deceived her.

Ruling 653: If a man marries a woman on the basis that she is a virgin, but he comes to know later that she is not a virgin, he does not have the right of annulment, but he may deduct from the dowry an amount proportionate to the usual difference in the dowry for a virgin and non-virgin.

The Dowry

The dowry (*mahr*) may be anything which has a value and which is permissible to earn from – e.g. by selling or leasing – whether it is much or little, or whether it is a tangible item or a service like the teaching of the Holy Quran. As for those things which are not permissible to make one's earning by, such as musical instruments or pigs, it is not permissible to make them the dowry.

Ruling 654: It is necessary to transfer the ownership of the dowry to the wife in the marriage contract; so if its ownership, or that of a part of it, is transferred to somebody else, the marriage contract becomes void.

Ruling 655: It is necessary for there to be a dowry in a marriage. If a marriage is based on there not being a dowry, the marriage is void. If the mention of the dowry was omitted in a temporary marriage contract, it will be void; if it was a permanent marriage, then the contract is valid but she is to be given a dowry that corresponds to a dowry that is given to a bride of her status in similar circumstances.

Ruling 656: The wife will take ownership of the dowry at the time of the marriage contract, and if the passing of the dowry to her is in absolute terms, she should be paid as soon as possible. She has the right to withhold herself from her husband before taking possession of the dowry. However, if he has intercourse with her before he passes the dowry to her, she cannot withhold herself in the future, and the dowry will become a debt like any other.

Ruling 657: If the dowry is deferred in absolute terms, the wife does not need to be paid until she is divorced or either of them dies. However, if the deferment period is stipulated, it must be acted upon.

Ruling 658: If the wife is divorced or either one of them dies, before consummation, half of the dowry is dropped. After consummation, the dowry will be full.

Ruling 659: The dowry is not dropped nor any part of it in a temporary marriage by the ending of the marriage period or by the death of either of them, before consummation.

Ruling 660: It is disliked to set a high dowry, and it is a cause of misfortune for the wife as it is mentioned in some narrations; rather, it is disliked to have the dowry more than what is prescribed by the *sunnah*, which is five-hundred dirhams, i.e. the value of 1,487.5 grams of silver.

Marital Duties

Ruling 661: It is obligatory for the husband, when he is not travelling, to spend the night with his permanent Muslim wife once every four nights as good company.

Ruling 662: A wife may waive her right for a particular night for any reason; however, she can withdraw her waiver afterwards, unless her waiver is stipulated within a binding contract.

Ruling 663: A permanent wife has the right of sexual intercourse once every four months. If her husband contravenes this right out of anger towards her, she may raise her case to the *hakim shar'i* who will order him to fulfil this right or to divorce her.

The same is so in the case of temporary marriage as an obligatory precaution, unless the marriage contract was based on there not being any sexual intercourse.

Ruling 664: It is obligatory on the wife to allow her husband to enjoy her sexually – except anal intercourse – and to remove anything that may cause obstruction or repulsion; rather, she should prepare herself with perfume and beautification by the means made available to her by her husband and which he requests.

Ruling 665: It is prohibited for a wife to leave the house without her husband's permission, or without being certain of him being agreeable to her leaving the house.

Ruling 666: If the wife does not fulfil her marital duties

with her husband, he may advise her, and if this is of no avail he can abandon her bed by turning his back to her and shunning her. If she still continues then he is permitted to hit her without causing her to bleed or breaking a bone.

Ruling 667: If the husband does not fulfil his marital duties with his wife, she cannot dismiss her own marital duties, but she may raise her case to the *hakim shar'i*, who will order her husband to fulfil her rights or to give her a divorce. If he refuses to do so, the *hakim shar'i* will divorce her on his behalf. It is possible for her to abandon some of her rights to conciliate with him and to avoid trouble and hardships, such as divorce.

The Laws Pertaining to Children

Ruling 668: A son will be regarded that of the person whose seed he was born from, whether conception was through sexual intercourse or by any other means. As such, all the laws of fatherhood and motherhood will take effect in respect to him, except in the case of inheritance of an illegitimate child. However, as an obligatory precaution, the obligation of the parents providing for an illegitimate child, and vice-versa, will remain.

Ruling 669: The unborn child will be regarded as the son of the husband of the pregnant woman, on the condition that the pregnancy resulted in sexual intercourse – or by any other alternative means – and that the child is born fully developed with stable life, after six months since the intercourse and before a complete lunar year. The same applies if the child was born out of mistaken sexual intercourse.

Ruling 670: It is impermissible for a man and a woman to adopt a child who was not born from either of them; but it is recommended for them to nurture him and provide for him.

Ruling 671: On the birth of a child it is recommended to recite the *adhan* in his right ear and the *iqamah* in the left ear. On the seventh day, it is recommended to have the boy circumcised and to hold the *aqeeqah*, i.e. a sacrifice of a sheep, cow or camel. It is recommended to have the child breastfed for two whole years.

Ruling 672: The mother has priority in the raising of the child during the period she is breastfeeding him, except in the following cases:

(1) When she is not competent to do so, by reason of illness or insanity;

(2) When she asks for a remuneration for her breastfeeding the child which is higher than the cost of wet-nursing;

(3) When she is no longer the wife of the father of the child and marries somebody else.

Ruling 673: The father is the guardian of the child. It is not permissible to hit the child to discipline him without the permission of the guardian. The mother may waive her right of raising the child, but the father cannot waive his right of guardianship, as long as he has not become incapable by death, illness or insanity.

Expenses and Financial Support

A person is obligated to provide for two groups of people:

(1) His wife, by permanent marriage;

(2) His children and their offspring, and his parents, as well as their parents as an obligatory precaution.

Ruling 674: The obligation of a man to provide for his wife is dropped if she fails to uphold her marital duties, whether she did not allow him to enjoy sexual pleasure with her, or she left the house without his permission and without any justifiable necessity.

Ruling 675: It is obligatory to provide for one's wife who he has divorced revocably while she is in the waiting period, and for one's pregnant wife who has been divorced irrevocably.

Ruling 676: What is meant by 'providing' is the provision of food, drink, clothing and residence, in a manner that is common, as well as what she requires in fulfilling his demands from her in cleaning and beautification and the like.

Ruling 677: The aforementioned relatives must be provided for with the following two conditions:

(1) One has the financial ability to do so, even if it is by earning it by work or by taking a loan – provided that he has wealth to cover it;

(2) The relatives are poor and in need of it.

Ruling 678: What is obligatory to provide for them is food, drink, clothing, residence, medicine and all other things which they require for their livelihood.

Ruling 679: It is recommended to provide for other relatives, such as brothers, and it is recommended to be generous in providing for his family without being extravagant or squandering.

(27)
DIVORCE

(27)

DIVORCE

Divorce is Allah Almighty's most detested of the permissible deeds.

Divorce and Its Formula

Divorce is a unilateral resolution which results in the separation of a husband and wife after permanent marriage, and it takes places by an affirmation of the husband, who may be represented by an agent, his guardian, or the *hakim shar'i* in some circumstances, like in the event of the husband being missing, or if he refuses to provide for his wife, or if he becomes insane.

Ruling 680: The formula of the divorce which should be pronounced by him is: "[Name] *Taliq*," mentioning the name of his wife. Alternatively he can say "*Anti Taliq*," (You are divorced) addressing his wife. Divorce by way of gesture and writing is not sufficient, as long as one can speak; and as long as one is able to recite the formula in Arabia, it is necessary to do so; this is so for all types of divorces.

Ruling 681: If he says: "*Anti Taliq*" three times or twice, it will not be regarded as a divorce three times or twice; rather, it is not even considered as a single divorce based on an obligatory precaution.

The Conditions of Divorce

Ruling 682: The divorcer must be adult, sane, rational, willing, and he must intend for the divorce to take place.

Ruling 683: The divorcee must be specified. She must not be in her menstruation period or during her lochia discharge (*nifas*), and she must not have had sexual intercourse since the last menstruation period. This condition does not apply if she does not have menstruation periods although she is of the age of menstruation, or she has reached the age of despondency (i.e. the age of fifty, or sixty if she is from the tribe of Quraysh), or she is pregnant, or if the marriage was not consummated.

Ruling 684: The divorce must not be conditional, so if one says, for example: "You are divorced if you leave the house," the divorce does not take place.

Ruling 685: The divorce must take place in the presence to two *adil* male witnesses.

Ruling 686: If any of the conditions mentioned above are not fulfilled, the divorce is invalid and the two are still considered to be married.

The Rules of Divorce

Ruling 687: There are two types of divorces:

(1) Irrevocable divorce: in this type of divorce, the husband is not permitted by the Sharia to return to his marriage. This type consists of the divorce of a non-adult girl, the divorce of an unconsummated marriage, the divorce of a woman who has reached the age of despondency, the divorce of *khula'* and *mubarat*, and the third divorce.

(2) Revocable divorce: this is when the husband can return to his wife, as long as she is in the waiting period (*iddah*), and this type consists of all other manners of divorces.

Ruling 688: If a man divorces his wife and returns to his marriage within the waiting period, the marriage is resumed. If he divorces his wife again, he can return to the marriage again. However, if he divorces her for the third time she becomes forbidden for him to marry again, unless she marries somebody else and this marriage then ends. If a man divorces his wife nine times, she becomes forbidden for him forever.

Ruling 689: As long as his wife is in the waiting period of a revocable divorce, a man can return to his matrimonial relationship with his wife, and this can be done verbally or by conduct in any manner that indicates his return, such as saying to his wife: "I take you back", or by having sexual intercourse with her, or kissing her with the intention to return. It is recommended to have one's return witnessed.

The Waiting Period (*Iddah*)

The waiting period must be observed by the woman in three situations:

(1) On the death of her husband; the waiting period is four months and ten days, and if she is pregnant then her waiting period is the greater of the mentioned period and the end of her pregnancy.

Ruling 690: The waiting period for the widow starts from the time that she comes to know of his death. During this period she is required to abstain from self-beautification. It makes no difference whether the widow is old or young, or whether the marriage was permanent or temporary.

(2) On the ending of a marriage; the marriage may be ended by divorce in a permanent marriage, or by the annulment of the marriage, or it becoming void. In temporary marriage there is no divorce, so the marriage is ended by the specified period ending or by the husband waiving the remaining period.

Ruling 691: For the waiting period in this situation to be obligated it is necessary for the woman to be between the ages of nine and fifty lunar years – or sixty years if she is a descendent of Quraysh – and that the marriage was consummated; as an obligatory precaution, the waiting period should be observed when the semen of the husband enters the vaginal passage without intercourse.

Ruling 692: The waiting period in this situation begins when the cause occurs, e.g. when the divorce takes place, or

the temporary marriage ends, or the marriage is annulled, the waiting period begins then.

Ruling 693: On the ending of a marriage, the duration of the period differs according to the circumstances, as follows:

(a) For a divorced Muslim woman, three complete gaps between her menstruation periods should pass, such that the first gap is when the divorce took place and she sees the menstruation bleeding for the third time after it. If she is of the age of menstruation, but she does not have them for any reason, then her waiting period is three lunar months. If she is pregnant, her waiting period will end when she delivers the baby.

(b) For a woman who was in temporary marriage, two complete gaps between her menstruation periods should pass, such that the first gap is when the specified period of marriage ended or was waived. If she is of the age of menstruation but does not have them, then her waiting period is one-and-a-half lunar months. If she is pregnant, as an obligatory precaution her waiting period will be the end of the mentioned period or the end of her pregnancy, whichever is later.

(c) For a woman whose marriage is annulled or has been deemed void, her waiting period is that of a divorce if the annulled or void marriage was permanent, and her waiting period is that of a temporary marriage if the annulled or void marriage was temporary.

(3) After mistaken sexual intercourse; the mistake should be that of the man, not the woman, i.e. the man should not have intended to commit a forbidden act. There is no waiting period for adultery.

Ruling 694: By mistaken sexual intercourse, a woman is required to observe the waiting period that is applicable to the waiting period of the divorced Muslim woman provided that she is of the age of menstruation, as explained above.

Ruling 695: The waiting period in this situation will begin when one realizes that he has made the mistake.

Ruling 696: During the waiting period of a revocable divorce, she is still considered to be like his wife; therefore he cannot marry her sister, nor can he marry a fifth wife if she was the fourth. If either of them die, the living will inherit the deceased. She should still obey him and allow him sexual enjoyment. He should provide for her and allow her to live with him, and it is impermissible for him to expel her from the house, unless she behaves with clear nastiness.

Ruling 697: If a woman is in her waiting period after separation from her former husband, she can remarry the same person without needing to observe the waiting period, even if her waiting period is a result of an irrevocable divorce, such as if it was a divorce of *khula'*, or the marriage was temporary and its period expired.

Divorce of *Khula'* and *Mubarat*

Both of these types of divorces are obtained due to the wife's demand for separation for which she makes a payment to her husband.

Ruling 698: For a divorce of *khula'* to take effect and be valid, it is necessary for the woman to hate her husband to such a degree that she prevents him from his rights or makes serious threats in this regard. It is forbidden on the husband to harass and harm her so much so that she comes to commit such a sin.

For a divorce of *mubarat* to take place, there should be mutual aversion and hatred from both sides.

Ruling 699: It is necessary for the payment made by the wife to be capable of being part of an exchange recognized by the Sharia, whether it is a tangible item, or a service, or a right. There is no limit on its quantity, except that in the divorce of *mubarat* the amount should not be greater than the dowry.

Ruling 700: The divorce is pronounced by saying: "[Name] *Taliq Ala Ma Badhalat*," or "*Khala'tu* [Name] *Ala* [Amount]," or "*Baara'tu* [Name] *Ala* [Amount]," mentioning the name of the wife and the amount paid accordingly.

Ruling 701: It is not necessary to pronounce the divorce himself; he may appoint an agent to do so on his behalf. It may also occur by responding to the wife or her agent's statement of divorce in the affirmative. For example, she may say intending divorce: "*Faariqni Ala* [Amount]." Then

the man will say: "*Radheetu Bi*-[Amount]."

Ruling 702: A woman can seek the return of her payment, with three conditions:

(1) She is still within her waiting period;

(2) The payment is still in the ownership of her husband;

(3) The Sharia allows the husband to return to her, and for this two matters must be fulfilled:

   (a) If he had not divorced her by *khula'* or *mubarat*, the divorce would have been revocable;

   (b) The husband has not done anything which prevents him returning to her e.g. him marrying her sister.

There is a fourth condition for the divorce of *khula'* in particular: that the woman stops transgressing against her husband and repents from sinning.

Dhihar and *Eilaa*

Dhihar: this is when the man makes his wife similar to any of his *mahram* relatives, like his mother or sister, with the purpose of making her forbidden for him while the marriage continues. If this takes place with all the conditions, the husband cannot have sexual intercourse with her unless he pays the expiation, or he divorces and remarries her.

Eilaa: this is when the man makes a vow never to have sexual intercourse with his wife. If this has taken place with all the conditions, then the man cannot have sexual intercourse with her until he pays the expiation.

The particulars of these two matters, including the conditions, consequences and resolutions, are given in the detailed books of Islamic law. The expiation which needs to be paid is mentioned in the chapter of Expiation.

(28)
OATHS, VOWS AND COVENANTS

(28)

OATHS, VOWS AND COVENANTS

Introduction

If a person imposes on himself to do something, he will not actually be obligated to do so except by an oath (*yameen*), a vow (*nadhr*) or a covenant (*ahd*). Once he has sworn an oath, vow or a covenant, he is obligated to fulfil it, and he is not permitted to violate it. If he does violate it, expiation (*kaffarah*) will be obligatory on him, as will be mentioned in the chapter on Expiation.

An **oath** (*yameen*) is of two types:

(1) When a person swears by Allah on the occurrence of an event in the past, present or future or on a particular claim. It is disliked (*makruh*) to undertake such an oath if one is truthful, and it is a sin to do so if one is lying, although no expiation (*kaffarah*) is prescribed.

(2) When a person swears by Allah that he will undertake a certain action or abstain from it, such as if one says, "I swear by Allah that I will fast tomorrow." This is the type that this chapter will focus on alongside the vow and covenant.

A **vow** (*nadhr*) is when a person obligates upon himself

that he will undertake a particular act or abstain from it for Allah, and there are two types of vows:

(1) The vow that is unconditional, such as if a person says, "For Allah, I obligate myself to fast tomorrow."

(2) The vow that is conditional, such as if a person says, "For Allah, I obligate myself to fast tomorrow if my father arrives safely today."

A **covenant** (*ahd*) is when a person makes a solemn pledge with Allah that he will undertake a particular act or abstain from it, and this is also, like the vow, of two types: unconditional and conditional. For example, one may say, "I make a covenant with Allah that I will fast tomorrow."

The Person Making the Oath, Vow or Covenant

Ruling 703: It is necessary for the validity of one's oath, vow or covenant, that one is adult, sane and freely willing.

Ruling 704: The oath and the vow in particular are not valid if they are declared out of severe anger, as opposed to the covenant which is still valid as long as the intention is there. Similarly, the oath is not valid if it is made out of impulsiveness, due to having a habit of making such oaths.

Ruling 705: An oath is not effective for a son without the permission of his father, or for a wife without the permission of her husband. As for the vows and covenants, they do not require their permission, and they do not become annulled by their annulment, or by their orders to breach them, except if abiding by the vow or covenant necessitates the violation of their rights; therefore, when they seek their right which will cause the breach of the vow or covenant, the vow or covenant becomes void.

Making of the Oath, Vow and Covenant

Ruling 706: An oath is not valid unless it is sworn on Allah's name, be it the name of 'Allah' or any of His other names, in any language. Swearing on any other's name, however great it or he may be, such as the Holy Quran, is not considered as a binding oath.

Ruling 707: It is necessary in a vow to make the vowed deed for Allah, e.g. one should say: "For Allah, I obligate myself to do such-and-such."

Ruling 708: It is sufficient in a covenant to express a covenant with Allah Almighty, e.g. one should say: "I make a covenant with Allah that...". In fact, as an obligatory precaution, such a covenant comes into effect even if it is made in the heart, without the need to say it verbally, as opposed to the oath and vow, which must be expressed verbally.

The Subject of the Oath, Vow and Covenant

Ruling 709: The oath or vow may only be made for acts which are considered obedience to Allah Almighty, i.e. to undertake an obligatory or recommended act, or to abstain from a forbidden or disliked deed. So an oath or a vow is not valid if it is made to promise to refrain from undertaking obligatory or recommended acts or to perform prohibited or disliked deeds, or to do an act which is *mubah*, i.e. that act which the Sharia has not expressed its like or dislike of it; however, if such an act becomes favoured or disfavoured by the Sharia by a secondary reason, then one's vow or oath to undertake or abstain from it respectively will be valid. The same applies to covenants, except that as an obligatory precaution a covenant to perform a *mubah* act will be valid.

Ruling 710: It is necessary in the oaths, vows and covenants that what is promised must be possible at the time of making them. This is so except for fasting on specified particular days, as the lapsed fasts will be performed later as *qadha*, and if one is not able to do so, he should give one *mudd* of food to the poor for each missed day as an obligatory precaution.

Ruling 711: There is no expiation (*kaffarah*) for violating a vow, oath or covenant unintentionally, nor in violating them if the circumstances change and make the act in question unfavourable in the eyes of the Sharia. There is also no expiation if one's vow, oath or covenant is based on thanksgiving for disobedience to Allah and dislike towards His obedience, as such are invalid.

(29)
EXPIATIONS
(*KAFFARAH*)

(29)

EXPIATIONS

(*KAFFARAH*)

The expiation (*kaffarah*) is obligatory when particular acts are committed. Apart from those related to the *ihram* during pilgrimage, there are fourteen expiations:

(1) The expiation for killing a Muslim intentionally: This is a combined expiation of freeing a believing slave, fasting for two consecutive months and the feeding of sixty poor persons.

Ruling 712: This expiation applies if the heirs of the killed do not seek retribution (refer to ruling 827).

(2) The expiation for killing a Muslim unintentionally: This is an expiation of freeing a slave, and if not possible then fasting for two consecutive months, and if not possible then feeding sixty poor persons.

Ruling 713: In the situation that the Muslim was killed – whether intentionally or unintentionally – in the sacred precincts (*haram*) of Makkah or in the sacred months – i.e. Rajab, Dhul-Qa'dah, Dhul-Hijjah and Muharram – the fasting of expiation should take place within the sacred months.

Ruling 714: The fasting in the sacred months – as mentioned in the previous ruling – comes ahead of freeing of a slave in the order of priority in the expiation for killing a Muslim unintentionally.

(3) The expiation for intentionally breaking a fast in the month of Ramadhan:

If one breaks the fast by a generally permissible act, such as drinking water, then the expiation is selective, i.e. he can choose to undertake any one of the following: freeing a believing slave, fasting for two consecutive months, or feeding sixty poor persons. If he broke the fast by a prohibited act, such as drinking wine, then a combined expiation of all of the three acts will be obligated.

(4) The expiation for intentionally breaking a *qadha* fast for the month of Ramadhan after *zawal* (noon): This is the feeding of ten poor persons, or if not possible then fasting for three days.

(5) The expiation for *dhihar* (as explained in the chapter of Divorce). This is a sequential expiation of freeing a slave, and if not possible then fasting for two consecutive months, and if not possible then feeding sixty poor persons.

(6) The expiation for sexual intercourse during *i'tikaf* – the details of which are mentioned in detailed books of Islamic Law.

(7) The expiation for violating a covenant.

(8) The expiation of a woman for cutting her hair in grief and mourning.

These three expiations (6, 7 and 8) are as mentioned above for the breaking of the fast of Ramadhan by a permissible act.

(9) The expiation for violating an oath.

(10) The expiation for violating a vow.

(11) The expiation for *eilaa* (as explained in the chapter of Divorce).

(12) The expiation of a woman for pulling her hair out in grief and mourning.

(13) The expiation of a woman for scratching her face in grief and mourning, such that she bleeds.

(14) The expiation of a man for tearing his clothes in mourning over his child or wife.

These six expiations (9-14) are: freeing a believing slave, or feeding ten poor persons, or clothing them; if none of these are possible, then he should fast for three consecutive days.

Ruling 715: None of the expiations are obligated unless the person is adult, sane and he committed the act intentionally and without being coerced, except for the person who killed a Muslim unintentionally as mentioned above.

Ruling 716: The expiations are acts of worship which require the intention of seeking proximity towards Allah.

Ruling 717: In fasting for two consecutive months, it is sufficient to fast continuously for a month and a day, and the remaining fasts may be separated; this is so unless the expiation is for killing a Muslim in the holy precincts

of Makkah or in the sacred months, intentionally or unintentionally, in which he is required to fast the whole period continuously.

Ruling 718: The clothing of the poor means providing him sufficient clothing to cover the body in a conventional manner.

Ruling 719: The feeding of the poor can be done in one of two ways:

(1) Every poor person is given a *mudd* – i.e. approximately 870 grams, or 900 grams as a precaution – of foodstuff, like dates, wheat, rice, etc, although it is better to give two *mudd*s. But in the case of violating one's oath and the other situations with the same expiation, as an obligatory precaution one should only give wheat, its flour, or its bread. It will not suffice to give the price of the foods rather than the foods themselves.

(2) Every poor person is fed a meal to his satiation. There are no limitations on the kind of food that is to be provided and its quantity.

Ruling 720: If one is unable to perform the expiation in any form, he should seek divine forgiveness.

(30)
ADMISSION

(30)

ADMISSION

This refers to the declaration of a person of his liability or a right he owes, or of negating his right or entitlement from another person.

Ruling 721: The admitter's admission will only be effective with the following conditions:

(1) if there is probability in his being truthful;

(2) if it is not known that he is lying;

(3) if the admission is not countered by the person in whose favor the admission is made

Ruling 722: One's admission will take priority over all other evidences, such as witnesses, and no other claim by the admitter to the contrary will then be heard.

Ruling 723: In order for the admission to be applicable, the admitter must be adult, sane, rational, be freely intending to declare the admission, and he must not be coerced to do so.

Ruling 724: There is no particular phrase to pronounce in one's admission; rather, any words, verbal or written, acts and signs – even indirectly – from which admission is understood is sufficient.

(31)
USURPATION

(31)

USURPATION

Usurpation is the misappropriation of somebody else's property without any right to do so according to the Sharia, and this is amongst the major sins. However, the laws of usurpation also apply to the situations where one appropriates somebody's property by mistake or with the erroneous thought that one is entitled to take it.

Ruling 725: Usurpation takes place by one taking physical possession of the item, rather than using it or barring the owner from it, although both of these acts are also not permissible.

Ruling 726: The usurper will be liable for the usurped item, in returning it if it is still there, or otherwise in returning its equivalent if it is not. This must be done immediately, unless the owner agrees to wait.

Ruling 727: Just as it is obligatory to return the actual item, it is also obligatory to return any addition arising from it, whether it is attached to it – such as extra trees on usurped land – or detached from it – such as eggs from a usurped chicken or milk from a usurped goat.

Ruling 728: If the usurped item becomes faulty or defective, he will also have to pay the owner the difference in the price of the sound item and the faulty item.

Ruling 729: The usurper, along with being liable for the actual usurped property, will also be liable for all benefits he has obtained from it, such as living in a usurped house, or using a usurped car for travelling, or wearing usurped clothes.

Ruling 730: If a person usurped land and farmed on it or built on it, he will be liable for the market rent of the land for the mentioned period, although he is still entitled to his crop plantations and buildings. If the usurper usurped the land out of aggression, rather than by mistake or error, then the owner can order him to remove his crops and building, even if he will suffer in doing so.

Ruling 731: It is not permissible to sell or buy anything usurped; and if the item has passed through many hands, the rightful owner can claim restitution from them all.

Ruling 732: It is permissible for the owner to seize his property from the usurper. If he is unable to do so, he can raise the matter to the *hakim shar'i*. If the usurper refuses to be taken to the *hakim shar'i*, the case may be raised to the courts of the land.

(32)
REVIVAL OF DESERTED LAND

(32)

REVIVAL OF DESERTED LAND

Deserted land here refers to un-owned land which does not have any buildings or farming.

Ruling 733: It is permissible to revive deserted land in order to take ownership of it, and by its revival the rules of ownership will apply to it, whether one revived it himself or by his appointed agent.

Ruling 734: Revival of the deserted land refers to any act which is conventionally seen as being building on it, such as making it a farm, a house, a shop, a storehouse, etc.

Ruling 735: Whoever takes ownership of land by its revival or by any other means, he also gains the right of its direct precincts, i.e. the area around the owned land which is required in order to properly benefit from the land, such as the path to it, a passing river, grazing land for animals, etc. It is not permissible for anybody to come and take ownership of the precinct of anybody else's land, or to use it in a way that hinders the other from making use of it as required.

Ruling 736: The precinct of a well dug in revived land for the watering of camels and the like is twenty meters in all directions, and if it is for the irrigation of cultivation then its precinct is thirty meters. It is not permissible for a person to

dig a well which will harm a pre-existing well.

Ruling 737: The precinct of a house is the path from its door, and its extent is approximately 2.5 meters, and it is recommended to regard it as being approximately 3.5 meters.

Ruling 738: Just as one's rights are established by the actual revival of deserted land, they are also established by denying access to land one wishes to revive in the future, such as by marking the borders and laying the foundation, provided that the period does not exceed a usual timeframe. If he does exceed such a period, his right will be forfeited and another person may come to revive it.

Shared Things

Ruling 739: Some things are defined by the Sharia to be common for all to share, and they are the following:

(1) Those things which are declared as *waqf*, for any purposes; the limitation of the rights of people will be according to what has been decided in its *waqf*.

(2) Mosques and holy shrines, and the like; but whoever occupies a space in them, he has more right to it than others, although those who want to pray will have priority over others, especially congregational prayers.

(3) Markets – and what is meant by a market here is a large area of land used for the selling and buying of items, whereby it is not assigned for anyone or for any particular party. So, whoever occupies a place first has right over it.

(4) Roadways; in respect to roadways which have buildings on either side of them, everybody has a right over them, as long as passers-by are not troubled. As for those lanes surrounded by houses on three sides, only those who have a door facing the road have rights on the road, as long as passers-by who have similar rights are not troubled.

(5) Water of the seas, shores, rivers, and springs which flow by themselves, as well as brooks and marshes of deserted lands, are allowed for everybody; nobody is permitted to bar others from them. Private waters

on land which is not concealed is permitted to be used by passers-by in a usual manner, without harming the water. If the land is concealed, it is not permissible for them to use it without the permission of the owner.

(6) Pastures in deserted land, which are not owned by anybody.

(7) Whatever is found in deserted land which is not owned by anybody, such as rocks, sand, mined objects, etc. As has been explained in the chapter of *Khums*, it is obligatory to pay *khums* on what is found in mines.

(33)
LOST PERSONS AND PROPERTY

(33)

LOST PERSONS AND PROPERTY

The rulings in this chapter deal with three matters: lost persons, lost animals, and other lost property.

Lost Persons

In particular this refers to a lost child – known as a *laqeet* – whose family is not known.

Ruling 740: It is obligatory to pick up a *laqeet* if it is feared that the *laqeet* will be harmed if one does not take him up. If so, it will be obligatory to care for and take custody of the *laqeet* if one is an adult, and he will become the *laqeet's* guardian. However, it is also obligatory for him to search for his actual guardian and family, unless it is known that the child was abandoned by them.

Ruling 741: The property found with the *laqeet* is regarded as being his property except if the circumstances indicate otherwise.

Ruling 742: The finder may provide for the *laqeet* from the latter's own wealth, or from the property which has been left with him for this purpose, or from monies designated for the poor, like religious dues and charity donations. But if none of these sources are available, then he is obligated

to provide for the *laqeet* from his own wealth. If he had not intended to provide for him from his own wealth, he may request reimbursement from the *laqeet* when he becomes an adult on two conditions:

(1) The *laqeet* has sufficient wealth.

(2) The finder-guardian has not taken on the *laqeet's* guardianship of the liability of the *diyah* in mistaken killing, which will be explained in the chapters on Inheritance and Compensation.

In any case, he is not permitted to adopt the child.

Lost Animals

This refers to an animal that is owned by somebody and has become stray.

Ruling 743: The finder may take it if he finds it in other than the land of Muslims without having to make a notification about it, except if this contravenes the laws of the land and will cause harm for the Muslims.

Ruling 744: It is not permissible to take an animal that one finds in places empty of human habitation, unless it is exposed to death, or one fears that it will be attacked by predatory animals. If it is exposed to death, fearing its hunger, thirst or beasts, it is permissible to take it, and it is obligatory to make it known that it is in his possession in the locality in which he found it, if there are nearby villages or nomads. If he finds its owner, he should return the animal to him. If he doesn't find him, he can take its ownership, and if the owner subsequently appears he should return it to him or he may give him money of its value.

Ruling 745: It is not permissible to take an animal that one finds in a built-up area, if it is probable that it has not been lost. If he still takes it, the previously-mentioned rulings will apply. If he knows that it is lost, he can take ownership of it, and it will be regarded as other lost and found property, the rules of which will be explained below, including announcing possession of it for a year. During the period of announcement, he may revert to the owner of the animal when he finds him in order to be reimbursed for what provisions he spent on the animal, if there is no donor

for this.

If one requires provisions for the animal and does not have the means himself, nor is there a donor for this, he may revert to the owner when he finds him in order to be reimbursed for what he spent on the animal.

Particularly in the case of a lost goat, the announcement should be for a period of three days. If the owner is not found, it should be sold and the price received will be given as religious charity (*sadaqah*). If the owner then appears and is not agreeable to the charity, the finder will be liable for the price of the animal.

Ruling 746: If an animal enters somebody's house, it will not be regarded as being taken by him, and it is permissible to send it out; rather, it is obligatory to do so if it is probable that it is not lost from its owner. However, if he knows that it is lost, then it is permissible for him to take it, and the rules mentioned above will apply.

Other Lost Property

This refers to lost and found movable items, other than animals.

Ruling 747: It is disliked for one who has found lost property to take it.

Ruling 748: If its value is less than one dirham, i.e. approximately the value of 2.975 grams of silver, he may take ownership of it after asking those people who are possible owners as an obligatory precaution, e.g. asking those around him, or those who were at the place recently.

Ruling 749: If the item's value is of more than a dirham, it is obligatory to make an announcement for a period of one year. After the year has ended, the finder will have a choice of either keeping it safe with the hope of discovering its owner, or to give it as religious charity (*sadaqah*). He also has the choice to take ownership of it unless he found it in the sanctified vicinity of Makkah, in which case he cannot take ownership of it as an obligatory precaution.

If he finds the owner, he will give the lost property to him if it is still present, or he will be liable to pay its value to him if he squandered it through negligence. If the finder has lost it without negligence then the two parties should conciliate on the issue. If it was given away as religious charity, and the owner is not agreeable to this, the finder will have to pay him in lieu of it, and the divine reward of the charity will be for the finder.

Ruling 750: It is necessary for the finder to be satisfied

with the truthfulness of the claimant of the lost property in order to hand it over to him. If one knows that the claimant had usurped it, he cannot give it to him, and it is obligatory to find the rightful owner. If he knows who the owner is but cannot reach him, he may spend from it in a manner in which he knows the owner to be agreeable with. Otherwise, he should keep it safe for him, however long it may take. If one becomes despondent of ever reaching the owner, he should refer to the *hakim shar'i* for how it should be spent on behalf of the owner.

Ruling 751: The above ruling applies to the lost item if it is not perishable, like vegetables; if it is perishable, then he will take possession of it and the previous rulings will apply on money representing its market place.

Ruling 752: If one's item is switched for that of another – such as shoes, which happens often in public places like mosques – if one knows that the other took his intentionally, one may take what the other left behind by way of compensation. If it is probable that one's item was taken unintentionally, it is necessary to be certain that the owner of the left item is agreeable to one's usage of it if he knew of the situation, and it will be necessary to search for the owner.

Ruling 753: It is not permissible to take ownership of an item which is of unknown ownership. He should try to find the owner, and when there is no hope of finding him, it should be donated as religious charity on his behalf.

(34)
HUNTING AND SLAUGHTERING

(34)

HUNTING AND SLAUGHTERING

It is forbidden to consume the dead animal, unless it is killed by hunting or slaughtering in the manner prescribed by the Sharia.

Hunting

(a) Hunting of those Animals which have Spurting Blood

This is specifically regarding the undomesticated animals which flee from capture, as well as those domesticated animals that have become wild. They may be hunted by dogs or by weaponry.

Ruling 754: If they are hunted by dogs, the dogs should not be very black in colour as an obligatory precaution. The dog should be trained, such that when it is commanded to go after the prey, it goes, and when it is restrained, it stops, even after being sent off by the hunter. Other animals cannot be used for hunting, such as hawks.

Ruling 755: The hunting weapons should have a piercing point, like spears and arrows and bullets with sharply pointed ends, or they should be able to cut through, such

as swords.

Ruling 756: In order for the hunted animal to be lawful to consume, the hunter must be a Muslim, he should recite the name of Allah, and he should intend to hunt before the hunt takes place; the animal should die due to the instrument of hunting (i.e. the weapon or the dog); the hunting should not take place within the *haram* – the sanctified land of Makkah and the specific surrounding areas – nor should the hunter be in the state of *ihram*.

Ruling 757: The hunted animal does not become lawful to consume unless it is made *tahir* from *najasah*, like where there is blood and where the dog has bitten it.

Ruling 758: If the hunter reaches the hunted animal while it is still alive, he will need to slaughter it for it to become *tahir* and consumable.

(b) Hunting of those Animals without Spurting Blood

This is specifically regarding fish and locusts.

Ruling 759: The locusts are permissible to consume if they are caught alive, and if they die before they are caught they will be unlawful to consume.

Ruling 760: For the fish to become lawful to consume, they should be taken out of the water alive, or caught alive before the water is depleted from them, or caught alive after it is taken out of the water. This may be done by hand, or by casting a net, or the like.

Ruling 761: It is not necessary for the person catching the

fish or the locust to be Muslim, nor is it necessary for him to recite the name of Allah, or any other previously mentioned conditions. However, if they are taken from a non-Muslim, they will not be considered lawful to consume unless one knows that he caught them alive, or that the non-Muslim obtained them from a Muslim.

Slaughtering

Every animal that has gushing blood, except the dog and pig, can be made *tahir* by slaughtering in a manner that suits its type, so it does not become a *najis* corpse. It does not become lawful to eat unless it is amongst those animals those meat are lawful to eat.

(a) The Method of Slaughtering

Ruling 762: It is necessary for the slaughtering to be done from the front of the neck, so that the passages of the food, blood and air are cut through, rather than incised. The slaughtering does not take place unless the head is cut from below the larynx. As an obligatory precaution, the head should not be fully cut off nor should its spinal cord be cut before the animal dies, although doing so does not make the animal unlawful to consume.

Ruling 763: If the animal is a camel, then the way it is slaughtered is different: a sharp pointed weapon – like a spear, lance or knife – should be thrust into the hollow between its neck and chest.

(b) The Conditions of Slaughtering

Ruling 764: The following conditions of slaughtering must be adhered to:

(1) The slaughterer must be Muslim;

(2) He must have the intention to slaughter;

(3) The slaughtering should take place with iron blade or point, except if it is not possible to find such a weapon when one is intending to slaughter;

(4) The legs and throat of the animal should be directed towards the *qibla*;

(5) The slaughterer should recite the name of Allah while he is slaughtering the animal;

(6) The animal should be alive before the slaughter;

(7) The blood should come out in the usual manner;

(8) The animal should show some movement after being slaughtered, even if it is minor movement, like the movement of the eye or leg.

Ruling 765: It is recommended that the animal is led to being slaughtered with gentleness, that water is presented to it before the slaughter and that the blade is sharpened and the slaughter is done quickly to make it easier for the animal.

(35)
FOOD AND DRINK

(34)

FOOD AND DRINK

Animals which are Originally Forbidden to Consume

Ruling 766: Sea animals are unlawful to consume except those which have removable scales or shells, such as the scales of fish and the shells of shrimp. If it is doubted, then it is regarded as unlawful.

Ruling 767: All land animals which have fangs or are predatory animals – those which prey on other animals and eat them, even if they do not have fangs – are unlawful to consume.

Ruling 768: It is also unlawful to consume those animals known as *musukh*. They include: the monkey, elephant, bear, rabbit, lizard, mouse and scorpion.

Ruling 769: It is forbidden to consume those animals which are originally *najis* – i.e. the dog and pig – and those animals which live underground, like urchins and snakes.

Ruling 770: Camels, cows, goats and sheep are permissible to consume, just as it is lawful to consume some wild animals such as cows, deers, and the like.

Ruling 771: As for the birds, those which are predatory are

unlawful to consume, such as hawks; it is also forbidden to consume birds which glide more than they flap their wings during flight; in the case where both manners of flying are equally used or one does not know how a bird flies, if the bird has either a crop or a gizzard or a spur on the back of its feet, it is lawful to eat. Crows, bats and peacocks are also unlawful. Insects are also forbidden to consume, such as wasps, bees, flies and the like, as well as crawling insects, except for the locust if it can fly independently.

Animals Which Become Forbidden to Consume

Ruling 772: In three situations, an animal will become forbidden to eat:

(1) When it is *jallal*;

(2) When it is suckled by a pig;

(3) When a man has sexual intercourse with it – as an obligatory precaution – according to the rules set out below.

Ruling 773: The *jallal* animal is the animal which has eaten for a considerable period of time the excrement of humans, and does not eat along with it anything else except rarely. If the animal also eats other food with it in a considerable amount, then it is not considered as *jallal* and unlawful to eat.

Ruling 774: The *jallal* animal may cease to be *jallal* and will become lawful to eat if it is prevented from eating human excrement and is fed other food for a considerable period of time. For a camel, such a period is of forty days, twenty days for a cow, ten days for a sheep or goat, five days for a duck, and a day and a night for a fish.

Ruling 775: A male goat – rather, any animal as an obligatory precaution – which is suckled by a pig for a considerable period of time, is unlawful to eat, and it will become lawful if it is prevented from being suckled by the pig and is made to suckle from an animal of its same type or is fed with *tahir* feed, for a period of seven days.

Ruling 776: Any livestock which has been subjected to sexual intercourse by a man, or even a boy as an obligatory precaution, is unlawful to eat. This also extends to all animals, based on an obligatory precaution, which have been subjected to sexual intercourse, whether they are males or females, even birds.

Ruling 777: If an animal becomes forbidden to consume by any of the three mentioned ways, their offspring are also forbidden, except that this prohibition applies to the *jallal* animal's offspring and egg as an obligatory precaution.

Other Food and Drink

Ruling 778: The lawfulness of milk, rennet, and eggs depends on the lawfulness of the animal from which they are obtained, so if the animal is unlawful so are they.

Ruling 779: The following parts of a lawfully slaughtered animal are forbidden to eat: the intestinal waste, blood, penis, testicles, glands and spleen. As an obligatory precaution the womb, the female genitals, the cords alongside the spinal cord, the bone marrow in the spinal cord, the bladder and the gall bladder are also unlawful.

Ruling 780: The originally *najis* things as well as those things which have become *najis* and have not been made *tahir* are unlawful to consume.

Ruling 781: Mud and clay are forbidden to consume, as well as earth and sand as an obligatory precaution.

Ruling 782: The juices of grapes are not permissible to drink if they are boiled until it is reduced to a third of it. The same applies to the juices of raisins as an obligatory precaution.

Ruling 783: Wine is unlawful, before it becomes vinegar, as well as every intoxicant, whether it is liquid or solid, although only those intoxicants which are originally liquid are *najis*.

Miscellaneous Rules

Ruling 784: It is unlawful to eat, drink or otherwise use anything that harms a person in such a way that it causes fear of one's life or that of a believer, or it causes his disgrace and weakness, or even the loss of any of his abilities as an obligatory precaution.

Ruling 785: If medicine that one has to take is limited to what is unlawful, he should take only an amount that is necessary, except if it is from a pig or intoxicant, as they are unlawful unless one's life depends on it.

Ruling 786: For somebody who is compelled, he may eat the unlawful in an amount that prevents him from dying.

Ruling 787: Eating and drinking and any other dealing of the property of those whose ownership is recognized by the Sharia is permissible provided that one has their permission or is sure of them being agreeable to this. Excluded from this are those mentioned in verse 61 of the chapter *Al-Noor* of the Holy Quran, who are: fathers, mothers, brothers, sisters, uncles, aunts, the agent who has been entrusted with one's keys, and one's friends, as well as one's spouses and children; therefore it is not necessary to be certain that they will allow it. As an obligatory precaution, one should not do so if it is probable that they will not allow it.

Ruling 788: It is permissible for one to eat the fruits of trees and palms and cultivations which he passes, according to the rules mentioned in more detailed books.

Ruling 789: It is not permissible for one to eat from

food which he has not been invited to; in fact, even if he is invited, he cannot bring his son except if he knows that the host will be agreeable with it, or if he acts on a conventionally-accepted context that he is agreeable to it.

Ruling 790: It is forbidden to eat, or even just to sit, at a table where wine is drunk.

Ruling 791: Some eating etiquettes are recommended, amongst which are:

(1) Economising in eating;

(2) Washing the hands before and after eating;

(3) Saying "*Bismillah...*" before eating and "*Alhamdulillah*" after eating;

(4) Beginning with salt and ending with it;

(5) Not wasting the food;

(6) Eating and drinking with the right hand;

(7) Cleansing the teeth after eating.

(36)
INHERITANCE

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INHERITANCE

Introduction

One inherits from another on the basis of two causes, as follows:

(1) Inheritors on the basis of blood relationship have three categories in order of priority, as follows:

(a) The first category consists of the immediate parents and the children and their offspring.

(b) The second category consists of the grandparents and the great grandparents, however far removed, as well as brothers and sisters, and their offspring.

(c) The third category consists of brothers and sisters of one's parents and grandparents however far removed, and their offspring.

Whoever is in the second and third category, they will only inherit if there is nobody present within the preceding category.

(2) Inheritors on the basis of other causes.

A person will inherit from his or her spouse through permanent marriage along with those mentioned in the

three categories above. The husband will receive half of his wife's estate if she doesn't have a child, and a quarter of it if she does have a child. The wife will inherit a quarter of her husband's estate if he doesn't have a child, and an eighth of it if he does.

One may also inherit on the basis of guardianship which also has three categories:

(a) Guardianship of liberation;

(b) Guardianship of the liability of the *diyah* in mistaken killing;

(c) Guardianship of the Imam.

These categories will become effective only if there is nobody present within the previously mentioned three categories and each of these three categories are also similarly in order of priority, so those in the second or third category here will not inherit if anybody is present in the preceding category.

Ruling 792: There are three barriers for inheritance:

(1) Disbelief: therefore, a non-Muslim will not inherit from a Muslim, but a Muslim will inherit from a non-Muslim.

(2) Killing: therefore, a killer will not inherit from the person he killed if the killing was not rightful, even if it was by mistake.

(3) Slavery: a slave will not inherit.

Inheritance of the First Category

Ruling 793: If there is a single person in this category, he will inherit the whole estate.

Ruling 794: If only the parents are present, the father will inherit two-thirds and the mother will inherit a third.

Ruling 795: If only the children are present, and they are all males or all females, the estate will be divided equally amongst them. If some are male and some are female, each male will receive twice as much as each female will inherit.

Ruling 796: If the deceased is survived by either one of the parents or both of them, and has one or more than one son, each of the parents will inherit a sixth of the estate, and the rest will be given to the son or divided equally amongst the sons. The same is the case if he is survived by both parents and at least two daughters.

Ruling 797: If the deceased is survived by both parents and one daughter, each of the parents will inherit a fifth and the daughter will inherit the rest, provided that the deceased does not also leave a widow or widower. If the deceased is survived also by a wife, she will inherit an eighth of the estate and the parents will each inherit a fifth of what remains and three-fifths will be given to the daughter. If the deceased is a wife who is survived by her husband, he will receive a quarter of the estate, and each of her parents will inherit a sixth of what remains, and the rest will be inherited by the daughter.

Ruling 798: If the deceased is survived by both or one of

his parents, as well as one or more sons and one or more daughters, each parent will receive a sixth, and the rest will be distributed amongst the children, each son receiving twice as much as each daughter will receive.

Ruling 799: The children of the deceased's children will stand in place of the deceased's children if they are all deceased too. The grandchildren of the deceased will receive the same inheritance that his children were to receive if they were present, so the son's daughter will receive the son's share, and the daughter's son will receive the daughter's share. However, the deceased's grandchildren can only receive a share if none of the deceased's children are present, and his great-grandchildren can only receive a share if none of his children and grandchildren are present. If any of the offspring of the deceased is alive, then those in the second category will not inherit.

Ruling 800: The eldest son, even if he is in the womb, will receive *habwah* from his father – i.e. some particular personal items as gift – which are his copy of the Holy Quran, his ring, his sword, and his clothes, even if they are more than one. However, this will come in priority after a debt which the estate can fully pay off. Furthermore, the *habwah* is only for the eldest immediate son, and it is not given to the grandchildren.

Inheritance of the Second Category

Ruling 801: If there is nobody in the first category to inherit from the deceased, those in the second category will inherit, i.e. the grandparents and siblings. If there is only one person from this category, he will inherit the whole estate.

Ruling 802: If heirs of the deceased are his siblings, whether by both parents or one of them, they will receive the whole estate, and it will be divided equally amongst them if they are all of the same gender or if they are all the deceased's siblings by his mother only – whether they are of the same gender or not. If they are siblings by the same parents or by the father only and their genders are different, the males will inherit twice the amount as the females.

Ruling 803: If the deceased has siblings, some of them being by both parents or by the father, and some of them being by the mother, if the sibling by the mother is only one he will receive one-sixth. If they are more than one, they will all receive a total of one-third of the estate which will be divided equally amongst them. The rest will be inherited by the other siblings by both parents or by the father only, and will be divided equally if they are all of the same gender, or each male will receive double the amount received by each female.

Ruling 804: A sibling by the father only will not inherit if there is a sibling by both parents.

Ruling 805: A grandparent of the deceased will block the

inheritance of a great-grandparent. So if the deceased has grandparents, and their parents are also alive, the former only will inherit, and the latter will not.

Ruling 806: If the deceased is survived only by his grandfather and grandmother, if they are his father's parents the grandfather will receive two-thirds and the grandmother will receive one-third. If they are his mother's parents they will both receive a half each.

Ruling 807: If the deceased is survived by his grandparents and siblings, the grandfather will inherit the amount that a brother by both parents will receive, and the grandmother will inherit the amount that a sister by both parents will receive, whether they (the grandfather and grandmother) are paternal or maternal.

Ruling 808: The children of one's siblings will stand in place of their fathers or mothers only if all the siblings are deceased. If a brother or sister is present, the nephews and nieces will not inherit.

Inheritance of the Third Category

Ruling 809: If there is nobody in the first or second category, those in the third category will inherit; and if there is only one uncle or aunt, he or she will be the sole heir.

Ruling 810: If there is an uncle or aunt who is a brother or sister of the deceased's father by his father only (i.e. his half-brother or sister), then he will not inherit if there is a brother or sister of the deceased's father by both parents (i.e. his real brother or sister). In fact, the presence of a cousin whose father is a real brother to the deceased will prevent the deceased's uncles from inheriting if the uncle is the deceased's father's half-brother by the father only.

Ruling 811: If the deceased is survived by only his paternal uncles or aunts, then his estate will be divided amongst them equally if their gender is the same. If some of them are uncles and some are aunts, the uncles will get double the amount received by the aunts, whether they are the siblings of his parents by both parents or by either one of them.

Ruling 812: The maternal uncle who is the deceased's mother's brother by the father only will not inherit if there is a maternal uncle who is his mother's brother by both parents.

Ruling 813: If the deceased is survived by only his maternal uncles and aunts, then his estate will be divided equally.

Ruling 814: If paternal and maternal uncles and aunts are the heirs, the maternal uncles and aunts will receive a third of the total which will be divided amongst them equally, and the rest will be divided amongst the paternal uncles and aunts as explained above.

Ruling 815: The children of the uncles and aunts will inherit only if all the uncles and aunts are deceased, in which case each of them will inherit the portion of his father or mother – i.e. the uncle or aunt of the deceased.

Inheritance on the Basis of Guardianship

Ruling 816: Inheritance by guardianship will not be applicable unless nobody in the above-mentioned three categories of heirs is present. As mentioned above, the inheritance here is also of three categories in order of priority, so nobody in the second and third categories will inherit unless there is nobody in the preceding category to inherit.

Ruling 817: The three categories are as follows:

(1) Guardianship of Liberation: Whoever liberates a slave, he is his heir. The details of this category are not relevant nowadays.

(2) Guardianship of the Liability of the *Diyah* in Mistaken Killing: The details of this category have been explained in other detailed books of Islamic laws.

(3) Guardianship of the Imam (peace be upon him): If a person has nobody in the preceding categories, the Imam (peace be upon him) will be the heir of the one who has no heir.
This is so provided that:

(a) The deceased does not have an heir except his wife, as she will receive a quarter of the estate, and the remainder will go to the Imam (peace be upon him).

(b) The deceased is not a woman who is survived only by her husband, in which case the husband will inherit all her wealth.

(c) The deceased has not willed that all his wealth will go to the Muslims and the poor and the stranded travelers; such a will is valid for such a person. However, if he willed for other causes it can only be executed in respect to a third of one's estate and the remainder will go the Imam (peace be upon him).

In the time of the occultation of the Imam (peace be upon him), this category of inheritance will be treated in the same manner the Imam's share of the *khums* is treated, i.e. one should revert to the *hakim shar'i*.

Other Important Rules about Inheritance

Ruling 818: The husband and wife in a permanent marriage inherit from each other, despite which category of heirs is present.

Ruling 819: The husband will inherit from his wife his portion from all parts of her wealth, just like the other heirs; however, the wife will not inherit from the land of her husband, whether it is used or not; she will inherit from what is on the land, like buildings, trees, crops, etc. If another inheritor offers to buy what she inherits, she is obligated to accept it.

Ruling 820: A person who was born illegitimately will not inherit from his parents who committed the adultery and those who are related through them, such as siblings, uncles, aunts, grandparents, nor will they inherit from him. He will inherit from other relatives, such as his children and spouse, and they will inherit from him.

Ruling 821: An unborn child at the time of the death of the deceased will inherit from him if it is born alive.

Ruling 822: If somebody is missing and has been absent, and it is not known whether he is alive or dead, his wealth should be kept aside for him for four years with searching, or ten years without searching. Thereafter, it should be divided amongst his heirs. Excluded from this ruling is if the missing person has somebody who he was obligated to provide for, like his needy children, in which case they should be provided for from the wealth

of the missing person before the end of the waiting period.

Ruling 823: The *diyah* of the killed person and the *diyah* of his body parts while he was alive are to be included in his estate. As for the *diyah* of his body parts after his death, it will not be included in it and will not be inherited – rather, it will be spent on his behalf for good purposes, amongst which is the payment of his debts if this is the only means to do so.

Ruling 824: The inheritable *diyah* is inherited by all heirs, except his siblings by his mother only.

Ruling 825: If the heir of the deceased is not from the Shia Ithna-Ashari sect, and he establishes that a believer has a portion of the deceased's estate according to his method of distributing the estate, while he does not actually have such a portion according to us, the believer is permitted to take it.

(37)
COMPENSATION FOR BODILY HARM (*DIYAH*)

(37)

COMPENSATION FOR BODILY HARM

(*DIYAH*)

Diyah refers to payment made to compensate for a physical transgression committed against another person's life or his body.

Ruling 826: Such transgressions are of three types:

(1) Deliberate: this is with intent. This includes when the act does not normally result in the harm intended, such as if one hits a man with small pebbles in order to kill him, and it does kill him. It may also be by an act which does normally result in such harm but he did not intend that harm, such as if one shoots a gun at a person in order to maim the target rather than kill him, and he dies.

(2) Semi-deliberate: this is when one intends to afflict somebody by an act which does not normally result in bodily harm and without intending it either; the person then happens to become unexpectedly harmed.

(3) Mistake: this is when he didn't intend to afflict or harm him, such as if one fires a gun in the air, and a bullet hits somebody injuring or killing him.

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