ISLAMIC LAWS

According to the fatwas of His Eminence
al-Sayyid Ali al-Husayni al-Sistani

VOLUME TWO: TRANSACTIONS

a new annotated translation by
Mohammed Ali Ismail

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THE WORLD FEDERATION

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THE
WORLD
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OF KHOJA SHIA ITHNA-ASHERI MUSLIM COMMUNITIES

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Foreword

By the grace of Allah, The World Federation is pleased to present to the community the second volume of a new translation of the *Tawḍīḥ al-Masā'il* of His Eminence al-Sayyid Ali al-Husayni al-Sistani (may Allah protect him). The first translation of this work, by Mulla Asgharali M. M. Jaffer, was published by The World Federation in 1994. This edition contains new rulings, as well as changes to some previous rulings, and is annotated by the translator.

Throughout this project we have kept the Office of His Eminence al-Sistani informed and updated. The work has been long-awaited and much-demanded by many community members. The Islamic Education Department of The World Federation has tried for many years to make this a reality but constantly faced obstacles in this task. We were therefore delighted when Shaykh Mohammed Ali Ismail accepted the challenge and agreed to translate this most vital work for us. Not only is this a high-quality translation but it is also a well-researched work that contains helpful footnotes as well as numerous clarifications in square brackets, which will assist readers to better understand the rulings and perform their duties to Allah. A glossary of legal terms is also a useful addition.

I also acknowledge and appreciate the efforts of the editors as well as the support of The World Federation office bearers. A special word of thanks goes to Sayyid Aliraza Naqvi, formerly The World Federation's Assistant Secretary General responsible for Islamic Education, as it was he who commenced this project. May Allah reward them and everyone else who has contributed to this work with the best in this life and in the hereafter, and may He grant them all increased success and grace.

KUMAIL RAJANI
Head of Islamic Education Department, The World Federation
Exeter, Jumādā al-Thāniyah 1438 / March 2017

Translator's Preface

In the name of Allah, the All-Beneficent, the Ever-Merciful.
All praise is for Allah, Lord of the worlds.
May Allah bless Muḥammad and his pure progeny.

~

The current volume represents a translation of the section pertaining to transactions (*muʿāmalāt*) in the Persian *Tawḍīḥ al-Masāʾil* (literally, *Explanation of Rulings*) of His Eminence al-Sayyid Ali al-Husayni al-Sistani. The text used for this translation is the thirty-first edition, published in 2014 by the Qum office of His Eminence. The following is a list of the most important conventions that have been adopted in this work.

1. The particular wording employed by a jurist in his rulings is highly significant; sometimes, even small differences in expression can impact greatly on people's lives. With this in mind, and given that the present work is a translation of a manual of jurisprudential rulings, the aim has been to produce a translation that is as close to the original wording as possible. However, where this approach would have produced unfamiliar or unclear expressions in English, a more idiomatic style has been adopted.
2. Annotations and glosses have been added in an effort to enhance the reader's understanding of the rulings and to facilitate cross-referencing with other parts of the work. Many of these annotations and glosses have been based on al-Sayyid al-Sistani's other works on Islamic law, particularly *Minhāj al-Ṣāliḥīn*.
3. In order for all aspects of the work to be accessible to as many English-speaking people around the world as possible, the standard Arabic spelling and pronunciation has been used as a model for the transliteration of legal terminology; for example, '*amānah*' and '*wakīl*' have been preferred to '*amānat*'

and '*vakīl*'. For the same reason, in the case of compound terms, the Arabic form has been preferred; for example, '*ahl al-kitāb*' and '*al-iḥtiyāṭ al-wājib*' have been used instead of '*ahl-i kitāb*' and '*iḥtiyāṭ-i wājib*'.

4. The transliteration of those Arabic parts of the text that in practice are meant to be articulated verbally has aimed to facilitate a more natural and uninterrupted pronunciation of the words and sentences. For example, in the section on the method of saying the marriage contract formula, '*qabiltut tazwīj*' has been preferred to '*qabiltu al-tazwīj*.'
5. To avoid making the text longer and more complex than necessary by constantly stating 'he/she' in rulings common to both genders, the word 'he' is used to refer to both a man and a woman except when the ruling is such that it can only apply to one gender.
6. The words 'should' and 'should not' are used in the context of recommendations and disapprovals, whereas 'must' and 'must not' refer to instructions that are obligatory to follow.
7. In order to produce a more fluid text, the use of square brackets to indicate the inclusion of words that are not in the original work has been kept to a minimum.
8. Legal terminology has been translated into English on the first occasion in each chapter. Upon subsequent use of these terms, only the original Arabic word or its English equivalent is given, depending on which one was deemed to be more familiar to the majority of English-speaking Shia Muslims, or in some cases, more suited to the particular context. In the main headings, however, both the key Arabic and English terms have been mentioned. Original terms and their translations can also be found in the glossary and appendix at the end of the book.
9. The invocation '*ṣallal lāhu 'alayhi wa ālih*' (may Allah bless him and his progeny) after the mention of Prophet Muḥammad has been indicated by the abbreviation 'Ṣ'; similarly, the invocation '*'alayhis/'alayhimus salām*' (peace be upon him/them) after the mention of one or all of the Imams has been indicated by the abbreviation ''A'.

I would like to take this opportunity to thank Shaykh Abbas

Mohamed Husein Ismail and Dr Amir Dastmalchian for editing and proofreading this work. I am also grateful to Dr Haider Bhogadia for his assistance with anatomical terms. Warm thanks are due to Shaykh Kumail Rajani, The World Federation's Head of Islamic Education, for his perceptive observations in the final draft of the text. I am grateful to the offices of His Eminence al-Sayyid al-Sistani in Qum and in London for providing clarification on certain rulings. My appreciation also goes to Sayyid Aliraza Naqvi, formerly The World Federation's Assistant Secretary General responsible for Islamic Education, for initiating the project which has resulted in this translation and for his support throughout. Finally, I am thankful to my wife for all her contributions during the course of this work.

I beseech Allah, without whose grace nothing can come to fruition, to accept the efforts of all those who have been His agents in this project and to bless us all with the success to worship Him as true servants.

MOHAMMED ALI ISMAIL
London, Jumādā al-Thāniyah 1438 / March 2017

Transliteration

Arabic terms which do not have standard spellings in English have been transliterated according to the system set out on this page.

ء	a, i, or u (initial form)	ل	l
ء	ʾ (medial of final form)	م	m
ا	a	ن	n
ب	b	ه	h
ت	t	و	w
ث	th	ي	y
ج	j	ة	h (without iḍāfah)
ح	ḥ	ة	t (with iḍāfah)
خ	kh	~	~
د	d	ال	al- *
ذ	dh	ـَ	a
ر	r	ـِ	i
ز	z	ـُ	u
س	s	ـا / آ / ى	ā
ش	sh	ـِي	ī
ص	ṣ	ـُو	ū
ض	ḍ	آ	ʾā (medial form)
ط	ṭ	ـَيْ	ay
ظ	ẓ	ـَيّ	ayy
ع	ʿ	ـِيّ	iyy (medial form)
غ	gh	ـِيّ	ī (final form)
ف	f	ـَوْ	aw
ق	q	ـَوّ	aww
ك	k	ـُوّ	uwww

* This does not apply, however, to those Arabic parts of the text that in practice are meant to be articulated verbally. See the fourth convention mentioned in the Translator's Preface.

CHAPTER TEN

Buying and Selling

Ruling 2059. It is befitting for a trader to learn the laws (*aḥkām*) of buying and selling concerning issues that he commonly encounters. In fact, if he would be at risk of committing an unlawful (*ḥarām*) actor abandoning an obligatory (*wājib*) act as a result of not learning the laws, then it would be necessary [not just befitting] for him to learn them. It is reported that His Eminence Imam al-Ṣādiq (ʿA) said: 'Onewho wishes to engage in buying and selling must learn its laws; ifhe were to buy and sell before learning its laws, he would fall intoruin by means of invalid (*bāṭil*) and dubious transactions (*muʿāmalāt*).'

Ruling 2060. If a person does not know whether a transaction (*muʿāmalah*) he has conducted is valid (*ṣaḥīḥ*) or invalid due to him not knowing the ruling (*masʾalah*), he cannot have disposal over what he received in the transaction nor what he handed over; rather, he must learn the ruling or exercise precaution (*iḥtiyāṭ*), albeit by means of a settlement (*muṣālaḥah*). However, if he knows that the other party consents to him having disposal over the item even though the transaction is invalid, then having disposal over it is permitted (*jāʾiz*).

Ruling 2061. If a person does not have any wealth but certain expenses are obligatory on him - such as providing for his wife and children - he must earn his living. As for recommended (*mustaḥabb*) matters - such as providing a better livelihood for one's family and helping the poor (*fuqarāʾ*) - for such matters, earning is recommended.

RECOMMENDED (*MUSTAḤABB*) ACTS OF BUYING AND SELLING

Some things are considered to be recommended when buying and selling, including:

1. one should not discriminate between buyers with respect to the price of goods except when taking into account the buyer's impoverished situation and suchlike;

2. at the start of business proceedings, one should say the *shahādatayn* (two testimonies),[1] and at the time of the transaction one should say *takbīr*;[2]
3. one should give more of what is being sold and take less of what is being bought;
4. if the other party involved in the transaction regrets making the transaction and requests to annul it, one should accept his request.

DISAPPROVED (*MAKRŪH*) TRANSACTIONS

Ruling 2062. Some disapproved transactions are as follows:

1. selling real estate, unless one buys another real estate with themoney acquired from the transaction;
2. to be a butcher;
3. selling shrouds (*kafan*s);
4. transactions with people of low character;
5. transactions between the start of the time for the morning (*ṣubḥ*) prayer and sunrise;
6. making one's profession the buying and selling of wheat, barley and suchlike;
7. intervening in someone else's transaction in order to buy the goods that the other person wishes to buy.

UNLAWFUL (*ḤARĀM*) TRANSACTIONS

Ruling 2063. There are many unlawful transactions; some of them are as follows:

1. buying and selling intoxicating drinks, non-hunting dogs, pigs, and - based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) - impure (*najis*) carcasses. Apart from these, buying and selling an intrinsic impurity (*ʿayn al-najāsah*) is permitted if it is for some significant and lawful use,

1 That is, testifying to the oneness of Allah and to the prophethood of Prophet Muḥammad (Ṣ).

2 *Takbīr* is a proclamation of Allah's greatness by saying '*allāhu akbar*'.

such as buying and selling impure animal waste for use as fertilisers;

2. buying and selling usurped (*ghaṣbī*) property, if this necessitates having disposal over it, such as handing it over and taking possession of it;
3. transactions with money that is no longer legal tender or with counterfeit money, if the other party is unaware of this; but if he is aware, the transaction is permitted;
4. transactions of unlawful objects; that is, things that have been made in a form that is usually utilised in an unlawful manner and its value is due to its unlawful utilisation, such as idols, crucifixes, gambling implements, and instruments of unlawful entertainment;
5. transactions in which there is deceit. The most noble Messenger (Ṣ) said, 'One who deceives Muslims in his transactions is not one of us; Allah takes away the blessing of his sustenance, closes the path of his livelihood, and leaves him to himself.' Deceit can take place in different ways, such as:
    a. mixing a good item with a bad one or with something else; for example, mixing milk with water;
    b. making an item appear better than it really is; for example, spraying water onto old vegetables to make them appear fresh;
    c. feigning an item as something else; for example, gold-plating an item without informing the buyer [that it is not solid gold];
    d. concealing a defect in an item when a buyer trusts the seller to not conceal defects.

Ruling 2064. There is no problem in selling an item that has become impure but is washable and may become pure (*ṭāhir*), such as a rug or utensil. The same applies if the item is not washable but the lawful and usual use of it is not dependent on it being pure, such as crude oil. In fact, even if its lawful and usual use is dependent on it being pure, in the event that it has a lawful and significant benefit, it is permitted to sell it.

Ruling 2065. If a person wishes to sell something that is impure, he must tell the buyer that it is impure in the event that were he to not tell him, the buyer would be at risk of committing an unlawful act or abandoning an obligatory act; for example, the buyer would use impure water to perform ablution (*wuḍū'*) or ritual bathing (*ghusl*) and then perform obligatory prayers (*ṣalāh*); or, he would use the impure item for eating or drinking. Of course, if one knows that telling the buyer would be of no avail - for example, he is someone who is unconcerned about religious matters - then it is not necessary to tell him.

Ruling 2066. Buying and selling impure consumable and non-consumable medicine is permitted; however, the seller must inform the buyer of it being impure in the case mentioned in the previous ruling.

Ruling 2067. There is no problem in buying and selling oil that has been imported from non-Muslim countries if one does not know it is impure. As for oil and other things that are acquired after the animal has died, such as gelatine, in the event that one acquires them from a disbeliever (*kāfir*) or they are imported from non-Muslim countries, they are pure and it is permitted to buy and sell them as long as one deems it probable that they have been acquired from an animal which was slaughtered according to Islamic law; however, it is unlawful to consume these things. Furthermore, it is necessary for the seller to tell the buyer how it was acquired in the event that were he to not tell him, the buyer would be at risk of committing an unlawful act or abandoning an obligatory one, similar to what was mentioned in Ruling 2065.

Ruling 2068. If a fox or similar animal is not slaughtered according to Islamic law or it dies by itself, then based on obligatory precaution, buying and selling its skin is not permitted; however, if it is doubtful [as to how the animal died,] then there is no problem.

Ruling 2069. It is permitted to buy and sell leather that is imported

from non-Muslim countries or is acquired from a disbeliever in the event that one deems it probable that it is from an animal which was slaughtered according to Islamic law. Moreover, it is correct (*ṣaḥīḥ*) to perform prayers with it.

Ruling 2070. Oil and other products that are acquired from an animal after it has died are considered pure, and buying and selling them is permitted. The same applies to leather that is acquired from a Muslim whom a person knows to have acquired it from a disbeliever without investigating whether or not the leather was acquired from an animal that was slaughtered according to Islamic law. However, consuming such oil and the like is not permitted.

Ruling 2071. A transaction of wine and other intoxicating drinks is unlawful and invalid.

Ruling 2072. The sale of usurped property is invalid unless the owner subsequently consents to it; and [if the owner does not,] the seller must return to the buyer the money he received from him.

Ruling 2073. If a buyer seriously intends to engage in a transaction but his intention (*qaṣd*) is to not pay for the item that he is buying, this intention does not affect the validity of the transaction. However, it is necessary for him to pay the seller for the item.

Ruling 2074. If a buyer purchases an item undertaking to pay for it later, but he wishes to pay for it later with unlawful wealth, the transaction is valid. However, he must pay the amount he owes from lawful wealth in order to be absolved of his responsibility [to pay the seller].

Ruling 2075. The buying and selling of unlawful instruments of entertainment is not permitted. As for instruments that can be used for lawful or unlawful purposes, such as radios, recorders, and video players, there is no problem in buying and selling them, and it is permitted to keep them when one is confident (i.e. has *iṭmiʾnān*) that he and his family will not use them in unlawful ways.

Ruling 2076. If something that can be used in a lawful manner is sold so that it is used in an unlawful way - for example, a person sells grapes so that wine can be produced from them - then, irrespective of whether it was decided to sell that thing for the unlawful use at the time of the transaction or before it, if the transaction takes place on the basis of the unlawful use, it is unlawful. However, if a person does not sell it for that reason but knows that the buyer will produce wine from the grapes, there is no problem wilh the transaction.

Ruling 2077. Based on obligatory precaution, it is unlawful to make sculptures of living things; however, there is no problem in buying and selling such sculptures. As for illustrating living things, this is permitted.

Ruling 2078. Buying items that have been acquired through gambling, theft, or void (*bāṭil*) transactions is unlawful if this amounts to having disposal over them. If someone buys such an item and receives it from the buyer, he must return it to its original owner.

Ruling 2079. If a person sells ghee that is mixed with suet and he specifies it - for example, he says, 'I am selling 1 kilogram of this ghee' - then in case the amount of suet is a lot, i.e. to the extent that the product could not be said to be ghee, the transaction is void. But if the amount of suet is a little, i.e. to the extent that the product could be said to be 'ghee mixed with suet', then the transaction is valid. However, in this case, the buyer has the right to annul due to a defect (*khiyār al-ʿayb*),[3] i.e. he can annul the transaction and take back his money. Furthermore, if the ghee is distinguishable from the suet, the transaction in relation to the amount of suet mixed in the ghee is void, and the money that the seller takes for the suet belongs to the buyer and the suet belongs to the seller. The buyer can also annul the transaction with respect to the pure ghee within the product. However, if the seller does not specify it and he sells 1 kilogram of ghee, undertaking to give it later, and he later gives

3 See Ruling 2134, case 6.

ghee mixed with suet, the buyer can return the mixed ghee and demand pure ghee.

Ruling 2080. If a commodity that is sold by weight or measure is sold for a greater weight or measure of the same commodity - for example, 1 kilogram of wheat is sold for 1.5 kilograms of wheat - it is usury (*ribā*) and unlawful. In fact, if one of two commodities is without defect and the other is defective, or the quality of one of them is good and the other is bad, or they are different to one another in price - then, in the event that the seller receives more than he gives, it is still usury and unlawful. Therefore, if a person gives unbroken copper and receives a greater amount of broken copper, or he gives rice of superior quality and receives a greater amount of inferior quality rice, or he gives gold that has been crafted [such as a piece of jewellery] and receives a greater amount of gold that has not been crafted, it is usury and unlawful.

Ruling 2081. If the extra thing that a seller receives is different to what he sells - for example, he sells 1 kilogram of wheat for 1 kilogram of wheat and 10 pence - it is still usury and unlawful. In fact, even if the seller does not receive any extra goods but makes it a condition that the buyer must do something for him, it is also usury and unlawful.

Ruling 2082. If a person gives a lesser amount but adds something else - for example, he sells 1 kilogram of wheat and one handkerchief for 1.5 kilograms of wheat - there is no problem as long as he intends the handkerchief to be the item for which he is receiving the extra amount [i.e. the extra half kilogram of wheat] and as long as the transaction is an immediate exchange (*naqd*) transaction.[4] Similarly, there is no problem if both sides add something extra - for example, one of them sells 1 kilogram of wheat and one handkerchief to the other person for 1.5 kilograms of wheat and one handkerchief - as long as they intend the handkerchief and half kilogram of wheat, on the one side, and the handkerchief, on the other, to be the items of exchange.

4 That is, a transaction in which there is no lapse of time between the buyer paying for the item and receiving it. This is in contrast to credit (*nasī'ah*) and prepayment (*salaf*) transaction.

Ruling 2083. If a person sells a commodity that is sold in metres or yards, such as cloth, or a commodity that is sold by count, such as eggs and walnuts, and he takes more in return, there is no problem except if both [the commodity being sold and the payment in exchange (*ʿiwaḍ*)] are of the same commodity and the transaction has a time period, in which case its validity is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution, it is not valid].[5] An example [of such a problematic transaction] is when a person gives ten walnuts at the present time in order to receive twelve walnuts after one month. The same applies to selling currency. Therefore, there is no problem if, for example, a person sells British pounds sterling for another currency such as dinars or dollars, whether that be at the present time or at another time. However, if the person wishes to sell some currency for the same currency and to receive more in return, then that transaction must not have a time period otherwise its validity is problematic [i.e. based on obligatory precaution, it is not valid]. An example [of such a problematic transaction] is when a person sells £100 at the present time in order to receive £110 after six months.

Ruling 2084. With regard to commodities that are sold by weight or measure in one city or in most cities, and by count in other cities, it is permitted to sell that commodity for more in the city in which it is sold by count.

Ruling 2085. With regard to things that are sold by weight or measure, if the thing that is sold and the payment in exchange for it are not of the same commodity and the transaction does not have a time period, there is no problem in taking more. However, if the transaction has a time period, it is problematic [i.e. based on obligatory precaution, it is not valid]. Therefore, if 1 kilogram of rice is sold for 2 kilograms of wheat after one month, the validity of the transaction is problematic [i.e. based on obligatory precaution, it is not valid].

5 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2086. Selling ripe fruit for unripe fruit with extra is not permitted. If there is no extra and the transaction does not have a time period, it is disapproved (*makrūh*), and if it is on credit, it is problematic [i.e. based on obligatory precaution, it is not permitted].

Ruling 2087. With regard to usury based transactions, barley and wheat are considered to be the same commodity. Therefore, if, for example, a person gives 1 kilogram of wheat and receives 1.5 kilograms of barley in return for it, it is usury and unlawful. Also, if, for example, a person buys 10 kilograms of barley in return for 10 kilograms of wheat at the beginning of the harvest, then because he acquires the barley immediately but will give the wheat after some time, it is as if he has acquired something extra and the transaction is unlawful.

Ruling 2088. A father and his child, and a wife and husband can take interest from one another. Similarly, a Muslim can take interest from a disbeliever (*kāfir*) who is not under the protection of Islam. However, an interest based transaction with a disbeliever who is under the protection of Islam is unlawful. Of course, after the transaction has taken place, one can take more from him if giving interest is permitted in his religion.

Ruling 2089. Shaving one's beard and taking a fee for doing so is not permitted, based on obligatory precaution. The exception to this rule is if it is done out of necessity or it would result in harm or hardship (*ḥaraj*) that cannot normally be endured, even if that hardship amounts to being mocked or insulted.

Ruling 2090. Singing (*ghinā*) is unlawful. The meaning of 'singing' here is void (*bāṭil*) speech that is articulated in a tune appropriate to gatherings of entertainment and amusement. Similarly, it is not permitted to recite the Qur'an, supplications (*duʿā'*s), and the like in such a tune. And based on obligatory precaution, other forms of speech, apart from the ones already mentioned, must also not be articulated in such a tune. Similarly, listening to singing is

unlawful, and taking a fee for singing is also unlawful and the fee does not become the property of the person who took it. Learning and teaching to sing is also not permitted. Music, i.e. playing instruments that are especially designed for music, is also unlawful if it is in a way that is appropriate to gatherings of entertainment and amusement [and listening to such music is unlawful as well]; other than that, it is not unlawful. Taking a fee for playing unlawful music is unlawful and the fee taken does not become the property of the person who took it. Teaching and learning it is also unlawful.

CONDITIONS RELATING TO THE SELLER AND THE BUYER

Ruling 2091. There are six conditions that must be fulfilled by the seller and the buyer [in order for the transaction to be valid]:

1. they must be of the age of legal responsilility (*bāligh*);
2. they must be sane (*ʿāqil*);
3. they must not be foolish with finances (*safīh*); i.e. they must not spend their wealth in futile ways;
4. they must have an intention to buy and sell. Therefore, if, for example, someone jokingly says, 'I sell my property', the transaction is void;
5. they must not be compelled by anyone [to carry out the transaction];
6. they must, respectively, be the owners of the commodity being sold and the payment made in exchange.

The rulings pertaining to these conditions will be explained below.

Ruling 2092. A transaction carried out with a non-*bāligh* child who acts independently in the transaction is void except with regard to things that have little value and with which it is normal to transact with a non-*bāligh* child who is able to discern between right and wrong (*mumayyiz*). If the transaction is carried out with his guardian (*walī*) and the non-*bāligh mumayyiz* child only says

the formula (*ṣīghah*)[6] for the transaction, it is valid in each case. In fact, if the commodity or the money belongs to someone else and the child sells the commodity as the agent (*wakīl*) of the owner or buys something with the money, the apparent (*ẓāhir*)[7] ruling is that the transaction is valid even though the *mumayyiz* child may be independent in having disposal over the commodity/money. Similarly, if the child merely acts as an intermediary for delivering the money to the seller, the transaction is valid even if the child is not *mumayyiz* because in reality two *bāligh* people will have transacted with one another.

Ruling 2093. If a person buys something from or sells something to a non-*bāligh* child when transactions with such a child are not valid, he must return the commodity or the money that was taken from the child - in the event that it was the property of the child - to his guardian. If, however, it belonged to someone else, he must return it to its owner or obtain the owner's consent. In the event that he does not know who the owner is and does not possess any means of identifying him, he must give the thing he acquired from the child to the poor on behalf of the owner as *radd al-maẓālim*.[8] And the obligatory precaution is that in order to do this, he must obtain permission from a fully qualified jurist (*al-ḥākim al-sharʿī*).

Ruling 2094. If a person carries out a transaction with a *mumayyiz* child when transactions with such a child are not valid, and the child destroys the commodity or the money that he gave him, he can claim it from the child's guardian or from the child himself after he becomes *bāligh*. And if the child is not *mumayyiz* or he is *mumayyiz* but does not destroy the property himself but rather it is destroyed while it is with him, albeit as a result of his negligence or dissipation, he is not responsible (*ḍāmin*) for it.

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6 See Rulings 2107 and 2108.

7 For practical purposes in jurisprudential rulings, expressing an 'apparent' ruling equates to giving a *fatwa*.

8 *Radd al-maẓālim* refers to giving back property - which has been unrightfully or unknowingly taken - to its rightful owner, or if that is not possible, to the poor as *ṣadaqah* on behalf of the rightful owner.

Ruling 2095. If a buyer or a seller is compelled to carry out a transaction but then consents to it after the transaction - for example, he says, 'I consent' - the transaction is valid. However, the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that the two parties should say the transaction formula again.

Ruling 2096. If a person sells someone's property without his authorisation, the transaction is void if the owner does not consent to its sale and does not subsequently authorise it.

Ruling 2097. The father and paternal grandfather of a child, and also the executor (*waṣī*) of the father or the executor of the paternal grandfather of a child, can sell the property belonging to the child. And in case none of them are alive, a just (*ʿādil*) jurist (*mujtahid*)[9] can also sell the property of an insane person, an orphan child, or a missing person, if a matter of primary importance necessitates it.

Ruling 2098. If a person usurps some property and then sells it and thereafter the owner of the property authorises the transaction, the transaction is valid. The thing that the usurper gives to the buyer and its usufruct from the time of the transaction belong to the buyer. The thing that the buyer gives and its usufruct from the time of the transaction belong to the person whose property was usurped.

Ruling 2099. If a person usurps some property and then sells it with the intention that the money acquired in return belongs to him, in the event that the owner of the usurped property authorises the transaction, the transaction is valid. However, the money belongs to the owner, not the usurper.

CONDITIONS RELATING TO THE COMMODITY AND THE PAYMENT IN EXCHANGE

Ruling 2100. The commodity that is sold and the thing that is

9 A *mujtahid* is a person who has attained the level of *ijtihād*, qualifying him to be an authority in Islamic law. *Ijtihād* is the process of deriving Islamic laws from authentic sources.

taken as payment in exchange for it must fulfil the following five conditions [in order for the transaction to be valid]:

1. the amount must be known, either by weight, measure, number, or other similar method;
2. the person must be able to hand over the item, otherwise the transaction is not valid unless he sells the thing with sorriething else that he can hand over, in which case the transaction is valid. However, if the buyer can acquire the thing that he has bought even though the seller is unable to hand it over to him, the transaction is valid. For example, if someone sells a horse that has run away and the buyer is able to find it, there is no problem with the transaction; it is valid and there is no need to include something that he can deliver;
3. the particulars of the commodity and the payment in exchange must be known. 'Particulars' here are those things that have an effect on one's decision concerning the transaction [as opposed to inconsequential things];
4. there must not be any other right attached to the commodity or the payment in exchange in that once it ceases to be owned by the owner, he no longer has any right over it.
5. the commodity itself must be sold, not its usufruct. Therefore, if, for example, someone sells the usufruct of a house, the transaction is not valid. However, in the event that the buyer offers the usufruct of his own property instead of money, there is no problem; for example, he buys a rug from someone and in exchange he gives him the usufruct of his house for a year.

The rulings pertaining to these conditions will be explained below.

Ruling 2101. A commodity that is sold by weight or measure in a particular city must be purchased by weight or measure in that city. However, he can purchase the same commodity by viewing it in another city where it is sold by viewing it.

Ruling 2102. Something that is bought and sold by weight can also be transacted by measure; for example, a person wishes to sell 10 kilograms of wheat and he uses a measuring vessel that has the capacity to hold 1 kilogram of wheat and sells ten of these measures.

Ruling 2103. If a transaction is void due to one of the conditions that were mentioned earlier - apart from the fourth condition - not being fulfilled, but the buyer and seller consent for the other to have disposal over their property, then there is no problem in them having this disposal.

Ruling 2104. The transaction of something that has been given as a charitable endowment (*waqf*) is invalid. However, if the thing is damaged to the extent that it can no longer be used for the purpose for which it was endowed, or it is close to reaching this stage - for example, the *ḥaṣīr*[10] of a mosque is so torn that one cannot perform prayers on it - then there is no problem if the trustee (*mutawallī*) or someone who is ruled to be in his position sells it. But wherever possible, the money acquired should - based on recommended precaution - be used in the same mosque in a manner that is most congruous with the aims of the endower (*wāqif*).

Ruling 2105. If a dispute arises between the beneficiaries of a charitable endowment to the extent that it is supposed that not selling the endowment may result in the loss of property or the loss of life, then selling the endowment is problematic [i.e. based on obligatory precaution, it must not be sold]. However, if the endower makes a condition that it must be sold if this be advisable, then there is no problem in selling it in this case.

Ruling 2106. There is no problem in buying or selling a property that has been rented to someone else. However, the use of the property during the rental period belongs to the tenant/hiree

10 A *ḥaṣīr* is mat that is made by plaiting or weaving straw, reed, or similar materials of plant origin.

(*mustaʾjir*). And if the buyer does not know that the property has been given on rent or he bought the property supposing that the rental period is short, he can annul his transaction after discovering the situation.

THE TRANSACTION FORMULA (*ṢĪGHAH*)

Ruling 2107. When buying and selling, it is not necessary to say a particular formula [or for it to be] in Arabic. For example, if a seller says in English, 'I sell this property in exchange for this money' and the buyer says, 'I accept', the transaction is valid. However, the buyer and the seller must have an intention to establish (*qaṣd al-inshāʾ*) [a contract of sale]; i.e. when they say these sentences, they must intend to buy/sell.

Ruling 2108. If at the time of the transaction the formula is not said but the seller, in exchange for the property that he takes from the buyer, makes the buyer the owner of his own property, the transaction is valid and both become owners [of the exchanged items].

BUYING AND SELLING FRUIT

Ruling 2109. The sale of fruit that has shed its flower and developed seeds, and about which it is known whether it has been saved from disease or not such that the quantity of that tree's produce can be estimated, is valid even before it is picked. In fact, even if it is not yet known whether it has been saved from disease or not, in the event that the sale is of fruit that is two years old or more, or the sale is of the quantity that has grown at the moment, the transaction is valid on condition that the fruit has a significant value. Similarly, if a produce of the earth or something else is sold with it, the transaction is valid. However, the obligatory precaution in this case is that the other produce must be incorporated into the transaction in a way that if the seeds do not form into fruit, the capital of the buyer is protected.

Ruling 2110. The sale of fruit that is on trees before the fruit forms seeds and sheds its flower is permitted, but it must be sold with something else in the way described in the previous ruling; or, the sale must be for fruit that is more than one year old.

Ruling 2111. There is no problem in the sale of the fruit of date palms which are on the trees, whether they be ripe or unripe. However, the payment in exchange must not be dates, whether they be from the same tree or from another. However, if the fruit is sold for ripe *ruṭab* [Soft, moist dates] or unripe ones that have not yet become dates, there is no problem. If someone owns one date palm in the house of another person and getting to it is difficult for him, then, in case the quantity is estimated and the owner of the date palm sells it to the owner of the house and receives dates in exchange, there is no problem.

Ruling 2112. There is no problem in selling cucumbers, aubergines, vegetables, and the like which are picked a number of times a year as long as the produce has become apparent and is visible, and as long the number of times the buyer will pick and purchase the produce has been specified. However, if the produce has not become apparent and visible, then selling it is problematic [i.e. based on obligatory precaution, it is not valid].

Ruling 2113. If wheat ears are sold after they have formed grains for wheat that has been acquired from itself or from other wheat ears, the transaction is not valid.

IMMEDIATE EXCHANGE (*NAQD*) AND CREDIT (*NASĪʾAH*) TRANSACTIONS

Ruling 2114. If a commodity is sold in an immediate exchange transaction, both the buyer and the seller can claim the commodity and the payment from each other after the transaction and they can take possession of them. The handing over of a moveable commodity, such as a rug or clothes, and of an immoveable commodity, such as a house or land, is realised by

relinquishing the item and making it available to the other party in a way that he could have disposal over it if he wanted. This would be different in different cases.

Ruling 2115. In a credit transaction, the deferment period must be precisely defined. Therefore, if a person sells a commodity with the understanding that he would get the payment at the beginning of harvest, the transaction is invalid because the deferment period has not been precisely defined.

Ruling 2116. If a commodity is sold on credit, the seller cannot claim payment for it from the buyer before the completion of the agreed deferment period. However, if the buyer dies and leaves behind an estate, the seller can claim payment from the heirs before the completion of the deferment period.

Ruling 2117. If a commodity is sold on credit, the seller can claim the payment for it from the buyer after the completion of the agreed deferment period. However, if the buyer is unable to pay, the seller must give him respite or rescind (*faskh*) the transaction and take back the commodity if it still exists.

Ruling 2118. If a person sells a commodity on credit to a person who does not know its price and the seller does not tell him the price, the transaction is invalid. However, if he sells the commodity for a higher price to a person who knows its immediate exchange transaction price - for example, he says, 'The commodity I am selling to you on credit is £10 more than immediate exchange transaction price', and the buyer accepts, there is no problem.

Ruling 2119. With regard to a person who has sold a commodity on credit and has specified a time for receiving the payment, if he, for example, reduces the amount he is owed after half of the deferment period has passed and takes the rest immediately, there is no problem.

PREPAYMENT (*SALAF*) TRANSACTION AND ITS CONDITIONS

Ruling 2120. A prepayment transaction is when a person sells a commodity that has been defined in general terms for an amount that is paid immediately and the seller hands over the commodity after a period of time. Therefore, if the buyer says, for example, 'I give you this money so that after six months I will take such and such commodity', and the seller responds by saying, 'I accept'; or, if the seller takes the money and says, 'I sell such and such commodity and I will hand it over after six months', the transaction is valid.

Ruling 2121. If a person sells by way of a prepayment transaction a commodity made of gold or silver and accepts gold or silver money in exchange, the transaction is invalid. However, if a person sells commodity or currency which is not made of gold or silver and takes another commodity or gold or silver money in exchange, the transaction is valid as per the details that will be mentioned in the seventh condition in the next ruling. And the recommended precaution is that in exchange for the commodity one sells, he should receive money, not another commodity.

Ruling 2122. A prepayment transaction must fulfil the following seven conditions [in order for it to be valid]:

1. the particulars which determine differences in the commodity's price must be specified, but a lot of precision is not necessary; it is sufficient to the extent that people would say its particulars are known;
2. before the buyer and the seller depart from each other, the buyer must pay the entire price to the seller; or, he must be owed an amount by the seller to be paid immediately which he offsets against the price of the commodity and which the seller accepts. In the event that the buyer pays only part of the price, although the transaction is valid with respect to that part, the seller can annul the transaction;

3. the period [within which the commodity must be handed over] must be precisely defined. If the seller says, 'I will hand over the commodity by the beginning of the harvest', the transaction is invalid because the period has not been precisely defined;
4. the time for handing over the commodity must be specified such that the seller is able to hand over the commodity in that time, whether the item is scarce or abundant;
5. based on obligatory precaution, the place where the commodity will be handed over must be precisely specified. And if the place is clear from the discussions of the two parties, it is not necessary to mention the name of the place;
6. the weight, measure, or number of items of the commodity must be specified. If commodities that are usually sold by viewing are sold by prepayment, there is no problem. However, as is the case with certain walnuts and eggs, the difference between the individual items of the commodity must be so small that people would not give it importance;
7. if the commodity being sold is usually sold by weight or measure, the thing that is received in exchange for it must not be of the same commodity; in fact, based on obligatory precaution, neither must it be a commodity that is sold by weight or measure. And if the thing. that is being sold is a commodity that is sold by number, then based on obligatory precaution the thing that is received in exchange for it must not be an extra amount of the same commodity.

LAWS RELATING TO PREPAYMENT (*SALAF*) TRANSACTIONS

Ruling 2123. A person cannot sell a commodity that has been acquired by prepayment to a person other than its seller before the end of the stipulated period. However, there is no problem in selling it after the period has expired even if he has not yet taken possession of it. But selling a commodity that is sold by weight or measure - apart from fruit - to a person other than its seller before

taking possession of it is not permitted unless it is sold for a price that is equal to or less than the price that was paid for it.

Ruling 2124. In a prepayment transaction, if the seller delivers the agreed commodity on its due date, the buyer must accept it if it is in the same condition that was stipulated. And if the commodity is in a better condition, again he must accept it unless there was a stipulation that allowed for a rejection of a better condition.

Ruling 2125. If the commodity delivered by the seller is of a lower quality than what was agreed, the buyer can choose not to accept it.

Ruling 2126. If the seller delivers a commodity that is different from the commodity that was agreed, there is no problem as long as the buyer consents.

Ruling 2127. If a seller who has sold a commodity by prepayment is unable to obtain it at the time when he must hand it over, the buyer can either wait until he obtains it, or he can annul the transaction and take back what he had given in exchange, or he can take something else instead [of what he had given in exchange]. And based on obligatory precaution, he cannot sell it to the seller at a higher price.

Ruling 2128. If a person sells a commodity and agrees to hand it over after a period of time and to take the payment after a period of time as well, the transaction is invalid.

SELLING GOLD AND SILVER FOR GOLD AND SILVER

Ruling 2129. If gold is sold for gold or silver is sold for silver, irrespective of whether the gold and silver are minted coins or not, in the event that the weight of one of them is more than the weight of the other, the transaction is unlawful and invalid.

Ruling 2130. If gold is sold for silver or silver is sold for gold in an immediate exchange transaction, the transaction is valid and it is not necessary for their weight to be the same. However, if the transaction has a time period, it is invalid.

Ruling 2131. If gold or silver is sold for gold or silver, the seller and buyer must hand over the commodity and the payment in exchange to each other before they depart from each other. If they do not hand over any amount of the thing that they had agreed on, the transaction is invalid; and if they hand over part of it, the transaction relating to that part is valid.

Ruling 2132. If the seller or the buyer hands over everything that was agreed but the other party hands over only a part of what he agreed and they depart from each other, the transaction is in order with respect to the part that was handed over. However, the party that did not receive the whole amount can annul the transaction.

Ruling 2133. If silver dust from a mine is sold for pure silver, or gold dust from a mine is sold for pure gold, the transaction is invalid unless it is known that, for example, the amount of silver dust is equivalent to the amount of pure silver. However, there is no problem in selling silver dust for gold, or gold dust for silver, as explained previously.

CASES WHEN A PERSON CAN ANNUL A TRANSACTION

Ruling 2134. The right to annul a transaction is referred to as *khiyār* (option). A buyer can annul a transaction in one of the following eleven cases:

1. when the buyer and the seller have not departed from each other, even though they may have left the meeting place of the transaction. This option is known as 'the option while meeting' (*khiyār al-majlis*);
2. when either the buyer or the seller in the case of a sale,

or one of the two parties of a transaction in the case other transactions, has been cheated. This is referred to as 'the option due to cheating' (*khiyār al-ghabn*). The establishment of this type of option stems from something that is rooted in common custom, namely, that in every transaction each party in the transaction has in his mind that the property he receives should not be drastically lower in valur than the property he gives in return; and if it is drastically lower, he should have the right to annul the transaction. However, in the event that in some cases something else is rooted in a particular custom - for example, that if someone receives a property that is lower in value than the property he gives in return, he can claim the difference between the two from the other party, and if this is not possible he can annul the transaction - then in such cases, that particular custom must be observed;

3. when the parties stipulate in the contract that either one of them or both of them can annul the transaction within a specified period of time. This option is referred to as 'the option due to a stipulated condition' (*khiyār al-sharṭ*);
4. when one of the parties of the transaction displays his property in a way that it looks better than what it truly is and this makes the other party desirous of it or increases his desire for it. This is referred to as 'the option due to deceit' (*khiyār al-tadlīs*);
5. when one of the parties of the transaction makes a condition with the other that he will do something but he does not fulfil that condition; or, he makes it a condition that the specified property which is to be given by other party must be of a special type but he discovers that it is not of that type. In these cases, the person who makes the condition can annul the transaction. This is known as 'the option due to a breach of condition' (*khiyār takhalluf al-sharṭ*);
6. when there is a defect in the commodity or in the payment exchanged for it. This is referred to as 'the option due to a defect' (*khiyār al-ʿayb*);

7. when it is later discovered that part of the commodity that was transacted belonged to someone else. In this case, if the owner does not consent to the transaction, the receiver of the commodity can annul the transaction or take back what he paid in exchange for it, in the event that he had already paid for it. This is referred to as 'the option due to a partnership' (*khiyār al-shirkah*);
8. when the owner describes to the other party the particulars of a specific commodity which the other party has not seen and it is later discovered that the commodity is not as it was described; or, the other party had previously seen the commodity and thought that it still possessed the qualities he had seen in the past and it is later discovered that it no longer has those qualities. In this case, the other party can annul the transaction. This is referred to as 'the option pertaining to seeing' (*khiyār al-ruʾyah*);
9. when the buyer fails to hand over the payment for the commodity he purchased within three days and the seller has not yet handed over the commodity. In this case, the seller can annul the transaction. This applies when the seller gives the buyer a respite for paying the money but does not specify the period of time. However, if he does not give him any respite at all, he can annul the transaction after a short delay in the payment of the money. And if he gives a respite of more than three days, he cannot annul the transaction until the respite period is over. Furthermore, if the commodity he sold is something like vegetables or fruit which deteriorates before three days, the respite period is less. This option is referred to as 'the option due to delay' (*khiyār al-takhīr*);

   when a person purchases an animal, he can annul the transaction within three days. And if he acquires an animal in exchange for something that he sells, the seller can annul the transaction within three days of the sale. This is referred to as 'the option pertaining to animals' (*khiyār al-ḥayawān*);
10. when the seller is unable to hand over the commodity he sold; for example, the horse that he sold runs away. In this

· case, the buyer can annul the transaction. This is referred to as 'the option due to an inability to hand over' (*khiyār taʿadhdhur al-taslīm*).

Ruling 2135. If the buyer does not know the price of the commodity or is unmindful of it at the time of the transaction and buys it for a price that is higher than its normal price, then, in the event that he buys it for a significantly inflated price, he can annul the transaction. Of course, this is on condition that at the time of annulling the transaction he is still being cheated; otherwise, the right to annul is problematic [i.e. based on obligatory precaution, he does not have the right to annul]. Similarly, if the seller does not know the commodity's price or is unmindful of it at the time of the transaction and sells it for a price that is lower than its normal price, then, in case he sells it for a significantly deflated price, he can annul the transaction on the same condition mentioned previously.

Ruling 2136. In a transaction involving a conditional sale, wherein, for example, a house worth £100,000 is sold for £50,000 with an agreement that if the seller returns the money within a stipulated period he can annul the transaction, the transaction is valid provided the buyer and the seller have a genuine intention (*qaṣd*) to buy and sell.

Ruling 2137. In a transaction involving a conditional sale, even if the seller is confident that should he fail to return the money within the stipulated period the buyer will give him the property, the transaction is valid. However, if he fails to return the money within the stipulated period, he does not have the right to claim the property from the buyer. Furthermore, if the buyer dies, he cannot claim the property from his inheritors.

Ruling 2138. If a person mixes high grade tea with low grade tea and sells it under the label of high grade tea, the buyer can annul the transaction.

Ruling 2139. If a buyer realises that a specified item has a defect - for example, he buys an animal and realises that it is blind in one eye - then, in the event that the defect was present in the item before the transaction and the buyer did not know about it, he can annul the transaction and return the item to the seller. And in the event that returning the item is not possible - for instance, the item has changed in some way; for example, it has become defective; or, it has been utilised in a manner that prevents it from being returned; for example, the buyer sold it or hired it out; or, [the item was a piece of cloth and] the buyer cut the cloth or stitched it - then in such cases, the difference in price between a non-defective and defective item must be delermined, and in proportion to the difference between the two, the buyer can take back part of the money he paid to the seller. For example, if he realises that an item he bought for £4 is defective, in the event that the price of a non-defective item is £8 and a defective one is £6, then since the difference in price between the non-defective item and the defective one is 25%, he can take back 25% of the money he paid to the seller, that is, £1.

Ruling 2140. If a seller realises that there is a defect in the specified payment of exchange for the item that he sold, in the event that the defect was present before the transaction and he did not know about it, he can annul the transaction and return the payment of exchange to its owner. And in the event that he is unable to return it due to a change in it or it having been utilised, he can claim back the difference in price between a non-defective and a defective item as per the instructions mentioned in the previous ruling.

Ruling 2141. If a defect is discovered in an item after the transaction but before it is handed over, the buyer can annul the transaction. Also, if a defect is discovered in the payment of exchange for the item after the transaction but before it is handed over, the seller can annul the transaction. And if they wish to take the difference in price, this is permitted if returning the item is not possible.

Ruling 2142. If after a transaction a person realises that the item has a defect, in the event that he wishes to annul the transaction, he must do so immediately. If he delays in annulling for more than a normal amount of time - taking into account the type of case it is - he cannot annul the transaction.

Ruling 2143. If at any time after buying a commodity a person realises that it has a defect, he can annul the transaction even if the seller is not prepared to accept it. The same rule applies to the other options for annulling a transaction.

Ruling 2144. In the following two cases, a buyer cannot annul a transaction due to a defect in the item nor claim the difference in price:

1. at the time of the transaction, he knew about the defect in the item;
2. at the time of the transaction, the seller says, 'I am selling this item with all the defects it has.' However, if he specifies a particular defect and says, 'I am selling this item with this defect', and later another defect is discovered, the buyer can return the item owing to the defect that the seller did not specify. And in case he cannot return it, he can claim the difference in price.

Ruling 2146. If a buyer realises that an item has a defect and after taking possession of the item another defect is discovered, he cannot annul the transaction. However, he can claim the difference in price between a non-defective item and a defective one. But if he buys a defective animal and he discovers another defect before the passage of time for the option with animals, which is three days,[11] he can return it even if he has taken possession of the animal. Also, if [in a particular transaction] only the buyer has the right to annul the transaction until a particular period of time and during that period another defect is discovered, he can annul the transaction even though he has taken possession of the item.

11 See Ruling 2134, case 10.

Ruling 2146. If a person has an item that he himself has not seen and its particulars are described to him by another person, in the event that he describes the same particulars to a buyer and sells it to him, and after the sale he realises that it was in fact better than what he had described, he can annul the transaction.

MISCELLANEOUS RULINGS

Ruling 2147. If a seller informs a buyer of the price of a commodity, he must inform him of all the things that cause the commodity to appreciate or depreciate in value, even if he sells it to him for that price or less than it. For example, he must inform him if he bought it by immediate payment or on credit. And in the event that he does not inform him of some of those particulars and afterwards the buyer comes to know them, the buyer can annul the transaction.

Ruling 2148. If a person gives a commodity to someone and specifies its price and says to him, 'Sell this commodity for this price, and the more you sell the more your commission will be', then whatever he gets above that price belongs to the owner of the commodity and the seller can only take his commission from the owner. However, if this is done in the form of a reward (*juʿālah*)[12] and the owner says, 'If you sell this commodity for a price that is higher than that price, the extra amount belongs to you', there is no problem.

Ruling 2149. If a butcher sells the meat of a male animal but gives the meat of a female animal instead, he will have sinned. Therefore, if he specifies the meat and says, 'I am selling this meat of a male animal' [but gives the meat of a female animal], the buyer can annul the transaction. However, if he does not specify it, then in case the buyer is not pleased with the meat he has received, the butcher must give him the meat of a male animal.

Ruling 2150. If a buyer tells a draper, 'I want to buy a cloth that is

12 The laws of *juʿālah* are stated in Chapter 15.

colourfast' and the draper sells him a cloth that is not colourfast, the buyer can annul the transaction.

Ruling 2151. If a seller cannot hand over a commodity that he has sold - for example, the horse that he sold has run away - the transaction is invalid and the buyer can claim his money back.

CHAPTER ELEVEN

Partnership (*Shirkah*)

Ruling 2152. If two people form an agreement to trade with property jointly owned by them and to divide the profits between them, and they say a formula (*ṣīghah*) for establishing a partnership - in Arabic or in any other language - or they do something that makes it understood that they want to be each other's partner (*sharīk*), their partnership will be valid (*ṣaḥīḥ*).

Ruling 2153. If some people form a partnership with respect to the wages they receive for their work - for example, some masseurs agree to divide whatever wages they earn between them - their partnership is not valid. However, if they reach a settlement (*muṣālahah*) that, for example, half of each of their wages will belong to the other for a specified period of time in return for half of the other's wages, then the settlement is valid and each of them will be a partner in the wages of the other.

Ruling 2154. If two people form a partnership and [make an agreement that] each of them will purchase a commodity with his own credit and that person will be responsible for paying off the debt for it but they will share the profits arising from the commodities each one has purchased, such an agreement is not valid. However, if each one makes the other his agent (*wakīl*) to be his partner in whatever he purchases on credit (*nasīʾah*) - i.e. he purchases a commodity for himself and for his partner with both of them being responsible to pay off the debt - then both of them become partners in the commodity.

Ruling 2155. Individuals who become partners of each other by means of a partnership contract must be of the age of legal responsibility (*bāligh*) and sane (*ʿāqil*). They must also have an intention (*qaṣd*) to enter into the partnership and enter it of their own volition (*ikhtiyār*). Furthermore, they must be able to have disposal over their own property. Therefore, if a person who is foolish with finances (*safīh*) - i.e. someone who spends his wealth in futile ways - enters into a partnership, then because he does not have right of disposal over his own proper ty, the partnership is not valid.

Ruling 2156. If in the partnership contract the partners stipulate a condition that the one who does the work, or who does more work than the other partners, or whose work is of greater importance than that of the others, will take a greater share of the profits, then they must give him whatever they stipulated. Similarly, if they stipulate a condition that the one who does not do any work, or who does not work more than the others, or whose work is not of greater importance than that of the others, will take a greater share of the profits, again the condition is valid and they must give him whatever they stipulated.

Ruling 2157. If the partners agree that one person will take all the profits or that one of them will bear all the losses, the validity of such a partnership is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), it is not valid].[1]

Ruling 2158. If the partners do not stipulate a condition that one of the partners will take a larger share of the profits, in the event that the capital invested by each partner is the same amount, they must enjoy the profits and bear the losses equally. But if the capital invested by each of them is not the same amount, they must divide the profits and losses in proportion to their capital. For example, if two people form a partnership and the capital invested by one is twice that of the other, his share of the profits and losses will also be twice that of the other's, regardless of whether they both work equally or one works less than the other or one does not do any work at all.

Ruling 2159. If in the partnership contract the partners stipulate a condition that both will buy and sell together, or each one of them on their own will conduct transactions (*muʿāmalāt*), or only one of them will conduct transactions, or a third party will be hired to conduct transactions, then in such cases, they must act according to the contract.

1 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2160. A partnership can be of two types: [i] a permission-based partnership (*al-shirkah al-idhniyyah*); in this type, before the partnership conducts a transaction (*muʿāmalah*), the trade property is owned by the partners (*shurakāʾ*) in the form of joint ownership (*mushāʿ*). And [ii] exchange-based partnership (*al-shirkah al-muʿāwaḍiyyah*); in this type, each partner presents his own property to the partnership, and as a result, each of them exchanges half of their own property with half of the other's property. Therefore, if they do not specify which one of them will buy and sell with the capital, then, if it is a permission-based partnership, none of them can conduct a transaction with the capital without the consent of the others. However, if it is an exchange-based partnership, then each partner can conduct a transaction in a way that does not harm the partnership.

Ruling 2161. A partner who has been vested with the right of discretion over the capital must act in accordance with the partnership contract. For example, if it has been agreed with him that he will buy on credit or sell by immediate payment or that he will buy the commodity from a particular place, he must act according to these agreements. However, if no agreement has been made with him, he must conduct transactions in a normal manner and do business in a way that will not harm the partnership.

Ruling 2162. If the partner who conducts transactions with the partnership capital buys and sells in a manner that is contrary to the contract made with him, or, if no contract was made with him and he conducts transactions in a manner that is not normal, then in these two cases, even though the transaction is valid based on a stronger opinion (*aqwāʾ*),[2] if the transaction is detrimental to the partnership or part of the partnership's property perishes, the partner who acted contrary to the contract or acted in a manner that was not normal is responsible (*ḍāmin*).

Ruling 2163. If the partner who conducts transactions with

2 For practical purposes, where an opinion is stated to be 'stronger', a *fatwa* is being given.

the partnership capital is neither excessive nor negligent in safeguarding the capital, but it so happens that part of the capital or all of it perishes, he is not responsible.

Ruling 2164. If the partner who conducts transactions with the partnership capital says that the capital has perished, in the event that he is trusted by the other partners, they must accept his word. But if this is not the case, they can complain against him to a fully qualified jurist (*al-ḥākim al-sharʿī*) for the dispute to be settled in accordance with adjudication standards.

Ruling 2165. In a permission-based partnership [as defined in Ruling 2160], if all the partners withdraw the consent they gave each other for them to have disposal over their property, none of them can have disposal over the partnership property. And if one of them withdraws his consent, the other partners do not have right of disposal. However, the one who withdraws his consent can have disposal over the partnership property. In each case, their partnership with respect to the capital remains in place.

Ruling 2166. In a permission-based partnership, whenever one of the partners requests that the partnership capital be divided, the others must accept his request even if a particular period has been fixed for the partnership, unless dividing it would require some of the partners to put in an amount or it would result in a significant loss for the partners.

Ruling 2167. If one of the partners of a permission-based partnership dies or becomes insane or becomes unconscious, the other partners cannot have disposal over the property. The same applies if one of them becomes foolish with finances, i.e. he spends his wealth in futile ways.

Ruling 2168. If a partner buys something on credit for himself, then any profit or loss resulting from this is his. However, if he buys it for the partnership and the partnership agreement allows for credit transactions, then any resulting profit or loss is his and theirs.

Ruling 2169. If one of the partners conducts a transaction with the partnership capital and later realises that the partnership was invalid, in the event that permission for the transaction was not contingent on the validity of the partnership in the sense that had they known that the partnership was not valid they would still have consented for the others to have disposal over the property, the transaction is valid. In such a case, whatever is acquired from the transaction belongs to all of them. However, if it was not such [i.e. permission for the transaction was contingent on the validity of the partnership], then, if those who did not consent for the others to have disposal say, 'We consent to the transaction', the transaction is valid; otherwise, it is void. In each case, whoever from among them worked for the partnership and did so without an intention to work for free can take wages for his efforts at the standard rate, taking into consideration the shares of the other partners. However, in the event that the standard rate is more than the amount of profit he would take on the assumption that the partnership was valid, then he can only take that amount of the profit.

CHAPTER TWELVE

Settlement (*Ṣulḥ*)

Ruling 2170. A settlement is when a person compromises with someone to make the latter the owner of part of his property or the usufruct of his property, or to relinquish a claim or a right of his. The other person in return also gives him part of his property or the usufruct of his property, or relinquishes a claim or a right that he has. In fact, even if a person compromises with someone to give him part of his property or the usufruct of his property, or to relinquish a claim or a right of his without taking anything in return, the settlement is valid (*ṣaḥīḥ*).

Ruling 2171. A person who settles his property with someone must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and he must have an intention (*qaṣd*) to settle. Furthermore, no one must have compelled him [to settle], and he must not be foolish with finances (*safīh*)[1] nor be prohibited from having disposal over that property because of bankruptcy.

Ruling 2172. It is not necessary for a formula (*ṣīghah*) to be said [in order for a settlement to be valid, or for it to be] in Arabic; rather, it is valid by means of any words or actions that make it understood that the parties have concluded a settlement and have compromised with each other.

Ruling 2173. If a person gives his sheep to a shepherd so that, for example, he takes care of them for one year and uses their milk, and in return he gives that person an amount of oil, then, in the event that the person concludes a settlement for the sheep's milk to be given in return for the shepherd's labour and the oil, the settlement is valid. In fact, if he hires the sheep to the shepherd for one year for him to use their milk and in return the shepherd gives him an amount of oil and it is not stipulated that the oil or milk must be from only those sheep, the hire (*ijārah*) contract is valid.

Ruling 2174. If a person wishes to settle a claim or right of his with someone, it will be valid only if the latter accepts. However, if he

1 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

wishes to relinquish a claim or a right of his, the acceptance of the other party is not necessary.

Ruling 2175. If a person is aware of the amount he owes but his creditor is not aware of it, then, in the event that the creditor settles the debt for an amount that is less than the actual amount - for example, he is owed £500 and settles the debt for £100 - the extra amount [i.e. £400 in this example] is not lawful (*ḥalāl*) for the debtor unless he informs the creditor of the actual amount he owes him and seeks his consent. Alternatively, the situation must be such that had the creditor known the actual amount of the debt, he would still have settled for the same [lesser] amount.

Ruling 2176. If two people have property that is in the hands of the other or they owe each other some property and they know that one of the two properties is more than the other, in the event that selling the two properties to each other would amount to usury (*ribā*) and be unlawful (*ḥarām*), then concluding a settlement with respect to the properties would also be unlawful. In fact, if it is not known that one of the two properties is more than the other but there is a probability that it is, they cannot, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), conclude a settlement with each other with respect to the two properties.

Ruling 2177. If two people are owed by one person or by two persons and the creditors wish to arrive at a settlement between themselves with respect to the debts, in the event that it does not amount to usury as explained in the previous ruling, there is no problem. For example, if both are owed 10 kilograms of wheat, with one of them being owed high quality wheat and the other medium quality, and it is time for both debts to be paid, their settlement is valid.

Ruling 2178. If someone is owed something that he can claim after a certain period, in the event that he settles the debt for a lower amount with the intention of relinquishing his claim to part of the debt and getting the rest immediately, there is no problem. This

rule applies when the claim is for gold or silver or for a commodity that is sold by weight or measure. As for other commodities, it is permitted (*jāʾiz*) for a creditor to settle his claim with a debtor or with someone else for less than the claim, or to sell the debt, as will be explained in Ruling 2307.

Ruling 2179. If two people conclude a settlement with each other with respect to something, they can annul the settlement with each other's consent. Also, if in the transaction (*muʿāmalah*) they stipulate a right for both or one of them to annul the transaction, the person who has that right can annul the settlement.

Ruling 2180. Until the time a buyer and a seller do not depart from each other, they can annul the transaction. Also, if a buyer purchases an animal, he has the right to annul the transaction within three days. And if for three days a buyer does not pay for a commodity he has bought and he does not take possession of the commodity, then just as it was mentioned in Ruling 2134, the seller can annul the transaction. However, a person who concludes a settlement with respect to something does not have the right to annul the settlement in these three cases. But, in case the other party to the settlement delays paying for the property over which the settlement was reached for a period of time that exceeds conventional norms, or, if a condition is stipulated that, for example, the item will be given immediately but the other party does not fulfil this condition, then one can annul the settlement. Similarly, in the other cases that were mentioned in the rulings (*aḥkām*) pertaining to buying and selling, one can also annul a settlement. Furthermore, in a case where one of the parties to a settlement has been cheated, if the settlement is concluded in order to resolve the dispute, he cannot annul settlement. In fact, in settlements other than this as well, based on obligatory precaution, someone who has been cheated must not annul the transaction.

Ruling 2181. If the thing that one acquires from a settlement is defective, one can annul the settlement. However, if he wishes to take the difference between the price of a non-defective and

defective item, it is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution he cannot do so].[2]

Ruling 2182. Whenever a person concludes a settlement with someone with respect to his own property and makes a condition saying, 'After my death, the property that I settled with you must (for example) be given as a charitable endowment (*waqf*)', and the other person accepts this condition, he must act according to the condition.

2 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

CHAPTER THIRTEEN

Hiring/Renting (*Ijārah*)[1]

1 The term '*ijārah*' and its derivatives are translated in different ways in English depending on the context. For example, when '*ijārah*' is used in the context of a property transaction, it is usually translated as 'renting' or 'leasing' and the parties involved are termed 'landlord' and 'tenant' or 'lessor' and 'lessee'. But when '*ijārah*' is used for the services of people, it is usually translated as 'hiring' and the two parties are termed 'hirer' and 'hiree' or 'hired'.

Ruling 2183. A person who gives something on rent (*muʾjir*) and a person who takes something on rent (*mustaʾjir*) must be of the age of legal responsibility (*bāligh*) and sane (*ʿāqil*). They must also enter into the rental agreement of their own volition (*ikhtiyār*) and have right of disposal over their property. Therefore, someone who is foolish with finances (*safīh*)[2] cannot rent anything nor give anything on rent as he does not have right of disposal over his property. Similarly, someone who has been proclaimed bankrupt (*mufallas*) cannot give on rent any property over which he does not have disposal, nor can he rent anything with that property. However, he can give himself on hire [as a worker].

Ruling 2184. A person may be an agent (*wakīl*) for another party to give property on rent for him or to rent property for him.

Ruling 2185. If the guardian (*walī*) or custodian of a child gives the child's property on rent or hires the child [as a worker] to another person, there is no problem. And if the hire agreement includes a period wherein the child is *bāligh*, the child can annul the remaining period of the hire agreement once he becomes *bāligh*, even though had the hire agreement not included a period wherein the child was *bāligh*, it would not have been in the child's interest. However, if the hire agreement is contrary to interests that are required by Islamic law to be protected - i.e. interests which we know the Holy Legislator [Allah] would not be pleased with were they to be disregarded - then, if the hiring was done with the permission of a fully qualified jurist (*al-ḥākim al-sharʿī*), the child cannot annul the contract once he reaches the age of legal responsibility (*bāligh*).

Ruling 2186. It is not allowed to give on hire a minor (*ṣaghīr*) who does not have a guardian without authorisation from a jurist (*mujtahid*).[3] As for someone who does not have access to a jurist,

2 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

3 A *mujtahid* is a person who has attained the level of *ijtihād*, qualifying him to be an authority in Islamic law. *Ijtihād* is the process of deriving Islamic laws from authentic sources.

he can obtain authorisation from a just (*ʿādil*) believer and give the child on hire.

Ruling 2187. It is not necessary for the lessor and the lessee to say a particular formula (*ṣīghah*) [in order for a rental agreement to be valid (*ṣaḥīḥ*), nor does it have to be] in Arabic; rather, if the owner says to someone [in English, for example], 'I rent my property to you', and the other person says, 'I accept', the rental agreement is valid. In fact, even if they do not say anything and the owner simply hands over the property to the lessee with the intention (*qaṣd*) of giving his property on rent to him and the lessee accepts it with the intention of renting it, the rental agreement is valid.

Ruling 2188. If a person wishes to be hired for a particular task without saying a formula, the hire agreement is valid the moment he engages himself in that task.

Ruling 2189. If a person who is unable to speak conveys by sign that he has given some property on rent or he has rented some property, the rental agreement is valid.

Ruling 2190. If a person leases a house, shop, or anything else and the owner stipulates a condition that only he can make use of it, the lessee cannot sublet it to anyone else to use unless the new rental agreement is such that the use of the property is especially for the lessee, such as when a woman rents a house or a room and later gets married and gives the house or room on rent to her husband for her own residence there. But, if the owner does not stipulate a condition [that only the lessee can make use of it], then the lessee can sublet it to another person. When handing the property over to the second lessee, the first lessee must, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), obtain authorisation from the owner. However, if the first lessee wishes to give it on rent for a higher amount than what he has rented it for, then even though the payment may be in a different commodity, in the event that the property is a house, shop, or ship, he must either do some work on it, such as make some repairs or do some plastering, or he must have suffered a loss in looking after the property.

Ruling 2191. If a person who is hired to do something (*ajīr*) stipulates a condition that he will only work for the person who has hired him, he cannot be hired to someone else except in a way mentioned in the previous ruling. However, if he does not stipulate a condition [that he will only work for the person who has hired him], then the hirer can hire him to another person. However, what he gets for hiring him out must not be more than the amount he has agreed with him. The same applies if he himself is hired by someone and he then hires someone else to do the work for a lesser amount. However, if he does some of the work himself, he can hire someone else for a lesser amount.

Ruling 2192. If a person rents something other than a house, shop, or ship - for example, he rents some land - and the owner does not stipulate a condition that only he must use it, then, if he gives it on rent for an amount that is higher than what he has rented it for, the validity of the rental agreement is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution, it is not valid].[4]

Ruling 2193. If a person rents a house or a shop for one year for £10,000, for example, and he makes use of half of it himself, he can give the other half on rent for £10,000. However, if he wishes to give the other half on rent for an amount that is higher than what he rented it for, for example £12,000, he must do some work on it, such as making some repairs.

CONDITIONS FOR PROPERTY GIVEN ON RENT

Ruling 2194. Property that is given on rent must fulfil the following conditions [in order for the rental agreement to be valid]:

1. it must be specified. Therefore, if a person says, 'I rent one of my houses to you', it is not correct;
2. the person taking it on rent must see it; and if it is not ready or it is described in general terms, the person giving it on

4 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

rent must describe those particulars of it that have an effect on one's decision to rent it;

3. it must be possible to hand over; therefore, giving on rent a horse that has run away is invalid (*bāṭil*) if the person taking it on rent cannot get hold of it. However, if he can get hold of it, it is valid;
4. using the property must not result in it perishing or being destroyed; therefore, giving on rent bread, fruit, or other food stuffs for eating is not valid;
5. the use for which the property is being hired must be possible; therefore, it is not valid to give land on rent for the purpose of farming when neither rainwater is sufficient for farming on that land nor is it irrigated by water from a river;
6. the lessor must own the usufruct for which the property is being given on rent; if he is neither the owner, nor the agent, nor the guardian (*walī*), then it will only be valid if the owner consents to it.

Ruling 2195. Giving a tree on hire so that others can use its fruit when the tree is not currently bearing any fruit is valid. The same applies to giving an animal on hire for its milk.

Ruling 2196. A woman can be hired for the purpose of wet nursing, and it is not necessary for her to obtain her husband's consent. However, if the act of wet nursing infringes on his rights, she cannot be hired without his consent.

CONDITIONS RELATING TO THE USE OF THE PROPERTY WHICH IS GIVEN ON RENT

Ruling 2197. The use of the property which is given on rent must fulfil the following four conditions [in order for the rental agreement to be valid]:

1. the use must be lawful (*ḥalāl*). Therefore, if a property has only an unlawful (*ḥarām*) use, or, if a condition is stipulated that the property must be used for an unlawful purpose,

or, if before the transaction (*muʿāmalah*) an unlawful use is specified and the transaction is carried out based on that, then in these cases, the transaction is invalid. Therefore, giving a shop on rent for the sale of wine or for storing wine, and hiring an animal for the transportation of wine, is invalid;

2. [in the case of hiring someone for a service,] the service must not be something that Islamic law deems obligatory (*wājib*) to perform free of charge. An example of this is, based on obligatory precaution, teaching rulings (*masāʾil*) on what is lawful and unlawful, if they concern matters that are commonly encountered. The same applies to the obligatory rituals of preparing a corpse for burial. And, based on obligatory precaution, it is a requirement that people must not consider giving money for the service as being futile;
3. if the item being given on rent is multi-purpose, the use that the lessee makes of it must be specified. For example, if an animal that is used for riding on and for transporting goods is given on rent, it must be specified at the time of the rental agreement whether the lessee will benefit from riding the animal or from using it to transport goods or from all its possible uses;
4. the extent of the use must be specified. This will either be in terms of length of time, as with renting a house and shop, or in terms of action, as with agreeing with a tailor for the stitching of specific clothing in a particular manner.

Ruling 2198. If the beginning of the rental period is not specified, it will begin the moment the rental contract has been concluded.

Ruling 2199. If a house is given on rent for a year, for example, and the beginning of the rental period is set to a month after the rental contract is concluded, the rental agreement is valid even if the house is being rented by someone else at the time of concluding the contract.

Ruling 2200. If the rental period is not known and instead the lessor says, 'Whenever you reside in the house its rent will be £1000 a month', the rental agreement is not valid.

Ruling 2201. If a person says to a lessee, 'I have given the house on rent to you for £1000 a month', or he says to him, 'I have given the house on rent to you for one month for £1000, and thereafter, for as long as you reside in the house the rent will be £1000 a month', then as long as the beginning of the rental period is known, the rental agreement is in order for the first month.

Ruling 2202. With regard to a house in which travellers and pilgrims take residence and the length of their stay there is not known, if it is agreed that, for example, they will pay £50 a night and the owner of the house consents to this, there is no problem in their use of that house. However, as the rental period is not known, the rental agreement is not valid with respect to the nights other than the first night, and the owner can ask them to vacate the premises whenever he wishes to do so.

MISCELLANEOUS RULINGS ON HIRING/RENTING

Ruling 2203. The property by which the lessee pays rent must be known. Therefore, if the property is something that is transacted by weight, such as wheat, then its weight must be known. If it is something that is transacted by count, such as modern currencies, its count must be known. And if it is something like horses and sheep, the lessor must either see them for himself or the lessee must describe their particulars to him.

Ruling 2204. If a person gives some land on rent for farming and sets its rent to be the produce of the very same land, or of another land, but the produce is non-existent at the moment, the rental agreement is not valid. The same applies [i.e. the rental agreement is not valid] if he sets the rent to be a general responsibility [on the lessee to pay] on condition that the rent is paid from the produce of the very same land. However, there is no objection if the produce is existent.

Ruling 2205. A person who has given something on rent cannot claim the rental payment before handing over the rented item. Similarly, if a person has been hired to perform a particular task, he cannot claim his fee before performing the task except in cases in which it is normal for the fee to be paid before performing the task, such as being hired to perform *hajj*.

Ruling 2206. Whenever a lessor hands over the leased item, the lessee must pay its rent even if he does not take possession of it [because, for example, he had gone away at that time,] or he does take possession of it but does not use it to the end of the rental period.

Ruling 2207. If a person is hired to perform a task on a particular day and he shows up to perform that task on that day, the person who hired him must pay him even if he chooses not to give that task to him. For example, if a person hires a tailor to stitch some clothes on a particular day and on that day the tailor is ready to perform that task, he must pay him his fee even if he does not give him the cloth from which to tailor the clothes, or the tailor remains without work that day, or he does his own or somebody else's work.

Ruling 2208. If after the end of the rental period it becomes apparent that the rental agreement was invalid, the lessee must pay the owner of the property the standard rate for that property (*ujrat al-mithl*). For example, if a person gives a house on rent for a year for £10,000 and later finds out that the rental agreement was invalid, in the event that the rent for that house is normally £5,000, the lessee must pay him £5,000. And if the standard rate is £20,000, in the event that the lessor was the owner of the property or an agent who had the authority to specify the rent and who also knew the normal price of the house, it is not necessary for the lessee to pay more than £10,000; otherwise, he must pay £20,000. Furthermore, if after the passing of some of the rental period it becomes apparent that the rental agreement was invalid, the same rule (*ḥukm*) applies to the fee in relation to the period that has passed.

Ruling 2209. If the rented item is destroyed, the lessee will not be responsible (*ḍāmin*) for it as long as he was not negligent in safeguarding it nor excessive in using it. Similarly, if, for example, the cloth given to a tailor is destroyed, the tailor will not be responsible for it as long as he was neither negligent in taking care of it nor excessive in using it.

Ruling 2210. Whenever a hired person, such as a tailor or craftsman, wants to perform a task with the property of the hirer and he destroys the property that he takes, he is responsible for it.

Ruling 2211. If a butcher slaughters an animal in a manner that renders it unlawful [to consume], he must pay its value to the owner, regardless of whether he has taken a fee for slaughtering it or did it free of charge.

Ruling 2212. If a person hires an animal or a vehicle and specifies how much load he will place on it, in the event that he loads more than that amount and the animal or vehicle perishes or becomes defective, he is responsible for it. The same applies if he does not specify the amount of load but places a load on it that is more than normal. In both cases, he must also pay a greater rental fee than normal.

Ruling 2213. If a person gives an animal on hire for the purpose of carrying fragile goods, in the event that the animal slips or stampedes causing the load to break, the owner of the animal is not responsible for it. However, if the owner of the animal causes the animal to fall by beating it excessively or by doing something similar and this results in the goods breaking, then he is responsible.

Ruling 2214. If a person circumcises a baby and is negligent in doing so, or, if he makes a mistake - for example, he cuts more than the normal amount - and the baby dies or is harmed, he is responsible. However, if he is neither negligent nor makes a mistake and the baby dies or is harmed as a result of the act of

circumcision itself, he is not responsible as long as he was not consulted to determine whether the baby would be harmed or not and he did not know that the baby would be harmed.

Ruling 2215. If a doctor himself gives some medicine to a patient or he recommends some medicine for him and the patient suffers harm or dies as a result of taking the medicine, the doctor is responsible even though he was not negligent in trying to cure the patient.

Ruling 2216. If a doctor says to a patient, 'If you are harmed [by this medicine] I am not responsible', in the event that he exercises due care and caution and the patient suffers harm or dies, the doctor is not responsible.

Ruling 2217. A lessee and a lessor can annul the lease agreement with each other's consent. Moreover, if they stipulate a condition in the lease agreement that both of them, or one of them, has the right to annul the lease, they can annul the lease in accordance with their agreement.

Ruling 2218. If a lessor or a lessee realises that he has been cheated, in the event that at the time of concluding the rental agreement he was not aware that he was being cheated, he can annul the rental agreement as per the details mentioned in Ruling 2134. However, if they had stipulated a condition within the rental agreement that even if they are cheated they do not reserve the right to annul the transaction, then they cannot annul the rental agreement.

Ruling 2219. If a person gives something on rent and it is usurped by someone before he can hand it over, the lessee can annul the rental agreement and claim back the payment he gave to the lessor. He can also choose not to annul the rental agreement and instead claim back the rental fee from the usurper, based on the standard rate, for the period wherein the leased item was at the disposal of the usurper. Therefore, if he hires an animal for a month for £100

and someone usurps it for ten days and the usual hire fee for ten days is £150, he can claim £150 from the usurper.

Ruling 2220. If someone does not allow a lessee to take possession of the item he has leased, or, if after the lessee has taken possession of the item someone usurps it or prevents him from using it, the lessee cannot annul the rental agreement. Instead, he only reserves the right to claim the rental fee for the item from the usurper based on the standard rate.

Ruling 2221. If a lessor sells the property to the lessee before completion of the rental period, the lease is not nullified and the lessee must pay the rental fee. The same applies if he sells it to someone else.

Ruling 2222. If prior to the commencement of the rental period the rented item becomes unusable for the purpose for which it was rented, the rental agreement is rendered void (*bāṭil*) and the money that the lessee had paid the lessor must be refunded. And if the state of the item is such that the lessee can make use of only some of it, he can annul the rental agreement.

Ruling 2223. If a person hires something and after the passage of part of the lease period the item becomes unusable for the purpose for which it was hired, the lease for the remaining period is rendered void. The tenant can also annul the lease pertaining to the preceding period and pay for that period at the standard rate.

Ruling 2224. If a house that contains two rooms, for example, is given on rent and one of the rooms is destroyed, and if it were to be rebuilt in a normal manner it would be very different to the previous building, then the rule in this case is the same as was mentioned in the previous ruling. Otherwise, if the landlord immediately rebuilds it and none of its usability is lost, the rental agreement does not become invalid. Furthermore, the tenant cannot annul the rental agreement. However, if the rebuilding takes so long that a period of the tenant's use of the property is

lost, the rental agreement is void for that period. Additionally, the tenant can annul the rental agreement for the entire rental period and pay the standard rate for the period that he has used the property.

Ruling 2225. If the lessor or the lessee dies, the rental agreement does not become void. However, if [the house does not belong to the lessor and] only the usufruct of the house while he is alive belong to him - such as the case wherein someone else specifies in his will (*waṣiyyah*) that as long as he [i.e. the lessor] is alive, the usufruct of the house will belong to him - then, in the event that he gives the house on rent and dies before the end of the rental period, the lease is void from the time he dies. And if the current owner of the house endorses the rental agreement [for its remaining period], it is valid, and the rental fee for the period remaining after the death of the lessor belongs to the current owner.

Ruling 2226. If an employer appoints a contractor to recruit workers for him, in the event that the contractor pays the workers less than what he receives from the employer, it is unlawful for him to take the difference and he must return it to the employer. However, if he is hired to construct a building and he reserves the right to construct it himself or to subcontract the work to someone else, then in case he constructs part of it himself and subcontracts the rest to someone else for less than what he was hired for, it is lawful for him to take the difference.

Ruling 2227. If a person who dyes clothes agrees to dye a cloth with indigo, for example, in the event that he dyes it another colour, he does not reserve the right to claim any payment.

CHAPTER FOURTEEN

Sleeping Partnership (*Muḍārabah*)

Ruling 2228. A sleeping partnership is a contract between two people in which one of them, the 'owner' (*mālik*), provides capital to the other, whom we call the 'worker' (*ʿāmil*), so that he may trade with it and the profits be divided between them.

The validity of such a transaction (*muʿāmalah*) is conditional upon the following matters:

1. offer and acceptance; in expressing these, any word or action that conveys their meaning is sufficient;
2. the parties must have reached the age of legal responsibility (*bulūgh*), be sane (*ʿāqil*), and have the ability to take care of their wealth and use it in a correct way (*rushd*). They must also enter into the agreement of their own volition (*ikhtiyār*). With regard to the owner specifically, it is a condition that he must not be prohibited from having disposal over his property (*al-maḥjūr ʿalayh*) by a fully qualified jurist (*al-ḥākim al-sharʿī*) due to bankruptcy. This condition does not apply to the worker except in the case where the agreement requires him to have disposal over property that belongs to him but which he is prohibited to have disposal over;
3. the share of the owner and the worker from the profit must be specified in terms of a fraction, such as a third, a half, or any other fraction. But this condition does not apply when the share of each is customarily determined in the market such that it is commonly understood that there is no need to state this condition. Furthermore, determining the share of each by stating an amount of the capital, such as £10,000, is not sufficient. However, once the profits become evident, one of them can reach a settlement (*ṣulḥ*) with the other with respect to his share for an amount of the capital;
4. the profits must only be shared between the owner and the worker. Therefore, if a condition is stipulated that some of the profits will be given to another person, the sleeping partnership is invalid (*bāṭil*) except if it is in exchange for some work relating to the sleeping partnership;

5. The worker himself must be able to trade, in the event that a restriction is mentioned in the contract that he must conduct the trade himself. For example, if it is said, 'I give you this money so that you personally trade with it yourself' and the worker is unable to do so, the contract is void (*bāṭil*). But if conducting the trade himself is mentioned as a condition [as opposed to a restriction] in the contract - for example, it is said, 'I give you this money so that you trade with it on condition that you yourself do it' - and the worker is unable to do so, the transaction is not void. However, the owner has the option (*khiyār*) to rescind (*faskh*) the contract in case the worker does not conduct the trade himself. Furthermore, if the contract mentions neither restriction nor condition but the worker is unable to trade even by appointing someone else, the contract is void. And if he is able to trade at the beginning but becomes unable to do so later on, the contract is void from the time he becomes unable.

Ruling 2229. A worker is considered to be trustworthy (*amīn*); therefore, in case the property perishes or it becomes defective, he is not responsible (*ḍāmin*) unless he acts beyond the boundaries of the contract or he is negligent in safeguarding the property. Similarly, he is not responsible if a loss in incurred; in fact, all losses are borne by the owner. If the owner wishes to stipulate a condition that any loss incurred is not to be borne only by him, this condition can be expressed in three ways:

1. he stipulates as part of the contract that the worker will be partner to any losses incurred just as he is partner to any profits made. In this case, the condition is invalid but the transaction is valid (*ṣaḥīḥ*);
2. it is stipulated that all losses are to be borne by the worker. In this case, the condition is valid but all profits will also be his and none of them will belong to the owner;
3. it is stipulated that if there is a loss to the capital, the worker will recompense all or a specified portion of it from his own

wealth and will give it to the owner. This condition is valid, and the worker is obliged to act according to it.

Ruling 2230. A sleeping partnership that is based on the owner giving the worker permission to trade with his property (*al-muḍārabah al-idhniyyah*) is not one of the irrevocable (*lāzim*) contracts [in Islamic law], meaning that the owner can revoke the permission he gave to the worker to use his property. Similarly, the worker is not obliged to continue doing the work with the owner's capital; whenever he wishes, he can refrain from doing the work, whether this be before starting the work or after it, and whether it be before the profits become evident or after that. Furthermore, the worker can do this whether the contract is non-specific about its duration or it specifies the duration. However, if the two parties stipulate a condition that they will not rescind the contract until a specific time, the condition 1s valid and it is obligatory (*wājib*) on them to act according to it. But, in case one of them does rescind, the contract will be considered rescinded even though the person will have committed a sin by acting contrary to his undertaking.

Ruling 2231. If a sleeping partnership contract is non-specific and does not mention any particular restrictions, the worker can buy, sell, and decide on the type of goods according to what he thinks is in the best interest [of the partnership]. However, it is not permitted (*jā'iz*) for him to take the goods from that city to another city unless this is something normal, such that the non-specific nature of the contract would be commonly understood to include it; or, the owner authorises him [to take the goods to another city]. And if he transfers the goods to another place without authorisation from the owner and the goods perish or a loss is incurred, he is responsible.

Ruling 2232. With a sleeping partnership that is based on the owner giving the worker permission to trade with his property, if the owner or the worker dies, the contract becomes void. This is because if the owner dies, his property is transferred to his heirs and a new sleeping partnership agreement is needed for the

property to remain in the possession of the worker. And if the worker dies, the permission is cancelled, because the owner's permission was given exclusively to him.

Ruling 2233. In a sleeping partnership contract, both the owner and the worker can stipulate a condition that the other must do something for him or pay him something. As long as the contract continues and is not rescinded, it is obligatory on them to act according to this condition whether profit is made or not.

Ruling 2234. Any loss or destruction of the sleeping partnership property - for example, it is burnt, stolen, or suchlike - is recompensed by any profits made, whether the profit is made before the loss or after it. Therefore, the worker's ownership of his share of the profit is dependent on there not being a loss or destruction, and only when the sleeping partnership period is over or the contract is rescinded will it be definite. However, if the worker stipulates a condition in the contract that any loss will not be recompensed by any prior or subsequent profit, the condition is valid and must be acted on.

Ruling 2235. An owner can invest in things that are sanctioned in Islamic law (*mashrūʿ*) by way of a 'reward' (*juʿālah*)[1] to achieve the same result as in a sleeping partnership; i.e. he can entrust someone with some property and say, for example, 'Use it for trading or any other operation and the equivalent of half the profits will be for you.'

1 The laws of *juʿālah* are stated in the next chapter.

CHAPTER FIFTEEN

Reward (*Juʿālah*)

Ruling 2236. A reward is when a person offers to give something in return for a task performed for him. For example, he says, 'Whoever finds my lost property, I will give him £100.' The person who makes such an offer is called the 'offeror' (*jāʿil*), and the one who performs the task is called the 'worker' (*ʿāmil*). There are a number of differences between a reward and hiring/renting (*ijārah*). Among these differences is that with hiring/renting, once the contract has been concluded, the hired person (*ajīr*) must perform the specified task and the person who hired him owes him payment. However, with a reward, even though the worker may be a specific person, he can choose not to perform the task and until he does not perform it, the offeror does not owe him anything.

Ruling 2237. The offeror must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), have an intention (*qaṣd*) to make the offer, and make it of his own volition (*ikhtiyār*). He must also legally (*sharʿan*) be able to have disposal over his property. Therefore, the reward of a person who is foolish with finances (*safīh*) - i.e. someone who spends his wealth in futile ways - is not valid (*ṣaḥīḥ*). Similarly, the reward of someone who has been proclaimed bankrupt (*mufallas*) is not valid with respect to that part of his wealth over which he does not have right of disposal.

Ruling 2238. The task that the offeror wishes to be performed for him must not be unlawful (*ḥarām*), pointless, or an obligatory (*wājib*) task that must legally be performed free of charge. Therefore, if a person offers £100 to whoever drinks wine, or wanders into a dark place at night without any rational purpose, or performs his obligatory prayers (*ṣalāh*), the reward is not valid.

Ruling 2239. It is not necessary that the property being offered be specified with all its particulars; rather, it is sufficient if it is understood by the worker such that him taking steps to perform the task would not be considered foolish. For example, if the offeror says, 'For whatever amount above £100 you sell this property, the extra is for you', the reward is valid. Similarly, if he says, 'Whoever finds my horse, I will give half of its value to him or I will give him 10 kilograms of wheat', again the reward is valid.

Ruling 2240. If the fee for the work is totally vague - for example, the offeror says, 'Whoever finds my child, I will give him some money' and he does not specify the amount - then, in the event that someone performs the task, the offeror must give him a fee equivalent to the value of his work in the eyes of the people.

Ruling 2241. If a worker performs the task before or after the contract is concluded with the intention of not taking any money, he does not have the right to claim any fee.

Ruling 2242. The offeror can annul the reward before the worker starts performing the task.

Ruling 2243. If the offeror wishes to annul the reward after the worker has started to perform the task, it is problematic unless he and the worker come to an agreement.

Ruling 2244. The worker can choose to leave the task unfinished. However, if leaving the task unfinished would cause harm to the offeror or to someone for whom the task is being performed, he must complete it. For example, if someone says, 'Whoever operates on my eye, I will give him such and such amount' and a surgeon starts operating on his eye, in the event that were he to leave the operation unfinished it would lead to the offeror having a defective eye, he must complete the operation.

Ruling 2245. If the worker leaves the task unfinished, he cannot claim any fee if the offeror had offered the fee for completing the task; for example, he said, 'Whoever stitches my clothes, I will give him £100.' However, if he had intended to give an amount of money proportional to the amount of work completed, then he must give the worker the fee for the amount of work he has completed.

CHAPTER SIXTEEN

Sharecropping (*Muzāraʿah*)

Ruling 2246. Sharecropping is when an owner of land forms an agreement with a farmer to place the land at his disposal so that the farmer may farm the land and give part of the produce to the owner.

Ruling 2247. A number of conditions must be fulfilled for sharecropping to be valid:

1. there must be a contract between the two parties. For example, the owner of the land says to the farmer, 'I place the land at your disposal' and the farmer responds by saying, 'I accept'; or, without uttering a word, the owner places the land at the disposal of the farmer with the intention (*qaṣd*) of farming and the farmer accepts;
2. the owner of the land and the farmer must both be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), have the intention to make a sharecropping agreement, and enter into the agreement of their own volition (*ikhtiyār*). Furthermore, they must not be foolish with finances (*safīh*) - i.e. they must not spend their wealth in futile ways - and the owner must not have been proclaimed bankrupt (*mufallas*). However, if the farmer has been proclaimed bankrupt, there is no problem as long as the sharecropping agreement does not require him to have disposal over that part of his wealth over which he has been prohibited to have disposal;
3. the share of the land's produce that the owner and the farmer receive must be in the form of a fraction, such as a half or a third or suchlike. Therefore, if they do not fix the share for either of them, or, for example, the owner says, 'Farm this land and in return give me whatever you wish', it is not valid (*ṣaḥīḥ*). Similarly, [it is not valid] if a specific amount of the produce, such as 10 kilograms, is fixed for the owner or for the farmer;
4. the period for which the land is to be at the disposal of the farmer must be specified, and the length of the period must be such that it is possible to harvest the crop in that time. If a specific day is fixed as the start of the period, and the end of the period is fixed as the time of harvest, it is sufficient;

5. the land must be cultivable. If it is not possible to farm the land at present but it can be worked on so that it becomes possible to farm it, the sharecropping is valid;
6. the crop that the farmer must cultivate must be specified. For example, it must be specified whether it is rice or wheat, and if it is rice then the type of rice must be specified. However, if the parties do not have a particular crop in mind, it is not necessary for them to specify it. Similarly, if the crop they have in mind is known, it is not necessary to expressly state it;
7. the owner must specify the land if he has a number of pieces of land which are different in terms of their agricultural qualities. However, if there is no difference between them, then specifying the land is not necessary. Therefore, [in the latter case,] if the owner says to the farmer, 'Farm one of these pieces of land' and he does not specify which piece, the sharecropping is valid, and after the conclusion of the contract the owner can specify which piece of land [he would like the farmer to farm];
8. the expenses that each of them must pay for - such as the cost of the seeds, fertilisers, farming equipment, and suchlike - must be specified. However, if the expenses that each of them must pay for are such that they are usually known, it is not necessary to expressly state them.

Ruling 2248. If an owner has an agreement with a farmer that an amount of the produce will belong to one of them and the rest of it will be divided between the two of them, the sharecropping is invalid (*bāṭil*), even if they know that after taking away that amount there will still be something left over. But, if they have an agreement to the effect that some of the seeds that have been planted or some of the tax that is taken by the government will be excepted from the produce and the rest of it will be divided between themselves, the sharecropping is valid.

Ruling 2249. If a period has been specified for the sharecropping and the period is such that usually produce is harvested by the

end of it, but it so happens that the period comes to an end and no produce is harvested, then, in the event that the specified period included this scenario as well - that is, the intention of both parties was that when the period comes to an end, the sharecropping will also come to an end even if no produce is harvested - in this case, if the owner consents - either by taking rent (*ijārah*) or not taking rent - to the crops remaining on his land, and the farmer also consents to it, there is no problem. However, if the owner does not consent to it, he can make the farmer remove the crop. And if by removing the crop the farmer suffers a loss, it is not necessary for the owner to give him something in return. However, even if the farmer consents to giving the owner something, he cannot compel the owner to keep the crop on the land.

Ruling 2250. If farming the land is not possible due to certain circumstances, such as the land being cut off from a water supply, the sharecropping is nullified. And if the farmer does not farm the land without a legitimate excuse (*ʿudhr*), then, if the land was at his disposal and the owner had no disposal over it, the farmer must pay the owner a rental fee for that period at the standard rate.

Ruling 2251. An owner and a farmer cannot annul the sharecropping contract without the consent of the other. However, if they stipulate a condition in the sharecropping agreement that both or one of them reserves the right to annul the agreement, they can annul the agreement in accordance with their agreement. Similarly, if one of them acts contrary to what was stipulated, the other can annul the agreement.

Ruling 2252. If the owner or the farmer dies after the sharecropping contract has been concluded, the sharecropping is not nullified and their heirs take their place. However, if the farmer dies and a restriction had been made in the sharecropping agreement that the farmer himself would farm the land, then the sharecropping agreement is nullified unless the work that was the responsibility of the farmer has been completed, in which case the

sharecropping agreement is not nullified and his share must be given to his heirs. Furthermore, his heirs inherit other rights that belonged to him, and they can compel the owner to keep the crops on the land until the end of the sharecropping period.

Ruling 2253. If after farming the land the parties realise that the sharecropping agreement was invalid (*bāṭil*), in the event that the seeds belonged to the owner, the produce will also belong to him. The owner must pay the farmer his wages and all the expenses he incurred, and he must also pay him a rental fee for the use of the cow or other animal that belonged to him and was used to work on the land. If the seeds belonged to the farmer, then the crops will also belong to him. The farmer in turn must pay the owner a rental fee for his land, and he must also pay for all the expenses he incurred. Moreover, he must pay him a rental fee for the use of the cow or other animal that belonged to him and was used to work on the land. In both cases, if the sum of the claim, based on standard rates, is greater than the amount agreed to in the contract and the other party is aware of this, it is not obligatory (*wājib*) to give the extra amount.

Ruling 2254. If the seeds belong to the farmer and after farming the land the parties realise that the sharecropping agreement was invalid, in the event that the owner and the farmer both consent to letting the crops remain on the land, whether that be for a rental fee or not, there is no problem. However, if the owner does not consent to this, then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) he must not compel the farmer to remove the crops. Similarly, the owner cannot compel the farmer to keep the crops on his land, whether that be by claiming rent from him for the land or not.

Ruling 2255. If after harvesting the crops and the completion of the sharecropping period the roots of the crop remain in the ground and they produce crops again in the following year, then, in the event that the owner and the farmer had not stipulated a condition that they would own the roots jointly, the following year's crops will belong to the owner of the seeds.

CHAPTER SEVENTEEN

Tree Tending Contract (*Musāqāt*) and Tree Planting Contract (*Mughārasah*)

Ruling 2256. If a person forms an agreement with someone to, for example, place at his disposal some fruit trees - the fruits of which either belong to him or are under his discretion - for a specific period of time so that he may tend to and water them, and in return take an agreed portion of the fruits for himself, then such a transaction (*muʿāmalah*) is called a 'tree tending contract'.

Ruling 2257. A tree tending transaction with trees that do not yield fruit but have, for example, leaves and flowers of significant value - such as the henna tree whose leaves are utilised - is valid (*ṣaḥīḥ*).

Ruling 2258. In a tree tending contract, it is not necessary to say a particular formula (*ṣīghah*) [in order for it to be valid]. Rather, if the owner of the trees leaves them with the intention (*qaṣd*) of a tree tending contract and someone who does such work starts doing the work, the transaction is valid.

Ruling 2259. Both the owner and the person who takes on the responsibility of tending to the trees must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled them [to enter into the tree tending contract]. Furthermore, they must not be foolish with finances (*safīh*) - i.e. they must not spend their wealth in futile ways - and the owner must not have been proclaimed bankrupt (*mufallas*). However, if the gardener has been proclaimed bankrupt, there is no problem as long as the tree tending contract does not require him to have disposal over that part of his wealth over which he has been prohibited to have disposal.

Ruling 2260. The period of the tree tending contract must be known, and the length of the period must be such that it is possible to harvest the crop in that time. If the start of the period is specified and the end of the period is fixed as the time of harvest, it is valid.

Ruling 2261. The share of each party must be a half, a third, or suchlike, of the produce. If they agree that, for example, 10 kilograms will belong to the owner and the rest will belong to the person who does the work, the transaction is not valid.

Ruling 2262. It is not necessary that the tree tending contract be concluded before the produce becomes apparent. Rather, if it is concluded after it becomes apparent, in the event that some necessary task remains to be performed in order to increase the produce or to make it better or to safeguard it from disease, the transaction is valid. However, if no such task remains to be performed, then even if there remains some necessary task to be performed for tending to the trees or for picking the fruit or for looking after it, the validity of such a transaction is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), the transaction is not valid].[1]

Ruling 2263. Based on the more apparent (*aẓhar*)[2] juristic opinion, a tree tending transaction for honeydew melon and cucumber plants and suchlike is valid.

Ruling 2264. If a tree uses rainwater or moisture from the earth and does not require any extra irrigation, then as long as it requires other tasks - such as those mentioned in Ruling 2262 - a tree tending contract with respect to it is valid.

Ruling 2265. The two parties to a tree tending contract can annul it with the consent of the other party. If they stipulate a condition in the tree tending contract that both or one of them reserves the right to annul the agreement, there is no problem in annulling it in accordance with their agreement. If they stipulate a particular condition in the tree tending contract and the condition is not fulfilled, the party in whose benefit the condition was made can annul the agreement.

Ruling 2266. If the owner dies, the tree tending contract is not nullified. Instead, his heirs will take his place.

Ruling 2267. If the person who has been tasked with tending to the

1 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

2 For practical purposes in jurisprudential rulings, an opinion that is termed 'more apparent' equates to a fatwa.

trees dies, in the event that there is no restriction or condition in the contract to the effect that the person himself must tend to the trees, his heirs will take his place. If the heirs do not perform the task themselves nor hire someone to do it, a fully qualified jurist (*al-ḥākim al-sharʿī*) will hire someone using the deceased's estate and will divide the produce between the heirs and the owner. And if there is a restriction in the contract that the person himself must tend to the trees, the contract is nullified upon his death.

Ruling 2268. If a condition is stipulated that the entire produce belongs to the owner, the tree tending contract is invalid (*bāṭil*) but the produce will nevertheless belong to the owner. Furthermore, the person who does the work on the trees cannot claim any wages. However, if the tree tending contract is invalidated due to another reason, the owner must pay wages at the standard rate to the person who tended to the trees by watering them and performing other tasks. And in the event that the normal wage is more than the amount in the contract and the owner is aware of this, it is not necessary for him to pay the extra amount.

Ruling 2269. A tree planting contract is one in which a person places some land at the disposal of another person so that he may plant trees on it and the proceeds be shared by both of them. This is a valid transaction, although the obligatory precaution is to refrain from it. In fact, the same result can be achieved through a transaction that is valid without problem; for example, the two parties can arrive at a settlement (*ṣulḥ*) and reach a compromise to the same effect; or, they can be each other's partner (*sharīk*) with respect to the saplings and thereafter the gardener can hire (*ijārah*) himself to the owner of the land for planting, tending to, and irrigating them for a specified period of time in return for half of the proceeds resulting from the land during that period.

CHAPTER EIGHTEEN

Those who are Prohibited from having Disposal over their Property

Ruling 2270. A child who is not of the age of legal responsibility (*bāligh*) cannot legally (*sharʿan*) exercise discretion over his liabilities,[1] nor can he have disposal over his property. This is the case even though the child may be perfectly able to discern between right and wrong (*tamyīz*) and take care of his wealth and use it in a correct way (*rushd*). In this regard, prior permission from his guardian (*walī*) is of no use, and subsequent authorisation is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), such authorisation is of no use as well].[2] However, in certain cases, a child's disposal over his property is valid (*ṣaḥīḥ*), such as his buying and selling of things that have a little value, as was mentioned in Ruling 2092, and his will (*waṣiyyah*) to his close relatives, as will be mentioned in Ruling 2714.

The signs of having reached the age of legal responsibility (*bulūgh*) for a girl is the completion of nine lunar years, and for boys it is one of three things:

1. growth of thick hair below the navel and above the genitalia;
2. ejaculation of semen;
3. completion of fifteen lunar years.

Ruling 2271. It is not farfetched (*baʿīd*)[3] that the growth of thick hair on the face and above the lips are signs of *bulūgh*. However, the growth of hair on the chest and under the armpits and the deepening of one's voice and suchlike are not signs of *bulūgh*.

Ruling 2272. An insane person cannot have disposal over his property. Similarly, a person who has been proclaimed bankrupt (*mufallas*) - i.e. someone who is prohibited by a fully qualified

1 Therefore, a minor cannot, for example, become a guarantor or take out a loan.

2 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

3 For practical purposes, a legal opinion that is termed 'not farfetched' equates to a *fatwa*.

jurist (*al-ḥākim al-sharʿī*) from having disposal over his wealth due to the claims on him by his creditors - cannot have disposal over his property without authorisation from his creditors. Similarly, a person who is foolish with finances (*safīh*) - i.e. someone who spends his wealth in futile ways - cannot have disposal over his property without authorisation from his guardian.

Ruling 2273. If a person is sometimes sane (*ʿāqil*) and sometimes insane, any disposal he exercises over his property during his moments of insanity is not valid.

Ruling 2274. A person can use any amount of his wealth during a terminal illness for himself, his family, guests, and anything that is not considered wasteful. There is no problem if he sells his property at the normal price or gives it on rent (*ijārah*). However, if, for example, he gifts his wealth to someone or sells it for a lower than normal price, in the event that the amount he has given or sold cheaply is equivalent to or less than one-third of his property, his disposal.is valid. If it is more than one-third, it is valid as long as his heirs authorise it, but if they do not, then his disposal over more than one-third is invalid (*bāṭil*).

CHAPTER NINETEEN

Agency (*Wikālah*)

Agency is the act of delegating a transaction (*muʿāmalah*) that a person has the right to perform himself to someone else so that he may perform the task on his behalf. The transaction may be a contract (*ʿaqd*) or a unilateral instigation (*īqāʿ*)[1] or something related to these, such as handing over and taking possession of something. For example, a person may appoint an agent (*wakīl*) to sell his house for him or to marry him to a woman. Therefore, someone who is foolish with finances (*safīh*)[2] cannot appoint an agent to sell his house for him as he does not have right of disposal over his property.

Ruling 2275. To form an agency agreement, it is not necessary to say a particular formula (*ṣīghah*). Therefore, if a person conveys to someone that he has made him his agent and the other individual in turn conveys to him that he has accepted it - as when a person gives his property to someone to sell it for him and the latter takes it - the agency is valid (*ṣaḥīḥ*).

Ruling 2276. If a person appoints someone in another city to be his agent and sends him a letter of agency and the latter accepts, the agency is valid even if the letter of agency reaches him a while after it was sent.

Ruling 2277. The principal (*muwakkil*) - i.e. the person who appoints someone to be his agent - and the agent must both be sane (*ʿāqil*) and they must both have an intention (*qaṣd*) to enter into the agreement and do so of their own volition (*ikhtiyār*). Furthermore, it is a requirement that the principal must have reached the age of legal responsibility (*bulūgh*), except in those cases where it is valid for a child who is able to discern between right and wrong (*mumayyiz*) [to carry out the transaction].

1 The difference between a 'contract' and a 'unilateral instigation' is as follows: with a contract, two parties are required - one to make the offer and the other to accept it. Marriage, therefore, is an example of a contract. In contrast, in a unilateral instigation, one party alone executes the transaction, as is the case with divorce.

2 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

Ruling 2278. A person must not become an agent to perform a task that he is not capable of performing or is legally (*sharʿan*) prohibited from performing. For example, a person who is in the state of *iḥrām*[3] for *hajj* and is therefore not permitted to say the formula for a marriage contract cannot become an agent for someone to say the formula for him.

Ruling 2279. If a person appoints someone to be his agent to perform all his tasks for him, it is valid. However, if he appoints him to be his agent to perform one of his tasks for him but does not specify that task, the agency is not valid. But, ifhe appoints him to be his agent to perform one of a number of tasks at the discretion of the agent - for example, he appoints him as his agent to either sell his house or give it on rent (*ijārah*) - the agency is valid.

Ruling 2280. If a person deposes his agent - i.e. he discharges him from his duty - then once news of this reaches the agent, he cannot perform the task for which he was appointed. However, if he performs the task before the news reaches him, it is valid.

Ruling 2281. An agent can discharge himself from the agency, even if the principal is absent.

Ruling 2282. An agent cannot appoint someone else to be his agent to perform the task that was delegated to him to perform. And if the principal authorises him to appoint an agent, he must act in the manner in which he was instructed. Therefore, if the principal states, 'Appoint an agent for me', he must appoint an agent on behalf of the principal and cannot appoint someone to be an agent on behalf of himself.

Ruling 2283. If with the authorisation of the principal an agent appoints someone to be an agent for the principal, the agent cannot depose him. And if the first agent dies or the principal deposes him, the second agency does not become void (*bāṭil*).

3 *Iḥrām* here refers to the state of ritual consecration of pilgrims during *hajj* and *ʿumrah*.

Ruling 2284. If with the authorisation of the principal an agent appoints someone to be an agent for himself, both the principal and the first agent can depose him. And if the first agent dies or is deposed, the second agency becomes void.

Ruling 2285. If a person appoints a number of people to be his agents to perform a task and authorises each of them to act solitarily in the performance of that task, then any one of them can perform that task. And in the event that one of them dies, the agency of the others does not become void. However, if it was said that they must perform the task together or it was said in a general way, 'You two are my agents', they cannot perform it solitarily. And in the event that one of them dies, the agency of the others becomes void.

Ruling 2286. If the agent or the principal dies, the agency becomes void. Also, if the item over which the person was appointed to have disposal perishes - for example, the sheep that the person was appointed to sell dies - the agency becomes void. Similarly, if one of them becomes permanently insane or loses consciousness, the agency becomes void. However, if one of them intermittently becomes insane or loses consciousness, then to say the agency becomes void while he is insane or unconscious, let alone when he is in neither of these states, is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), the agency does not become void].[4]

Ruling 2287. If a person appoints someone to be his agent to perform a task and agrees on a remuneration, then upon completion of the task, he must remunerate him according to the agreement.

Ruling 2288. If an agent is not negligent in safeguarding the property that has been placed in his possession and does not use it in any manner except in the way he was authorised, and it so

4 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

happens the property is destroyed, he is not responsible (*ḍāmin*) for it.

Ruling 2289. If an agent is negligent in safeguarding the property that has been placed in his possession or uses it in a manner that was not authorised and the property is destroyed, he is responsible for it. Therefore, if he wears a piece of clothing that he was told to sell and that clothing is ruined, he must replace it.

Ruling 2290. If an agent uses the property in a manner that was not authorised - for example, he wears a piece of clothing that he was told to sell - and he thereafter disposes of it as he was authorised, that disposal is valid.

CHAPTER TWENTY

Loan (*Qarḍ*)

Giving a loan to believers, especially the needy among them, is one of the recommended (*mustaḥabb*) acts that has been highly advised in traditions. For example, it has been reported that the most noble Messenger (Ṣ) said: 'Whoever gives a loan to his brother in faith and gives him respite until he is financially able to repay it, his wealth will increase and angels will send mercy upon him until the time he takes his money back.' And it is reported that Imam al-Ṣādiq ('Ā) said: 'Every believer who gives another believer a loan with the intention of attaining proximity to Allah, Allah will record for him the reward of giving alms to the poor (*ṣadaqah*) until he takes his property back.'

Ruling 2291. It is not necessary to say a particular formula (*ṣīghah*) when giving a loan; rather, if one gives something to someone with the intention (*niyyah*) of giving a loan and the latter takes it with the same intention, it is valid (*ṣaḥīḥ*).

Ruling 2292. Whenever a borrower repays his loan, the lender must accept it unless a period for repaying it at the request of the lender or both parties was agreed upon. In that case, the lender can refuse to receive what he is owed before the end of the period.

Ruling 2293. If a period for repaying the loan is agreed upon in the loan agreement, in the event that specifying the period was done at the request of the borrower or both parties, the lender cannot claim what he is owed before the end of the period. However, if specifying the period was done at the request of the lender or no period was specified at all, the lender can claim what he is owed whenever he wishes.

Ruling 2294. If a lender claims what he is owed and there is no time [period specified in the loan agreement] or the time for repayment is due, in the event that the borrower can repay his loan, he must do so immediately. If he delays in doing so, he will have sinned.

Ruling 2295. If a borrower owns nothing besides a house that he resides in and some household furniture and some other things

which, taking into consideration his status and social position, he needs and without which he would fall into difficulty, the lender cannot claim what he is owed from him. Instead, he must wait until the borrower can repay his loan.

Ruling 2296. If a borrower cannot repay his loan but it is easy for him to trade, or if his job is trading, then it is obligatory (*wājib*) on him to earn and repay his loan. In fact, if none of the above apply to him but he can earn by doing something that is worthy of his status, the obligatory precaution (*al-iḥtiyāṭ al-wājib*) is that he must earn and repay his loan.

Ruling 2297. If a person has no access to his lender and has no hope of finding him or his heirs in the future, he must give what he owes to a poor person (*faqīr*) on behalf of the lender. The obligatory precaution here is that he must obtain authorisation from a fully qualified jurist (*al-ḥākim al-shar'ī*). However, if he has hope of finding his lender or his heirs, he must wait and search for him. In the event that he does not find him, he must make a will (*waṣiyyah*) to the effect that if he dies and his lender or his heirs are found, he/they must be paid from his estate what he/they are owed.

Ruling 2298. If the estate of a deceased person is not greater than the costs of his obligatory shroud (*kafan*), burial (*dafn*), and debts, his estate must be spent on these items and his heirs do not inherit anything.

Ruling 2299. If a person borrows an amount of money, wheat, barley, or something else that is fungible and its value depreciates or appreciates, he must return the same amount of those items with the same qualities and particulars that effect the desirability of those items. And there is no problem if the borrower and the lender are content with receiving something else instead. However, if he borrows something that is non-fungible, such as sheep, he must give back an amount that is equivalent to the item's value on the day he took it on loan.

Ruling 2300. If the property that someone has borrowed is not destroyed and the owner claims it, it is not obligatory on the borrower to return the same property to him. Likewise, if the borrower wishes to return it, the lender can refuse to accept it.

Ruling 2301. If the lender stipulates a condition that he will take back more than he gives - for example, he gives 10 kilograms of wheat and stipulates that he will take back 11 kilograms, or he gives ten eggs and stipulates that he will take back eleven eggs - this is usury (*ribā*) and unlawful (*ḥarām*). In fact, if it is agreed that the lender will perform a task for him or will return the loan along with some other commodity - for example, he stipulates that the £10 he has given on loan must be returned along with one matchstick - this is also usury and unlawful. Furthermore, if he stipulates a condition that the item being taken on loan must be returned in a particular manner - for example, he gives an amount of gold that has not been crafted and stipulates that gold that has been crafted [such as a piece of jewellery] must be returned - again, this is usury and unlawful. However, if the borrower himself returns the loaned item with an extra amount without such a thing being stipulated, there is no problem in it; in
fact, it is recommended.

Ruling 2302. Giving interest (*ribā*), just like taking interest, is unlawful, but the loan itself is valid. Someone who takes a usurious loan becomes the owner of it but the lender does not become the owner of the extra that he takes, and any use he makes of it is unlawful. Furthermore, if the lender purchases something with the same item [i.e. the extra item he received in the usurious loan], he does not become the owner of it. And in the event that had he not made an agreement of usury, the borrower would have consented for the lender to use the money, then his use of it is permitted (*jā'iz*). Similarly, if due to not knowing the ruling (*mas'alah*) the lender takes interest and after finding out the ruling he repents, then what he took when he did not know the ruling is lawful (*ḥalāl*) for him.

Ruling 2303. If a person acquires wheat or something similar through a usurious loan and cultivates it, he becomes the owner of the resulting produce.

Ruling 2304. If a person purchases some clothing and afterwards pays for it with money acquired through usury or with lawful money mixed with such money, he becomes the owner of it and there is no problem in him wearing it and performing prayers in it. However, if he says to the seller, 'I am purchasing this clothing with this money', then he does not become the owner of it and wearing it is unlawful.

Ruling 2305. If a person gives an amount of money to someone so that someone else in another city takes a lesser amount on his behalf, there is no problem. This is called '*ṣarf al-barāt*' [a type of bill of exchange].

Ruling 2306. If a person gives something to someone so that he may take a greater amount in another city, and if the item is gold, silver, wheat, or barley which can be weighed or measured, it is usury and unlawful. However, if the party that is taking the extra amount gives or does something in return, there is no problem. If bank notes are given on loan, it is not permitted to take back more. If a person sells them as an immediate exchange (*naqd*)[1] transaction, or on credit (*nasī'ah*) but the money is in two currencies, such as pounds sterling and dollars, then there is no problem with-any extra received. However, if it is a credit sale and the money is in one currency only, then receiving an extra amount is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution, it is to be avoided].[2]

Ruling 2307. If a person is owed by someone a commodity that is neither weighed nor measured, he can sell it to the borrower or to someone else for a lower price and take the sum immediately.

1 In an immediate exchange transaction, there is no lapse of time between the buyer paying for the item and receiving it.

2 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Therefore, in present times, a lender can take a cheque or promissory note from the borrower and sell it to a bank or to another person for less than what he is owed - which is commonly known as ‘cheque cashing’ - and he can take the sum immediately.

CHAPTER TWENTY-ONE

Transfer of Debt (*Ḥawālah*)

Ruling 2308. If a person refers his creditor to someone to get the money he is owed and the creditor accepts to do this, then, if the transfer agreement is concluded in accordance with the conditions that will be mentioned later, the person to whom the debt is transferred becomes indebted to the creditor. Thereafter, the creditor cannot claim what he is owed from the first debtor.

Ruling 2309. The debtor, creditor, and the transferee must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled them [to enter into the transfer of debt agreement]. Furthermore, they must not be foolish with finances (*safīh*); i.e. they must not spend their wealth in futile ways. It is also a requirement that the debtor and the creditor must not have been proclaimed bankrupt (*mufallas*) except if the transfer is to a person who is not indebted to the transferor, in which case if the transferor has been proclaimed bankrupt, there is no problem.

Ruling 2310. In all cases of transfer of debt, [in order for the transfer to be valid (*ṣaḥīḥ*),] the transferee must be willing to accept the transfer, whether he is indebted or not.

Ruling 2311. When a person makes the transfer, he must be indebted. Therefore, if he wishes to obtain a loan (*qarḍ*) from someone, then until he does not obtain the loan from him, he cannot refer him to someone else to get the sum that he later wishes to borrow from him.

Ruling 2312. The type and amount of the debt being transferred must in fact be specified. Therefore, if a person owes a quantity of wheat (say, 10 kilograms) and an amount of money (say, £10), and he says to the creditor, 'Get one of the two things you are owed from so-and-so' without specifying which item, the transfer is not correct.

Ruling 2313. If the debt is actually specified but at the time of making the transfer the debtor and the creditor do not know the amount or type of it, the transfer is valid. For example, if someone's

debt is recorded in a document and he makes the transfer before referring to the document and thereafter he refers to it and informs the creditor of the amount of the debt, the transfer is valid.

Ruling 2314. A creditor reserves the right to refuse a transfer of debt, even if the [proposed] transferee is wealthy and would not be negligent in paying the debt.

Ruling 2315. If a person who is not indebted to the transferor accepts the transfer of debt to himself, he can claim the amount of the debt from him before paying it. This is unless the debt that has been transferred to him has a time period and the period has not yet come to an end. In such a case, he cannot claim the amount of the debt from the transferor before the period comes to an end, even if he has already paid it. And if the creditor settles what he is owed for a lower amount with the transferee, the latter can only claim that amount from the transferor.

Ruling 2316. Once a transfer of debt has taken place, the transferor and the transferee cannot annul the transfer. And if the transferee is not poor (*faqīr*) at the time of the transfer, even though he may have become so afterwards, the creditor cannot annul the transfer. The same applies if he is poor at the time of the transfer and the creditor is aware that he is poor. However, if the creditor does not know he is poor and realises this afterwards, then, if at that time he is not financially stable, the creditor can annul the transfer and claim what he is owed from the transferor. But if he is financially stable, then for him to have the right to rescind (*faskh*) is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), he does not have the right to rescind the transfer].[1]

Ruling 2317. If a debtor, creditor, and transferee, or one of them, reserves the right to annul the transfer of debt, he/they can annul the transfer in accordance with their agreement.

1 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2318. If a transferor himself pays his debt to the creditor, then, if the transferee was indebted to the transferor and he had requested the transferor to pay the creditor, the transferor can claim what he paid to the creditor from the transferee. But, if the transferor paid the creditor without the transferee requesting this, or if the transferee was not indebted to the transferor, then the transferor cannot claim what he paid the creditor from the transferee.

CHAPTER TWENTY-TWO

Security (*Rahn*)[1]

1 lt is necessary to note that at present, what is commonly known as '*rahn*' among people [in some places] is not, in reality, '*rahn*' [in its jurisprudential sense]. Rather, it refers to the money that is given to the owner of a house as a loan (*qarḍ*) in return for use of the house as a place of residence. This act, if it takes place without rent (*ijārah*), is usury (*ribā*) and unlawful (*ḥarām*), and the person does not have the right to live in that house. If it takes place with rent, then, if giving the loan is conditional on the rent, it is again unlawful; and if the rent is on condition of the loan, then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) it is not permitted (*jā'iz*). [Author]

Ruling 2319. In a security agreement, a person deposits some property with another person as collateral for a debt or for some property that he is responsible (*ḍāmin*) for so that in the event that he fails to pay off his debt or property, the other party can be compensated from the deposited property.

Ruling 2320. In a security agreement, it is not necessary to say a particular formula (*ṣīghah*). In fact, if the depositor gives his property to the depositee with the intention (*qaṣd*) of a security deposit and the depositee accepts it with the same intention, it is valid (*ṣaḥīḥ*).

Ruling 2321. The depositor and the depositee must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled them [to enter into the security agreement]. Furthermore, the depositor must not have been proclaimed bankrupt (*mufallas*) nor must he be foolish with finances (*safīh*) (the meaning of these terms was explained in Ruling 2272). However, if a bankrupt person deposits as security property that is not his, or property over which he has not been prohibited to have disposal, there is no problem.

Ruling 2322. A person can only deposit as security property over which he can legally (*sharʿan*) have disposal. And if he deposits as security another person's property with his consent, it is valid.

Ruling 2323. The property that is deposited as security must be something that is valid to buy and sell. Therefore, if wine or suchlike is deposited as security, it is not correct.

Ruling 2324. The profits from the deposited item belong to its owner, whether that be the depositor or another person.

Ruling 2325. A depositee cannot give or sell the deposited property without the owner's consent, whether that be the depositor or another person. And if the owner consents afterwards, there is no problem.

Ruling 2326. If a depositee sells the deposited property with the owner's consent, the proceeds of the sale, just like the property itself, will not be considered to be security. The same applies if he sells it without the owner's consent but the latter consents afterwards. However, if the depositor sells that property with the depositee's consent so that the proceeds be deposited as security, then in case he violates this agreement, the transaction (*muʿāmalah*) is void (*bāṭil*) unless the depositee consents to it.

Ruling 2327. If the time arrives for a debtor to pay his debt and the creditor demands it but the debtor does not pay him, in the event that the creditor has agency (*wikālah*) to sell the property that has been deposited as security and to take what he is owed from the proceeds, he can sell it and take what he is owed. And in case he does not have agency, it is necessary for him to obtain the owner's consent. If he does not have access to him, then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), he must get authorisation from a fully qualified jurist (*al-ḥākim al-sharʿī*). In both cases, if he acquires an extra amount [from the sale], he must give that extra amount to the owner.

Ruling 2328. If a debtor owns nothing besides the house in which he resides and some things such as household furniture which he needs, a creditor cannot claim what he is owed from him. However, if the property that has been deposited as security is something like a house and household furniture, then the creditor can sell it and take what he is owed in accordance with what was said in the previous ruling.

CHAPTER TWENTY-THREE

Suretyship (*Ḍamān*)

Ruling 2329. If a person wishes to act as guarantor (*ḍāmin*)[1] for paying off someone's debt, it is valid (*ṣaḥīḥ*) only if he conveys to the creditor - by means of any words, even if they are not in Arabic, or actions - that he is acting as guarantor for paying him what he is owed. Furthermore, the creditor must convey his consent to this, but the consent of the debtor is not a condition [for the validity of the person to act as guarantor]. This transaction (*muʿāmalah*) is of two types:

1. the guarantor transfers the debt (*dayn*) that was a liability on the debtor to himself. With this type of transaction, if the guarantor were to die before paying off the debt, then as is the case with other debts, the debt takes priority over inheritance (*irth*) [i.e. the debt would first need to be paid off before anything from his estate is inherited]. Usually, jurists (*fuqahāʾ*) intend this meaning when they discuss 'suretyship';
2. the guarantor is committed to paying off the debt but is not liable to do so. With this type of transaction, if he does not make a will (*waṣiyyah*), the debt is not to be paid from his estate after his death.

Ruling 2330. The guarantor and the creditor must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled them [to enter into the suretyship agreement]. Furthermore, they must not be foolish with finances (*safīh*),[2] and the creditor must not have been proclaimed bankrupt (*mufallas*). However, these conditions do not apply to a debtor; for example, if a person acts as guarantor for paying off the debt of a child, an insane person, or someone who is foolish with finances, it is valid.

Ruling 2331. Whenever a person places a condition for him to act as guarantor - for example, he says, 'If the debtor does not pay back your loan (*qarḍ*), I will pay it', then him acting as guarantor in the first type of suretyship mentioned in Ruling 2329 is problematic

1 Sometimes, the guarantor in a suretyship is called the 'surety'.

2 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

(*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), it is not valid].[3] However, there is no problem [in him acting as guarantor in] the second type mentioned in that ruling (*mas'alah*).

Ruling 2332. The person for whom an individual acts as guarantor must be in debt. Therefore, if a person wishes to acquire a loan from someone, one cannot act as guarantor for him until he acquires the loan. This condition does not apply to the second type of suretyship [mentioned in Ruling 2329].

Ruling 2333. A person can only act as guarantor if the creditor, debtor, and type of debt are in fact specified. Therefore, if two people are owed by someone and another person says, 'I act as guarantor for paying the debt owed to one of you', then him acting as guarantor in this case is invalid (*bāṭil*) as he did not specify whose debt he is acting as guarantor for. Also, if someone is owed by two people and another person says, 'I act as guarantor for paying you the debt owed by one of them', then him acting as guarantor here is invalid as well as he too did not specify whose debt he is acting as guarantor for. Similarly, if someone is owed, for example, a quantity of wheat (say, 10 kilograms) and a quantity of money (say, £10), and another person says, 'I act as guarantor for one of the two items you are owed' and does not specify whether he is acting as guarantor for the wheat or for the money, it is not valid.

Ruling 2334. If a person acts as guarantor for paying off someone's debt without the debtor's consent, he cannot claim anything from him.

Ruling 2335. If a person acts as guarantor for paying off someone's debt with the debtor's consent, he can claim some of the suretyship amount from him even before he has paid it. However, if he pays the creditor with a commodity that is different to the commodity

3 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

owed by the debtor, he cannot claim anything that he gave from the debtor. For example, if the debtor owes 10 kilograms of wheat and the guarantor pays 10 kilograms of rice, the latter cannot claim rice from the debtor. However, if the debtor consents to rice being paid, then there is no problem.

Ruling 2336. If a creditor pardons the guarantor what he is owed, the guarantor cannot claim anything from the debtor. Similarly, if the creditor pardons some of it, he cannot claim that amount. However, if the creditor gifts (*hibah*) all or some of it, or calculates it as one-fifth tax (*khums*), alms tax (*zakat*), alms to the poor (*ṣadaqah*), or something similar, the guarantor can claim it from the debtor.

Ruling 2337. If a person acts as guarantor for paying off someone's debt, he cannot revert from acting as guarantor.

Ruling 2338. The guarantor and the debtor cannot, based on obligatory precaution, stipulate a condition that permits them to annul the suretyship agreement whenever they wish.

Ruling 2339. If a person is able to pay off the debt owed to a creditor at the time of the suretyship agreement, even if he were to become poor (*faqīr*) afterwards, the creditor cannot rescind (*faskh*) the suretyship agreement and recover the debt from the original debtor. The same applies if he is unable to pay off the debt at that time but the creditor knows this and consents to him acting as guarantor nevertheless.

Ruling 2340. If a person is unable to pay off the debt owed to the creditor at the time of acting as guarantor and the creditor was not aware of this but now wishes to annul him being a guarantor, it is problematic [i.e. based on obligatory precaution, he cannot do this). This is especially so if the guarantor acquires the ability to pay off the debt before the creditor becomes aware [that he is unable to pay off the debt].

CHAPTER TWENTY-FOUR

Surety for the Appearance of a Debtor (*Kafālah*)

Ruling 2341. *Kafālah* is when a person undertakes to present a debtor whenever the creditor seeks him. Someone who takes on such an undertaking is called a 'surety' (*kafīl*).

Ruling 2342. A *kafālah* is valid (*ṣaḥīḥ*) only if the surety conveys to the creditor - by means of any words, even if they are not in Arabic, or actions - that he undertakes to present the debtor whenever he wishes, and the creditor accepts. And based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), the debtor's consent is also a requirement for the validity of the *kafālah*. In fact, the obligatory precaution is that he must be a party of the contract as well, i.e. both the debtor and creditor must both accept the *kafālah*.

Ruling 2343. The surety must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled him [to enter into the *kafālah* agreement]. In addition, he must be able to make the person for whom he is the surety appear, and he must not be foolish with finances (*safīh*).[1] Furthermore, he must not have been proclaimed bankrupt (*mufallas*) in the event that making the debtor appear requires him to have disposal over his property.

Ruling 2344. One of five things annuls a *kafālah* agreement:

1. the surety presents the debtor to the creditor, or the debtor submits himself to the creditor;
2. the debt owed to the creditor is paid;
3. the creditor pardons the debt he is owed or transfers it to another person;
4. the debtor or the surety dies;
5. the creditor releases the surety from the *kafālah*.

Ruling 2345. If a person forcefully frees a debtor from the hands of the creditor, in the event that the creditor does not have access to the debtor, the person who freed the debtor must present him to the creditor or pay off his debts.

1 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

CHAPTER TWENTY-FIVE

Deposit (*Wadīʿah*) and Trust (*Amānah*)

Ruling 2346. If a person gives some property to someone, saying, 'Let it be trusted to you' and the latter accepts, or, if without uttering a word a person conveys to someone that he is giving him some property for safeguarding and the latter accepts in a way that makes it clear he has committed to safeguarding it, then in such cases, the parties must act in accordance with the laws (*aḥkām*) of deposit and trust, which will be mentioned below.

Ruling 2347. The depositor and the safe keeper must both be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), and no one must have compelled them [to enter into the deposit agreement]. Therefore, if a person entrusts some property to an insane person or to a child, or, if an insane person or a child entrusts some property to someone, it is not valid (*ṣaḥīḥ*). However, it is permitted (*jāʾiz*) for a child who is able to discern between right and wrong (*mumayyiz*) to entrust another person's property to someone with the owner's consent. Furthermore, the depositor must not be foolish with finances (*safīh*)[1] nor have been proclaimed bankrupt (*mufallas*). However, there is no problem if a person who has been proclaimed bankrupt entrusts property over which he has not been prohibited from having disposal. Also, the safe keeper must not be foolish with finances nor have been proclaimed bankrupt; this is in the event that protecting and safeguarding the deposit would require him to have disposal over his own property in a way that ownership of the property would transfer from him or it would be destroyed.

Ruling 2348. If a person accepts a deposit from a child without the permission of its owner, he must return it to its owner. If the deposited item belongs to the child itself, it is necessary to return it to the child's guardian (*walī*). And in the event that it perishes before it is returned to them, the safe keeper must replace it. However, if the deposit is at risk of perishing and it is taken from the child in order to protect and return it to the guardian, then as long as the safe keeper was not negligent in safeguarding or

1 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

returning it and he did not use it in an unpermitted manner, he is not responsible (*ḍāmin*) for it. The same applies if the depositor is an insane person.

Ruling 2349. A person who is not capable of safeguarding a deposit must not accept it if the depositor is unaware of his incapability. If he does accept it and it perishes, he is responsible for it.

Ruling 2350. If a person conveys to the owner of the property that he is not prepared to safeguard his property, and he does not take the property from him but the owner nevertheless places it with him and leaves, and the property perishes, then the safe keeper is not responsible for it. However, the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that he should, if possible, safeguard it.

Ruling 2351. A depositor may annul the deposit agreement whenever he likes. Similarly, a safe keeper can also annul the deposit agreement whenever he likes.

Ruling 2352. If a person changes his mind about safeguarding a deposit and annuls the deposit agreement, he must return the deposit to the owner or his agent (wakīl) or guardian as soon as he can, or he must inform them that *he* is no longer prepared to safeguard it. And if he fails to return the deposit to them without a legitimate excuse (*ʿudhr*) and does not inform them either, in the event that the deposit perishes, he must replace it.

Ruling 2353. A person who accepts a deposit but does not have an appropriate place for it must acquire a suitable place for it. Furthermore, he must safeguard it in a manner such that it could not be said he was negligent in safeguarding it. And if he is negligent in this matter and the deposit perishes, he must replace it.

Ruling 2354. If a safe keeper of a deposit is not negligent in safeguarding it nor excessive with it, i.e. he does not use it in an unpermitted manner, but it so happens that it perishes, he is not

responsible for it. However, if he is negligent in safeguarding it - for example, he keeps it in a place that is not secure from being found and taken by an unjust person - or he is excessive - for example, he wears the clothing or rides the horse [that he was entrusted with] - then, in the event that it perishes, he must replace it for the owner.

Ruling 2355. If the owner of some property specifies a place for safeguarding it and he says to the safe keeper, 'you must look after the property here even if you deem it probable that it will be destroyed', the safe keeper cannot take it to another place. If he does [take the property to another place] and it perishes, he is responsible for it unless he is certain (i.e. he has *yaqīn*) that the property would perish there [i.e. in the first location], in which case it is permitted for him to transfer it to a safe place.

Ruling 2356. If the owner of some property specifies a place for safeguarding it and it is understood from what he says that the place is not of any particular significance to the owner, the safe keeper can take it to another place where it would be safer or just as safe as the first place. And in the event that the property perishes there [i.e. in the new location], he is not responsible for it.

Ruling 2357. If the owner of some property becomes permanently insane or unconscious, the deposit agreement becomes void (*bāṭil*) and the safe keeper must immediately return it to his guardian or inform him of the deposit. If he does not do this and the property perishes, he must replace it. And if the insanity or unconsciousness of the owner is intermittent, the obligatory precaution (*al-iḥtiyāṭ al-wājib*) is that he must do exactly the same.

Ruling 2358. If the owner of the property dies, the deposit agreement becomes void. Therefore, if there are no other rights on the property and it is to be transferred to his heir, then the safe keeper must return it to him or inform him of it. If he does not do this and the property perishes, he is responsible for it. However, if he holds on to the property in order to find out about the heirs or whether they are the only heirs of the deceased and the property perishes, he is responsible for it.

Ruling 2359. If the owner of the property dies and the property transfers to his heirs, the safe keeper must hand over the property to all of them or to the agent of all of them. Therefore, if he hands over the entire property to one of the heirs without the consent of the others, he is responsible for their shares.

Ruling 2350. If the safe keeper dies or permanently becomes insane or unconscious, the deposit agreement becomes void and his heirs or agent must inform the owner of the property as soon as possible or return the deposit to him. And if the insanity or unconsciousness of the owner is intermittent, then based on obligatory precaution he must do exactly the same.

Ruling 2361. If the safe keeper realises that he is nearing death, then based on obligatory precaution he must, if it is possible, return the deposit to its owner or to the owner's guardian or agent, or he must inform him. If this is not possible, he must act in a way that he becomes confident (i.e. he attains *iṭmi'nān*) that the property will return to its owner after his death. For example, he must write a will (*waṣiyyah*) and obtain a witness and inform the executor (*waṣī*) and the witness about the name of the property's owner, the type of property it is, its particulars, and its location.

Ruling 2362. If the safe keeper has to travel, he can keep the deposit with his family. This is unless safeguarding the deposit is dependent on him being there, in which case he must either stay or return the deposit to its owner or to the owner's executor (*waṣī*) or his agent, or he must inform him [about his travel].

CHAPTER TWENTY-SIX

Gratuitous Loan (*ʿĀriyah*)

Ruling 2363. A gratuitous loan is when a person gives his property to someone to use without taking anything in return.

Ruling 2364. It is not necessary that the parties say a particular formula (*ṣīghah*) [for a gratuitous loan agreement to be valid (*ṣaḥīḥ*)]. If, for example, a person gives some clothing to someone with the intention (*qaṣd*) of a gratuitous loan and the latter accepts it with the same intention, it is valid.

Ruling 2365. Lending a usurped (*ghaṣbī*) item or an item that belongs to the lender but its usufruct has been granted to someone else - such as property that has been given on rent (*ijārah*) - is valid only if the owner or the lessee consents to the loan.

Ruling 2366. If the usufruct of a property belongs to a particular individual - because he has rented it, for example - then that individual is allowed to loan it to someone else unless a condition is stipulated in the rental contract that only he can use it. With regard to the first matter [i.e. being allowed to loan the usufruct to someone else], based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), he cannot hand it over without the owner's permission.

Ruling 2367. It is not valid if a child, insane person, or someone who has been proclaimed bankrupt (*mufallas*) or is foolish with finances (*safīh*)[1] lends out his property. However, if the guardian (*walī*) deems it a matter of primary importance and lends out property belonging to someone over whom he has guardianship (*wilāyah*), it is not a problem. Similarly, there is no problem in a child merely being an intermediary for delivering the property to the borrower.

Ruling 2368. If a person is neither negligent in safeguarding the loaned property nor excessive in using it, but it so happens that the property perishes, he is not responsible (*ḍāmin*) for it. However, if a condition is stipulated that in the event that the property perishes

1 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

the borrower will be responsible for it, or, if the loaned item is gold or silver, then the property must be replaced.

Ruling 2369. If a person borrows gold or silver and stipulates a condition that if it perishes he will not be responsible for it, in the event that it does perish, he will not be responsible for it.

Ruling 2370. If the lender dies, the borrower must act in accordance with the sequence of steps mentioned in Ruling 2358 concerning the death of an owner in a deposit agreement.

Ruling 2371. If the lender can no longer legally (*sharʿan*) have disposal over his property - for example, he becomes insane or unconscious - the borrower must act in accordance with the sequence of steps mentioned in Ruling 2357 concerning deposits.

Ruling 2372. The lender and the borrower can annul the gratuitous loan agreement whenever they like.

Ruling 2373. Lending an item that has no lawful (*ḥalāl*) use - such as instruments of amusement and gambling - is invalid (*bāṭil*). The same applies to lending gold or silver utensils for the purpose of eating and drinking from them. In fact, based on obligatory precaution, using these utensils in general is unlawful. However, it is permitted (*jāʾiz*) to lend them for decoration.[2]

Ruling 2374. Lending a sheep for use of its milk and wool and lending a male animal so that it can mate with a female one is valid.

Ruling 2375. If a borrower returns the loaned item to its owner or to the owner's agent (*wakīl*) or guardian, and afterwards the item perishes, the borrower is not responsible for it. However, if the borrower takes the property to another location without the permission of its owner or the owner's agent or guardian, he will be responsible for it, even if the location is one to where the owner would usually take the property. For example, if the

2 See Ruling 227.

borrower ties a horse in a stable which was built by the owner for that very purpose and afterwards the horse perishes or someone causes it to perish, he is responsible for it.

Ruling 2376. If a person lends an impure (*najis*) item, he must inform the borrower of this in accordance with the instructions mentioned in Ruling 2065.

Ruling 2377. A person cannot give on rent or lend an item that he has borrowed without the owner's consent.

Ruling 2378. If a person lends some property that he has borrowed to someone without the owner's consent, in the event that the person who first borrowed it dies or becomes insane, the second person's loan does not become invalid.

Ruling 2379. If a person knows that the property he has borrowed is usurped, he must return it to its owner; he cannot return it to the lender.

Ruling 2380. If a person borrows some property that he knows is usurped and uses it and it perishes in his possession, the owner can claim compensation for the property and for its use from the borrower or from the usurper. And if the owner acquires compensation from the borrower, the latter cannot claim anything that he has given to the owner from the lender.

Ruling 2381. If a borrower does not know that the property he has borrowed is usurped and it perishes in his possession, in the event that the owner acquires compensation from him, he in turn can claim what he gave to the owner from the lender. However, if the borrowed item is gold or silver, or if the lender stipulates a condition that in the event that the item is destroyed the borrower must replace it, then the latter cannot claim what he gave to the owner from the lender. However, if the owner takes something from him for using the property, he can claim that from the lender.

CHAPTER TWENTY-SEVEN

Marriage

By means of a marriage contract, a man and woman become lawful (*ḥalāl*) for each other. A marriage contract is of two types: permanent (*dāʾim*) and temporary (*munqaṭiʿ*) [also known as '*mutʿah*']. A permanent marriage contract is one in which no period of time is specified for the marriage. A woman who is married in such a contract is called a 'permanent wife' (*dāʾimah*). A temporary marriage contract is one in which a period of time is specified for the marriage, such as a marriage contract that is concluded with a woman for a period of one hour, one day, one month, one year, or longer. However, the period specified for such a marriage must not exceed the lifespan of the husband and wife, or one of them, otherwise the contract is invalid (*bāṭil*). A woman who is married in such a contract is called a 'temporary wife' (*mutʿah*).[1]

THE MARRIAGE CONTRACT

Ruling 2382. To conclude a marriage contract, whether that be for a permanent marriage or for a temporary one, a formula (*ṣīghah*) must be said; the mere consent of the man and the woman is not sufficient, nor is writing it, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*). The formula is either said by the man and the woman themselves or they can appoint an agent (*wakīl*) to say it on their behalf.

Ruling 2383. The agent does not have to be a man; a woman can also be an agent on behalf of a party to say the formula of the marriage contract.

Ruling 2384. As long as the man and the woman are not confident (i.e. they do not have *iṭmiʾnān*) that their agent has said the formula, they cannot consider themselves legally married. Merely supposing (i.e. having a *ẓann*) that the agent has said the formula does not suffice. In fact, if an agent says that he has said

1 In the Persian original, the terms '*mutʿah*' and '*ṣīghah*' are used to refer to both temporary marriage and a temporary wife. In his Arabic work *Minhāj al-Ṣāliḥīn*, al-Sayyid al-Sistani refers to a temporary wife as '*mutʿah*', '*al-mutamattaʿ bihā*', and '*munqaṭiʿah*' (vol. 3, p. 16).

the formula but they do not have confidence in what he says, the obligatory precaution is that they must not give heed to what he says.

Ruling 2385. If a woman appoints an agent to marry her to a man for ten days, for example, but she does not specify a starting date for those ten days, the agent can marry her to the man for ten days starting from whenever he likes. However, if it is known that the woman has intended a specific date or time, the agent must say the formula in accordance with her intention (*qaṣd*).

Ruling 2386. One individual can be an agent for both parties to say the formula of the marriage contract, be it temporary or permanent. A man can be an agent for the woman to marry her to himself, both in a temporary marriage and in a permanent one. However, the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that the formula should be said by two individuals.

METHOD OF SAYING THE MARRIAGE CONTRACT FORMULA (*ṢĪGHAH*)

Ruling 2387. If the man and the woman are to say the formula of a permanent marriage themselves, then after specifying the amount of dowry (*mahr*), the woman commences by saying:

زَوَّجْتُكَ نَفْسِي عَلَىٰ الصِّدَاقِ الْمَعْلُومِ

zawwajtuka nafsī ʿalaṣ ṣidāqil maʿlūm
I wed myself to you for the determined dowry.

Thereafter, without there being any significant gap, the man says:

قَبِلْتُ التَّزْوِيجَ

qabiltut tazwīj
I accept the marriage.

If this is done, the marriage contract is valid (*ṣaḥīḥ*). The marriage contract is also valid if the man simply says:

قَبِلْتُ

qabiltu
I accept

If the man and the woman each appoint an agent to say the marriage contract formula on their behalf, and if, for example, the name of the man is Aḥmad and the name of the woman is Fāṭimah, the woman's agent says:

زَوَّجْتُ مُوَكِّلَكَ أَحْمَدَ مُوَكِّلَتِي فَاطِمَةَ عَلَى الصِّدَاقِ الْمَعْلُومِ

zawwajtu muwakkilaka aḥmad muwakkilatī
fāṭimah ʿalaṣ ṣidāqil maʿlūm
I wed your client Aḥmad to my client Fāṭimah for
the determined dowry.

Thereafter, without there being any significant gap, the man's agent says:

قَبِلْتُ التَّزْوِيجَ لِمُوَكِّلِي أَحْمَدَ عَلَى الصِّدَاقِ الْمَعْلُومِ

qabiltut tazwīja limuwakkilī aḥmad ʿalaṣ ṣidāqil maʿlūm
I accept the marriage on behalf of my client Aḥmad
for the determined dowry.

If this is done, the marriage contract is valid. The recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that the words said by the man should be consistent with the words said by the woman. For example, if the woman uses the expression زَوَّجْتُ [*zawwajtu*], the man should respond with قَبِلْتُ التَّزْوِيجَ [*qabiltut tazwīj*] instead of قَبِلْتُ النِّكَاحَ [*qabiltun nikīḥ*].

Ruling 2388. If the man and the woman are to say the formula of a temporary marriage themselves, then after specifying the period of time and the amount of dowry (*mahr*), the woman says:

زَوَّجْتُكَ نَفْسِي فِي الْمُدَّةِ الْمَعْلُومَةِ عَلَى الْمَهْرِ الْمَعْلُومِ

zawwajtuka nafsī fil muddatil maʿlūmah ʿalal mahril maʿlūm
I wed myself to you for the determined period
for the determined dowry.

Thereafter, without there being any significant gap, the man says:

قَبِلْتُ

qabiltu
I accept

If this is done, the marriage contract is valid. If the man and the woman each appoint an agent [to say the marriage contract formula on their behalf], then first the woman's agent says to the man's agent:

زَوَّجْتُ مُوَكِّلَتِي مُوَكِّلَكَ فِي الْمُدَّةِ الْمَعْلُومَةِ عَلَى الْمَهْرِ الْمَعْلُومِ

zawwajtu muwakkilatī muwakkilaka fil muddatil maʿlūmah ʿalal mahril maʿlūm
I wed my client to your client for the determined period for the determined dowry.

Thereafter, without there being any significant gap, the man's agent says:

قَبِلْتُ التَّزْوِيجَ لِمُوَكِّلِي هٰكَذَا

qabiltut tazwīja limuwakkilī hākadhā
I accept the marriage on behalf of my client accordingly.

If this is done, the marriage contract is valid.[2]

CONDITIONS OF A MARRIAGE CONTRACT

Ruling 2389. A marriage contract must fulfil the following conditions [in order for it to be valid]:

1. based on obligatory precaution, the formula must be said in Arabic. If the man or the woman are unable to say the formula in Arabic, they can say it in a language other than Arabic, and it is not necessary that they appoint an agent; however, they must use words that convey the meaning زَوَّجْتُ [*zawwajtu*] and قَبِلْتُ [*qabiltu*];

2 variations of the marriage formula are mentioned in *Minhāj al-Ṣāliḥīn* (vol. 3, p. 16-18).

2. the man and the woman, or their agents, who say the formula must have an intention to establish (*qaṣd al-inshāʾ*) [a marriage contract], meaning that if the man and the woman say the formula themselves, then when the woman says زَوَّجْتُكَ نَفْسِي [*zawwajtuka nafsī*] she must intend to make herself his wife. Similarly, when the man says قَبِلْتُ التَّزْوِيجَ [*qabiltut tazwīj*] he must intend to accept her as his wife. And if their agents say the formula, then when they say زَوَّجْتُ [*zawwajtu*] and قَبِلْتُ [*qabiltu*] they must intend for the man and woman who have appointed them as their agents to become husband and wife;
3. the person saying the formula must be sane (*ʿāqil*), and if the person is saying it for himself or herself, he/she must also be of the age of legal responsibility (*bāligh*). In fact, based on obligatory precaution, if a non-*bāligh* child who is able to discern between right and wrong (*mumayyiz*) says the formula for someone else, it is not sufficient and the couple must get a divorce or say the formula again;
4. if the agent of the man and woman, or their guardians (*walī*s), say the formula, then at the time of the contract they must specify the husband and wife. For example, they must mention their names or indicate to them. Therefore, if someone who has a number of daughters says to a man, زَوَّجْتُكَ إِحْدىٰ بَنَاتِي [*zawwajtuka iḥdā banatī*] meaning 'I wed one of my daughters to you' and the man responds by saying, قَبِلْتُ [*qabiltu*], meaning 'I accept', the marriage contract is invalid as they did not specify a particular daughter at the time of the contract;
5. the man and the woman must consent to the marriage. However, if they appear to disapprove but it is known that in their hearts they consent, the marriage contract is valid.

Ruling 2390. If one or more letters is wrongly said in the marriage contract but the meaning does not change, the contract is valid.

Ruling 2391. If a person who says the formula knows its meaning, albeit in a general way, and he intends to bring its

meaning into effect, the contract is valid and it is not necessary for him to know the meaning of the formula in detail. For example, [it is not necessary for him to know] which word is a verb and which word is the subject of a verb according to the rules of Arabic grammar.

Ruling 2392. If a woman is wedded to a man without their consent and afterwards the man and the woman consent to the marriage, the marriage contract is valid. Furthermore, for their consent [to be understood], it is sufficient that they say something or do something that conveys their consent.

Ruling 2393. If a man and a woman, or one of them, is compelled to marry, and after the marriage contract has been concluded they consent to it in the manner that was mentioned in the previous ruling, the contract is valid. It is better, however, that the contract be concluded again.

Ruling 2394. A father or paternal grandfather can wed to someone his non-*bāligh* child/grandchild or his insane child/grandchild who has become *bāligh* while in the state of insanity. After the child becomes *bāligh* or the insane individual becomes sane, if the marriage is detrimental for them, he/she can either approve or reject it. But if such a marriage is not detrimental and he/she annuls the marriage after they become *bāligh* [or after the insane individual becomes sane], the obligatory precaution is that they must either get a divorce or conclude another marriage contract.[3]

Ruling 2395. If a girl wishes to get married and she has reached the age of legal responsibility (*bulūgh*) and is mature (*rashīdah*) - meaning that she is able to determine what is in her interest - and she is a virgin, and she is not in charge of her life's affairs, such a girl must obtain the consent of her father or grandfather. In fact, based on obligatory precaution, even if she in charge of her life's affairs, she must still obtain their consent. The consent of her mother or brother is not necessary.

3 The interpretation of this ruling is based on Ruling 980 of *al-Masā'il al-Muntakhabah* (p. 362).

Ruling 2396. If a girl is not a virgin, or if she is a virgin but her father or paternal grandfather totally prevent her from marrying every individual who is legally (*sharʿan*) and commonly considered to be appropriate for her, then it is not necessary for her to obtain their consent. Furthermore, if they are not at all prepared to participate in the matter of her getting married, or if they are not competent to give their consent because of insanity or suchlike, then in these cases, their consent is not necessary. Similarly, if it is not possible to get their consent because they are absent or because of some other reason, and if the girl has a great need to get married at that time, the consent of her father or paternal grandfather is not necessary.

Ruling 2397. If a father or a paternal grandfather marries his non-*bāligh* son/grandson to a girl, then once he becomes *bāligh* he will have to pay for his wife's living expenses. In fact, even before he reaches *bulūgh*, if he is of an age when he is able to derive sexual pleasure and his wife is not so young that her husband cannot derive sexual pleasure from her, then in such a case, her maintenance (*nafaqah*) is his responsibility. Otherwise, maintenance is not obligatory (*wājib*) on him.

Ruling 2398. If a father or paternal grandfather marries his non-*bāligh* son/grandson to a girl, in the event that the son/grandson does not own any property at the time of the marriage contract, the father or paternal grandfather must provide his wife's dowry. The same applies if he does own some property but his father or grandfather acts as guarantor (*ḍāmin*) for the dowry. Apart from these two cases, if the dowry is not more than the standard amount given for a dowry (*mahr al-mithl*), or, if a matter of primary importance necessitates that the dowry be more than the standard amount, then his father or grandfather can pay the dowry from the property of the son/grandson. Otherwise, they cannot pay more than the standard amount from his property and it would only be valid if he accepts t his after he reaches *bulūgh*.

SITUATIONS IN WHICH A MAN AND A WOMAN CAN ANNUL THE MARRIAGE CONTRACT

Ruling 2399. If a man realises after the conclusion of the marriage contract that his wife had one of the following six defects at the time of the marriage contract, he can annul the contract:

1. insanity, albeit intermittent;
2. leprosy;
3. vitiligo;
4. blindness;
5. paralysis, albeit not to the extent of immobility;
6. presence of flesh or bone in her uterus, whether or not that prevents sexual intercourse or becoming pregnant. If the man realises that at the time of contract the woman had a cloacal abnormality, meaning that her urethral opening and vagina had become one [vesicovaginal fistula], or her vagina and anus had become one [rectovaginal fistula], or all three had become one [persistent cloaca], then for the man to be able to annul the marriage contract is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution, he cannot annul it].[4] But in the event that he does annul it, the obligatory precaution is that he must also divorce her.

Ruling 2400. If a wife realises after the conclusion of the marriage contract that her husband does not possess a penis, or, if after the conclusion of the marriage contract but before having sexual intercourse, or after it, his penis is cut off, or, if he has a dysfunction whereby he is unable to have sexual intercourse even if the dysfunction develops after the marriage contract and before having sexual intercourse, or after it, then in all of these cases, the wife can annul the marriage contract without getting a divorce.

If a wife realises after the conclusion of the marriage contract that her husband was insane before the marriage contract, or, if

4 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

after the conclusion of the marriage contract he becomes insane, irrespective of whether this happens after sexual intercourse or before it, or, if she realises that at the time of the marriage contract his testicles had been removed or they had been crushed, or that at the time of the marriage contract he had leprosy, vitiligo, or blindness, then in all of these cases, the obligatory precaution is that she must not annul the marriage contract. But if she does, then the obligatory precaution is that if they wish to continue with their married life, they must conclude another marriage contract; and if they wish to separate, then they must get a divorce.

In case a husband cannot have sexual intercourse and his wife wishes to annul the marriage contract, it is necessary that she first refers to a fully qualified jurist (*al-ḥākim al-sharʿī*) or his agent. The jurist will give the husband a one-year respite; if he is unable to have sexual intercourse with his wife or with another woman during this period, his wife can annul the marriage contract once the respite period is over.

Ruling 2401. If a wife annuls the marriage contract owing to her husband's inability to have sexual intercourse, the husband must pay her half of the dowry. However, if owing to any of the other aforementioned defects the husband or the wife annul the marriage contract, in the event that they have not had sexual intercourse, the husband does not have to pay her anything. And if they have had sexual intercourse, he must pay her the entire dowry.

Ruling 2402. If a woman or a man is described to the other as being better than she/he really is so that the other desires to marry her/him - irrespective of whether this happens at the time of the marriage contract or before it - then in case the marriage contract is concluded on that basis and this matter was realised by the other party after the contract, she/he can annul the marriage contract. The detailed laws (*aḥkām*) of this ruling (*masʾalah*) are explained in *Minhāj al-Ṣāliḥīn*.[5]

5 This is al-Sayyid al-Sistani's more detailed work on Islamic law.

WOMEN WITH WHOM MARRIAGE IS UNLAWFUL (*ḤARĀM*)

Ruling 2403. It is unlawful for a man to marry women who are his *maḥram*,[6] such as his mother, sister, daughter, paternal aunt, maternal aunt, his nieces, and his mother-in-law.

Ruling 2404. If a person marries a woman, then even though they may not have had sexual intercourse, her mother, her maternal grandmother, and her paternal grandmother, however many generations they go back, become *maḥram* to him.

Ruling 2405. If a person marries a woman and has sexual intercourse with her, her daughters and granddaughters, however many generations they go forward, become *maḥram* to him, irrespective of whether they are alive at the time of the marriage contract or are born thereafter.

Ruling 2406. Even if a person has not had sexual intercourse with the woman he has married, as long as he is married to her, he must not - based on obligatory precaution - marry her daughter.

Ruling 2407. The paternal and maternal aunts of a person, and the paternal and maternal aunts of his father, and the paternal aunts of his paternal grandfather or paternal grandmother, however many generations they go back, are *maḥram* to him. Similarly, the paternal and maternal aunts of one's mother, and the paternal and maternal aunts of his maternal grandmother or maternal grandfather, however many generations they go back, are *maḥram* to him.

Ruling 2408. The father and grandfather of one's husband, however many generations they go back, and her sons and grandsons, however many generations they go back, are all *maḥram* to her, irrespective of whether they are alive at the time of the marriage contract or are born thereafter.

6 A *maḥram* is a person whom one is never permitted to marry on account of being related to them in a particular way.

Ruling 2409. If a person marries a woman, be it in a permanent or temporary marriage, he cannot marry her sister as long as she is married to him.

Ruling 2410. If a man gives his wife a revocable divorce (*al-ṭalāq al-rijʿī*) in the manner that will be explained in the laws pertaining to divorce, he cannot marry her sister during the prescribed waiting period (*ʿiddah*). However, he can marry her sister if she is observing *ʿiddah* of an irrevocable divorce (*al-ṭalāq al-bāʾin*). And the obligatory precaution is that a man must not marry a woman who is observing *ʿiddah* of a temporary marriage.

Ruling 2411. A person cannot marry his wife's niece without her consent. However, if he contracts a marriage with his wife's niece without her consent and afterwards his wife consents to it, there is no problem.

Ruling 2412. If a woman realises that her husband has married her niece and she does not say anything about this, in the event that she consents afterwards, the marriage is valid. But if she does not consent, it is invalid.

Ruling 2413. If a person fornicates with his maternal aunt or paternal aunt before marrying the daughter of either of them, then based on obligatory precaution he can no longer marry the daughter.

Ruling 2414. If a person marries the daughter of his paternal aunt or maternal aunt and after sexual intercourse, or before it, he fornicates with her mother, it does not annul their marriage.

Ruling 2415. If a person fornicates with a woman other than his maternal or paternal aunt, the recommended precaution is that he should not marry her daughter.

Ruling 2416. A Muslim woman cannot marry a man who is a disbeliever (*kāfir*), be it in a permanent marriage or a temporary

one. It makes no difference whether the man is from among the People of the Book (*ahl al-kitāb*)[7] or not. And a Muslim man cannot marry women who are disbelievers other than those from among the People of the Book. However, there is no problem if a Muslim man contracts a temporary marriage with Jewish or Christian women but, based on obligatory precaution, he must not contract a permanent marriage with them. As for Zoroastrian women, based on obligatory precaution, a Muslim man must not contract marriage with them, not even a temporary marriage.

A man who has a Muslim wife cannot contract marriage with women who are from among the People of the Book without the permission of his wife; rather, even with her permission, it is not permitted (*jā'iz*) for him to marry them. As for those who consider themselves to be Muslims but are subject to the rules applicable to disbelievers, such as *nawāṣib*,[8] a Muslim man or woman cannot marry them in a permanent or temporary or marriage. The same applies to marrying an apostate (*murtadd*).

Ruling 2417. If a person fornicates with a woman who is observing the *ʿiddah* of a revocable divorce, then based on obligatory precaution that woman becomes unlawful for him [to marry]. However, if a person fornicates with a woman who is observing the *ʿiddah* of a temporary marriage, or the *ʿiddah* of an irrevocable divorce, or the *ʿiddah* of a widow (*wafāt*), or the *ʿiddah* of intercourse that has ensued from a mistake (*waṭ' al-shubhah*), then in all of these cases, he can marry her afterwards. The meaning of 'revocable divorce', 'irrevocable divorce', '*ʿiddah* of a temporary marriage', '*ʿiddah* of a widow', and '*ʿiddah* of intercourse that has ensued from a mistake' will be explained in the laws pertaining to divorce.

Ruling 2418. If a person fornicates with an unmarried woman who is not observing *ʿiddah*, then based on obligatory precaution

7 As mentioned in Ruling 103, the 'People of the Book' are Jews, Christians, and Zoroastrians.

8 In Ruling 103, *nawāṣib* (pl. of *nāṣibī*) are defined as 'those who show enmity towards the Imams ('A).'

he cannot marry her before she repents. However, there is no problem if another man wishes to marry her before she repents unless she is known for fornicating, in which case, based on obligatory precaution, it is not permitted to marry her before she repents. The same applies to a man who is known for fornicating [i.e. based on obligatory precaution, it is not permitted to marry him] before he repents. Furthermore, the recommended precaution is that if a man wishes to marry a woman who commits fornication, whether he himself fornicated with her or not, he should wait until she menstruates and then marry her.

Ruling 2419. If a man marries a woman who is observing the *ʿiddah* of her marriage to another man, in the event that both or one of them knew that her *ʿiddah* was not yet over and they knew that marrying a woman who is observing *ʿiddah* is unlawful, the woman becomes unlawful for him forever even if they did not have sexual intercourse after getting married. And if they were ignorant about what *ʿiddah* is or about it being unlawful to marry a woman who is observing *ʿiddah*, then the marriage contract is invalid. Furthermore, if they have had sexual intercourse, it is forever unlawful [for them to get married to each other]; otherwise, it is not unlawful and they can get married again once the *ʿiddah* is over.

Ruling 2420. If a person knows that a woman is married but he marries her anyway, he must separate from her and must not marry her again. The same applies, based on obligatory precaution, if he does not know that she is married but he has sexual intercourse with her after getting married to her.

Ruling 2421. If a married woman commits adultery, then based on obligatory precaution she becomes unlawful forever for the adulterous man. However, she does not become unlawful for her husband. And in the event that she does not repent and persists in committing adultery, it is better for her husband to divorce her, although he still has to give her dowry to her.

Ruling 2422. If a woman who is divorced - or if a woman who was a temporary wife and who was given the remaining marriage period by her husband, or whose marriage period came to an end - marries again after a period of time but then doubts (i.e. has a *shakk*) whether or not the *ʿiddah* of her first husband had finished when she married her second husband, such a woman must not give heed to her doubt.

Ruling 2423. The mother, sister, and daughter of a boy who has been sodomised are unlawful for the one who sodomised him if the latter was *bāligh*, even if the extent of penetration was less than the circumcised part of the penis. The same applies, based on obligatory precaution, if the one who was sodomised was a man [i.e. *bāligh*] or if the one who sodomised him was not *bāligh*. However, if he merely supposes (i.e. has a *ẓann*) that penetration occurred, or he doubts whether or not penetration occurred, then they are not unlawful for him. Furthermore, the mother, sister, and daughter of the one who sodomised are not unlawful for the one who was sodomised.

Ruling 2424. If a person marries a woman and after marrying her commits sodomy with her father, brother, or son, then based on obligatory precaution she becomes unlawful for him.

Ruling 2425. If a person marries a woman while he is in the state of *iḥrām* (*iḥrām* is one of the requirements of *hajj*),[9] the marriage contract is invalid even if the woman is not in the state of *iḥrām* herself. And in the event that he knew that marrying a woman [in the state of *iḥrām*] was unlawful for him, he cannot ever marry that woman.

Ruling 2426. If a woman marries a man while she is in the state of *iḥrām*, the marriage contract is invalid even if the man is not in the state of *iḥrām* himself. And in the event that the woman knew that getting married while in the state of *iḥrām* is unlawful, the obligatory precaution is that she must never marry that man.

9 *Iḥrām* here refers to the state of ritual consecration of pilgrims during *hajj* and *ʿumrah*.

Ruling 2427. If a man or a woman does not perform *ṭawāf al-nisāʾ*,[10] which is one of the rituals of *hajj* and *ʿumrat al-mufradah*,[11] then sexual activity is not lawful for them until they perform *ṭawāf al-nisāʾ*. However, if they marry, then in the event that they perform *ḥalq*[12] or *taqṣīr*[13] and come out of the state of *iḥrām*, their marriage is valid even if they have not performed *ṭawāf al-nisāʾ*.

Ruling 2428. If a person marries a non-*bālighah* girl, it is unlawful for him to have sexual intercourse with her until she has completed nine lunar years. However, if he does have sexual intercourse with her before then, it will not be unlawful for him to have sexual intercourse with her after she reaches *bulūgh* even if she has developed a cloacal abnormality (the meaning of which was explained in Ruling 2399). And if she has developed a cloacal abnormality, he must pay her blood money (*diyah*), which is equivalent to the blood money for killing a human being, and he must also pay for her living expenses forever, even after divorce. In fact, based on obligatory precaution, even if that girl marries someone else after getting divorced [he must still pay for her living expenses].

Ruling 2429. A woman who has been divorced three times - having returned to her husband twice or having again contracted marriage with him twice in between those three divorces - becomes unlawful for her husband. However, if she marries another man in accordance with the conditions that will be mentioned in the laws pertaining to divorce, her first husband can marry her again after the second husband dies or divorces her and after her *ʿiddah* finishes.

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10 This is an obligatory circumambulation (*ṭawāf*) of the Kaʿbah that is performed as part of the *hajj* rituals.

11 *ʿUmrat al-mufradah* refers to the recommended pilgrimage to Mecca that is performed independently of *hajj* at any time of the year.

12 *Ḥalq* is the shaving of the head performed by men as part of the *hajj* rituals.

13 *Taqṣīr* refers to snipping one's hair or trimming one's beard or moustache as part of the *hajj* and *ʿumrah* rituals.

Ruling 2430. It is unlawful for a woman in a permanent marriage to leave the house without the permission of her husband even if this does not infringe on his rights, except in the following cases: [i] a necessity requires her to; [ii] staying in the house causes her hardship (*ḥaraj*); [iii] the house is not appropriate for her. Also, she must submit to giving her husband sexual pleasure, which is his right, whenever he wishes. She must also not prevent him from having sexual intercourse with her without a legitimate excuse (*ʿudhr*). It is obligatory on a husband to provide his wife with food, clothing, housing, and other things that she needs. If he does not provide these for her, irrespective of whether he is able to or not, he will be indebted to her. Furthermore, one of the rights of a wife is that her husband must not subject her to harassment or abuse, and he must not treat her in a harsh or rough manner without a legitimate reason.

Ruling 2431. If a woman does not perform any of her marital duties with regard to her husband, she has no right over him for food, clothing, and housing, even if she continues to live with him. And if she sometimes refuses to submit to her husband's legitimate sexual wants, then based on obligatory precaution he is not exempted from providing her with her maintenance. As for her dowry, if she does not perform her duties, he is in no way exempted [from owing her it].

Ruling 2432. A man has no right to compel his wife to do housework.

Ruling 2433. If the living expenses of a wife when she is outside her home town (*waṭan*) are more than when she is in her home town, in the event that she travelled to that place with the permission of her husband, her living expenses must be borne by her husband. However, the costs of travelling by car or by plane and suchlike, and other expenses that are necessary for her travel, must be borne by herself. If a husband wants his wife to travel, he

must pay for her travel expenses. The same applies if travelling is necessary for her, such as travelling for medical treatment.

Ruling 2434. If a wife's living expenses are to be borne by her husband but he does not pay them, she can take her living expenses from his property without his consent. If this is not possible, in the event that she cannot complain to a fully qualified jurist about this and has no option but to work in order to meet her living expenses, then while she is working to meet her living expenses it is not obligatory on her to obey her husband [in those matters that are normally obligatory on her to obey him].

Ruling 2435. If, for example, a man has two permanent wives and he stays with one of them one night, it is obligatory on him to also stay with his other wife one in every four nights. Apart from this case, it is not obligatory on him to stay with his wife. However, it is necessary that he does not totally abandon her, and the more precautious and more preferred (*al-aḥwaṭ al-awlā*) [juristic opinion][14] is that a husband should stay with his permanent wife one in every four nights.

Ruling 2436. A husband cannot refrain from having sexual intercourse with a young wife of his for more than four months unless sexual intercourse is harmful or excessively difficult (*mashaqqah*) for him, or the wife consents to it, or he had stipulated a condition in the marriage contract regarding this. There is no difference in this rule (*ḥukm*), based on obligatory precaution, whether the husband is in his home town or not. Therefore, based on obligatory precaution, it is not permitted for a husband to continue on a non-essential trip for more than four months without a legitimate excuse and without the permission of his wife.

Ruling 2437. If in a permanent marriage contract the parties do not specify the dowry, the contract is valid. [If the dowry is not

14 For practical purposes, a 'more precautious and more preferred' juristic opinion is equivalent to recommended precaution.

specified, then] in the event that the husband has sexual intercourse with his wife, he must pay her a dowry that women like her usually receive. As for temporary marriage, in the event that the parties do not specify the dowry - even if that be due to ignorance, negligence, or forgetfulness - the marriage contract is invalid.

Ruling 2438. If at the time of concluding a permanent marriage contract a period is not specified for giving the dowry, the wife can refuse to have sexual intercourse with her husband before receiving the dowry, irrespective of whether her husband is able to pay the dowry or not. However, if she consents to having sexual intercourse before receiving the dowry and her husband has sexual intercourse with her, she can no longer refuse to have sexual intercourse with him without a legitimate excuse.

LAWS OF TEMPORARY MARRIAGE (*MUTʿAH*)

Ruling 2439. A temporary marriage that is not for the purpose of deriving sexual pleasure is valid. However, the woman cannot stipulate a condition that the man must not derive any sexual pleasure.

Ruling 2440. The obligatory precaution is that a husband must not avoid having sexual intercourse with his temporary wife, if she is young, for more than four months.

Ruling 2441. If a woman in a temporary marriage stipulates a condition in the marriage contract that her husband must not have sexual intercourse with her, the contract and the condition are valid. In such a case, the husband can only derive other forms of sexual pleasure from her. However, if she later consents to having sexual intercourse, then her husband can have sexual intercourse with her. The same rule applies in a permanent marriage.

Ruling 2442. A temporary wife is not entitled to living expenses [to be paid for by the husband] even if she becomes pregnant.

Ruling 2443. A temporary wife is not entitled to the right of sleeping together [i.e. the right that was mentioned in Ruling 2435]. She does not inherit from her husband, nor does her husband inherit from her. And in the event that one or both of them stipulate a condition [in the marriage contract] that they will inherit [from the other/each other], then the validity of this condition is problematic, but observing precaution (*iḥtiyāṭ*) here must not be abandoned.

Ruling 2444. Even if a woman in a temporary marriage does not know that she is not entitled to the right of having her living expenses paid for and the right of sleeping together, the marriage contract is valid. Her ignorance of this does not grant her a right over her husband.

Ruling 2445. A woman in a temporary marriage can leave the house without the permission of her husband. However, if the act of leaving the house violates the right of her husband, then it is unlawful for her to leave the house. And based on recommended precaution, in case the husband's right is not violated, she should not leave the house without his permission.

Ruling 2446. If a woman appoints a man to be her agent for marrying her to himself for a specified period and a specified amount, and the man marries her to himself in a permanent marriage, or he marries her for a period or for an amount that is different to what was specified, then, if the woman consents upon realising this, the marriage contract is valid; otherwise, it is invalid.

Ruling 2447. If in order to become *maḥram* a father or a paternal grandfather marries his non-*bāligh* daughter/granddaughter or son/grandson to someone for a short period of time, the marriage contract is valid as long as it is not detrimental. However, if during the period of the marriage the boy is totally unable to derive sexual pleasure, or, if no sexual pleasure can be derived from the girl, then the validity of the marriage contract is problematic [i.e. based on obligatory precaution, it is not valid].

Ruling 2448. If a father or paternal grandfather of a child who resides in a different place marries the child to someone in order to become *maḥram* [to that person], not knowing whether the child is alive or not, then, if the marriage period is such that it is possible for the boy to derive sexual pleasure from the girl during it, what is apparent (*ẓāhir*)[15] is that they become *maḥram*. However, if it is later realised that the girl was in fact dead at the time of the marriage contract, then the contract is void and the persons who had apparently becom *maḥram* will be non-*maḥram*.

Ruling 2449. If a man gives his wife the remaining period of the marriage, in the event that he had sexual intercourse with her, he must give her all the dowry that he had agreed to give her. However, if he did not have sexual intercourse with her, it is obligatory on him to give her half of it.

Ruling 2450. If a man has a temporary wife whose *ʿiddah* has not yet finished, he can contract a permanent marriage with her or marry her again in a temporary marriage. However, if the period of the temporary marriage has not yet finished and he contracts a permanent marriage, the marriage contract is invalid unless he first gives her the remaining period and then contracts the permanent marriage.

LOOKING AT NON-*MAḤRAM*

Ruling 2451. It is unlawful for a man to look at the body or hair of non-*maḥram* women, be it with lust or without lust, and be it with fear of committing a sin or without such a fear. As for looking at the face and hands up to the wrists of non-*maḥram* women, if it is with lust or there is a fear of committing a sin, it too is unlawful. In fact, the recommended precaution is that a man should not look at these areas even if it is not with lust or there is no fear of committing a sin. Furthermore, it is unlawful for a woman to look at the body of a non-*maḥram* man with lust or if there is a fear of committing a sin. In fact, based on obligatory precaution, a woman

15 For practical purposes in jurisprudential rulings, expressing an 'apparent' ruling equates to giv ing a *fatwa*.

must not look at these areas even if it is not with lust or there is no fear of committing a sin. However, there is no problem for a woman to look at those areas of the body that men usually do not cover - such as the head, hands, and feet - if it is not with lust or there is no fear of committing a sin.

Ruling 2452. With regard to a *mubtadhilah*[16] woman who does not take heed if someone enjoins her to observe hijab, there is no problem in looking at her on condition that it is not with lust and there is no fear of committing a sin. In this rule, there is no difference between disbelieving women and other women. Likewise, there is no difference between looking at their hands and face and other areas of their body which they usually do not cover.

Ruling 2453. A woman must cover her hair and body, apart from her face and hands, from a non-*maḥram* man. And the obligatory precaution is that she must also cover her body and hair from a non-*bāligh* boy who understands good and bad if she deems it probable that him looking at the body of a woman would arouse lustful desires. However, a woman can keep her face and hands up to the wrists uncovered from a non-*maḥram* man unless she fears that he would fall into sin or she has the intention of making him look at something unlawful; in these two cases, covering those areas as well is obligatory on her.

Ruling 2454. Looking at the private parts of a Muslim who is *bāligh* is unlawful even from behind glass, in a mirror, in clear water, or suchlike. The same applies to looking at the private parts of a disbeliever and a non-*bāligh* child who understands good and bad. However, a husband and wife can look at each other's entire body.

Ruling 2455. A man and a woman who are *maḥram* to each other can look at each other's entire body, except the private parts, if they do not have the intention of deriving pleasure and there is no fear of committing a sin.

16 *Mubtadhilah* is a term used to refer to a woman who does not observe hijab in front of non-*maḥram* men and does not take heed when she is forbidden from continuing with this behaviour.

Ruling 2456. A man must not look at the body of another man with the intention of deriving pleasure. It is also unlawful for a woman to look at the body of another woman with the intention of deriving pleasure. The same applies [i.e. it is unlawful for a man/woman to look at the body of another man/woman] if there is fear of committing a sin.

Ruling 2457. If a man knows a non-*maḥram* woman and that woman is not *mubtadhilah*, then based on obligatory precaution he must not look at a photo of her. However, it is permitted for him to look at her face and hands without the intention of deriving pleasure and if there is no fear of committing a sin.

Ruling 2458. If it becomes necessary for a woman to administer an enema to another woman or to a man other than her husband, or to wash her/his private parts, then she must wear something on her hands so that her hands do not come into direct contact with her/his private parts. The same applies if it becomes necessary for a man to administer an enema to another man or to a woman other than his wife, or to wash his/her private parts.

Ruling 2459. If a woman is compelled to have medical treatment and a non-*maḥram* man is better placed to administer the treatment, she can refer to a non-*maḥram* man for the treatment. And in the event that the man is compelled to look at her and to touch her body for administering the treatment, there is no problem. However, if he is able to treat her by only looking at her [and not touching her body], then he must not touch her body. Similarly, if he is able to treat her by only touching her, then he must not look at her.

Ruling 2460. If a person is compelled to look at someone's private parts in order to treat him, then based on obligatory precaution he must place a mirror opposite [the person's private parts] and look [at his private parts] through the mirror. However, if there is no other way but to look directly at his private parts, there is no problem. The same applies [i.e. there is no problem] if it would

be quicker to look directly at the private parts rather than look at them through a mirror.

MISCELLANEOUS RULINGS ON MARRIAGE

Ruling 2461. It is obligatory for someone who falls into sin on account of not having a wife to get married.

Ruling 2462. If a husband stipulates a condition in the marriage contract that his wife must be a virgin but after concluding the marriage he realises that she is not a virgin, he can annul the marriage contract. However, if he does not annul it or if he did not make such a stipulation in the marriage contract but married her on the belief that she was a virgin, he can take into account the percentage difference between the standard amount given for a dowry (*mahr al-mithl*) of a virgin woman and that of a non-virgin woman and deduct that percentage difference from the dowry agreed by them; and if he has already given the dowry to her, he can take it back. For example, if her dowry is £1,000 and the dowry of a woman like her, if she is a virgin, is [usually] £800, and if she is not a virgin , it is [usually] £600, which is a difference of 25%, this percentage difference can be deducted from the £1,ooo dowry of the woman [and so her dowry would be £750].

Ruling 2463. It is unlawful for a man and a non-*maḥram* woman to remain together in a secluded place where no one else is present in the event that an immoral act taking place is deemed probable, even if the place is such that someone else could enter. However, if an immoral act taking place is not deemed probable, then there is no problem.

Ruling 2464. If a man specifies a woman's dowry in the marriage contract but he does not have the intention to give it, the marriage contract is valid. However, the man must give the dowry.

Ruling 2465. A Muslim who leaves the religion of Islam and chooses to be a disbeliever is called an 'apostate' (*murtadd*). There

are two types of apostates:

1. ʿ*fiṭrī*ʾ: this is someone whose father and mother, or one of them, were Muslim when he was born, and after he was able to discern between right and wrong (*tamyīz*) he remained a Muslim, and after that he became a disbeliever.
2. ʿ*millī*ʾ: this is someone who is the opposite [of a *fiṭrī* apostate; i.e. it refers to someone whose father and mother, or one or them, were disbelievers when he was born, and after he was able to discern between right and wrong he became a Muslim. and after that he became a disbeliever].

Ruling 2466. If after the conclusion of a marriage contract a woman becomes apostate, whether that be *millī* or *fiṭrī*, her marriage contract becomes void. And in the event that her husband has not had sexual intercourse with her, she does not have to observe ʿ*iddah*. The same applies if she becomes apostate after sexual intercourse but she is postmenopausal (*yāʾisah*) [as defined-below] or a minor (*ṣaghīrah*). However, if she is of the age of women who experience menstruation (*ḥayḍ*), she must observe ʿ*iddah* in accordance with the instructions that will be mentioned in the laws pertaining to divorce. If she reverts to Islam within the ʿ*iddah* period, the marriage contract will remain as it is, although it is better that if the couple wish to live together they should contract a marriage again, and if they wish to separate they should get a divorce. A postmenopausal woman in this ruling is a woman who has reached the age of fifty, and due to her advanced age she does not experience *ḥayḍ* and has no expectation of experiencing it again.

Ruling 2467. If after marriage a man becomes a *fiṭrī* apostate, his wife becomes unlawful for him. If they have had sexual intercourse and she is neither postmenopausal nor a minor, she must observe the ʿ*iddah* of a widow, which will be explained in the rulings pertaining to divorce. In fact, based on obligatory precaution, if they have not had sexual intercourse or she is either postmenopausal or a minor, she must still observe the ʿ*iddah* of

a widow. And if the man repents within the *ʿiddah* period, then based on obligatory precaution, if the couple wish to live together they must contract a marriage again, and if they wish to separate they must get a divorce.

Ruling 2468. If after the conclusion of a marriage contract a man becomes a *millī* apostate, in the event that he has not had sexual intercourse with his wife or his wife is postmenopausal or a minor, the marriage contract becomes void and the woman does not have to observe *ʿiddah*. And if he becomes apostate after sexual intercourse and his wife is the age of women who experience *ḥayḍ*, the woman must observe the *ʿiddah* of a divorce, which will be explained in the laws pertaining to divorce. Furthermore, if the man reverts to Islam before the completion of the *ʿiddah*, the marriage contract remains as it is.

Ruling 2469. If a woman stipulates a condition in the marriage contract that the man must not take her out of a particular city and the man accepts the condition, then he must not take her out of the city without her consent.

Ruling 2470. If a woman has a daughter from her previous husband, her subsequent husband may marry his son - if he was not born to the same woman - to that daughter. Also, if a man marries his son to a girl , he can marry the girl's mother.

Ruling 2471. It is not permitted to abort a foetus even if a woman becomes pregnant through fornication unless the foetus remaining [in the mother's womb] causes the mother harm or excessive difficulty. In such a case, it is permitted to abort the foetus before the soul has entered it, but [if this is done, then] blood money (*diyah*) must be paid. Aborting a foetus after the soul has entered it is not permitted even if, based on obligatory precaution, it causes the mother excessive difficulty or harm.

Ruling 2472. If a person fornicates with a woman who is neither married nor observing the *ʿiddah* of another man, in the event that

he marries her afterwards and a child is born to them and they do not know if the child was conceived out of legal wedlock or not, the child is regarded as being of legitimate birth.

Ruling 2473. If a man does not know that a woman is observing *ʿiddah* and he marries her, in the event that the woman does not know either and a child is born to them, it is regarded as being of legitimate birth and it is legally the child of both of them. However, if the woman knew that she was observing *ʿiddah* and that marrying while observing *ʿiddah* is not legally permitted, then it is the child of the father. In each case, the marriage contract is void, and as previously explained, the man and the woman are forever unlawful for each other.

Ruling 2474. If a woman says she is postmenopausal, her word must not be accepted. However, if she says she does not have a husband, her word is to be accepted unless she is believed to be someone whose word cannot be accepted in this case, in which case the obligatory precaution is that investigations must be made about her situation.

Ruling 2475. If a woman says she is not married and subsequently a man marries her and after that someone claims that the woman is his wife, in the event that the person's claim is not legally established as being correct (*ṣaḥīḥ*), his word must not be accepted.

Ruling 2476. A father cannot separate a son or daughter from his/her mother before he/she completes two years of age, because looking after a child [up to the age of two] is a right that is shared between the father and the mother. And the more precautious and more preferred [juristic opinion, i.e. the recommended precaution] is that a child should not be separated from his/her mother until he/she completes seven years of age.

Ruling 2477. If a marriage proposal is received from a person whose religiosity and morals are approved, it is better not to reject

it. It has been reported from the most noble Messenger (Ṣ) that he said: 'Whenever a proposal for your daughter arrives from a person whose morals and religiosity you approve, then marry your daughter to him. If you do not do this, great discord and immorality will arise on the earth.'

Ruling 2478. If a wife arrives at a settlement (*ṣulḥ*) of her dowry with her husband so that he does not marry another woman, it is obligatory on him not to marry another woman. Furthermore, the wife has no right to claim her dowry back.

Ruling 2479. If a person is born from fornication and later marries and has a child, the child is considered to be of legitimate birth.

Ruling 2480. If a man has sexual intercourse with his wife [while fasting] in the month of Ramadan or when she is in the state of *ḥayḍ*, he will have committed a sin. However, if a child is born to them, the child is considered to be of legitimate birth.

Ruling 2481. If a wife is certain (i.e. she has *yaqīn*) that her husband has died on a journey, and after the completion of the *ʿiddah* of a widow - the duration of which will be explained in the rulings pertaining to divorce - she marries another man, and then her first husband returns from his journey, then in such a case, she must separate from her second husband and she will be considered lawful for her first husband. However, if her second husband had sexual intercourse with her, she must observe the *ʿiddah* of intercourse that has ensued from a mistake, which is the same length of time as the *ʿiddah* of divorce. During the period of her *ʿiddah*, her first husband must not have sexual intercourse with her but deriving other forms of sexual pleasure is permitted. Furthermore, her maintenance is the responsibility of her first husband, and her second husband must give her a dowry that is accordant with that of women like her.

CHAPTER TWENTY-EIGHT

Breastfeeding

Ruling 2482. If a woman brcastfeeds a child and fulfils the conditions that will be mentioned in Ruling 2492, the child becomes *maḥram*[1] to the women below if the child is a boy, or to the men below if the child is a girl:

1. the woman herself; she is called the 'nursing mother' (*murḍiʿah*);
2. the nursing mother's husband to whom the milk is related;[2] he is called the 'nursing father' (*ṣāḥib al-laban*);
3. the father and mother of the nursing mother [and her grandparents], however many generations they go back, even if they are her nursing mother and father [or her nursing grandparents];
4. the children who have been born to the nursing mother or who will be born in the future;
5. the offspring of the woman's biological children, however many generations they go forward, whether they [i.e. the offspring of the other generations] are their biological children or their nursing children;
6. the sisters and brothers of the nursing mother, even if they are nursing sisters and brothers, meaning that they have become sisters and brothers of the nursing mother due to having been breastfed by the same woman;
7. the paternal uncles and the paternal aunts of the nursing mother, even if they are nursing paternal uncles and paternal aunts;
8. the maternal uncles and the maternal aunts of the nursing mother, even if they are nursing maternal uncles and maternal aunts;
9. the offspring of the nursing mother's husband to whom the milk is related [i.e. the nursing father], however many generations they go forward, even if they are his nursing offspring;

1 A *maḥram* is a person whom one is never permitted to marry on account of being related to them in a particular way.

2 The phrase 'to whom the milk is related' and its variations points to the man with whom the woman had sexual intercourse which resulted in her having milk.

10. the father and mother of the nursing father [and his grandparents], however many generations they go back;
11. the sisters and brothers of the nursing father, even if they are his nursing sisters and brothers;
12. the paternal uncles and the paternal aunts and the maternal uncles and the maternal aunts of the nursing father, however many generations they go back, even if they are his nursing uncles and aunts.

There are some other people as well who become *maḥram* on account of breastfeeding, as will be explained in the subsequent rulings.

Ruling 2483. If a woman breastfeeds a child and fulfils the conditions that will be mentioned in Ruling 2492, the father of that child cannot marry the woman's biological daughters. And in the event that one of them is presently his wife, the marriage contract becomes invalid (*bāṭil*). However, it is permitted (*jā'iz*) for him to marry her nursing daughters, although the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that he should not marry them. Furthermore, he cannot, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), marry the biological and nursing daughters of the nursing father. And in the event that one of them is presently his wife, then based on obligatory precaution the marriage contract becomes invalid.

Ruling 2484. If a woman breastfeeds a child and fulfils the conditions that will be mentioned in Ruling 2492, the nursing father does not become *maḥram* to the sisters of that child. Furthermore, the husband's relatives do not become *maḥram* to the child's sisters and brothers.

Ruling 2485. If a woman breastfeeds a child, she does not become *maḥram* to the child's brothers. Furthermore, the relatives of the woman do not become *maḥram* to the breastfed child's sisters and brothers.

Ruling 2486. If a man marries a woman who has fully breastfed a girl and he has sexual intercourse with the woman, he can no longer marry the girl.

Ruling 2487. If a man marries a girl, he can no longer marry the woman who fully breastfed her as a girl.

Ruling 2488. A man cannot marry a girl who has been fully breastfed by his mother or grandmother. And if his father's wife nurses a girl from the milk that is related to his father, he cannot marry that girl. Furthermore, in the event that a man contracts a marriage with a breastfeeding girl and thereafter his mother, his grandmother, or his father's wife breastfeeds the girl, the marriage contract becomes void (*bāṭil*).

Ruling 2489. A man cannot marry a girl who has been fully breastfed by his sister or his brother's wife from the milk that is related to his brother. The same applies if the girl is breastfed by the man's niece or his sister's granddaughter or his brother's granddaughter.

Ruling 2490. If a woman fully breastfeeds her daughter's child, the daughter becomes unlawful (*ḥarām*) for her own husband. The same applies if she breastfeeds the child of her daughter's husband from another woman. However, if a woman breastfeeds her son's child, the wife of her son - who is the mother of that breastfeeding child - does not become unlawful for her husband.

Ruling 2491. If the wife of the father of a girl breastfeeds the child of the girl's husband with the milk that is related to the girl's father, then based on the precaution mentioned in Ruling 2483, the girl becomes unlawful for her husband, irrespective of whether the child is the child of the same girl or of some other woman.

CONDITIONS FOR BREASTFEEDING TO CAUSE SOMEONE TO BECOME *MAḤRAM*

Ruling 2492. There are eight conditions that must be fulfilled in

order for breastfeeding to cause someone to become *maḥram*:

1. a child must breastfeed the milk of a woman who is alive. Therefore, if a child breastfeeds some of the required amount of milk from the breasts of a dead woman, it is of no use [i.e. the child does not become *maḥram*];
2. the milk of the woman must be from a legitimate birth, even if [the conception of the child was] from intercourse that ensued from a mistake (*waṭ' al-shubhah*). Therefore, if, supposedly, a woman produces milk without giving birth, or the milk of a child that was born from fornication is given to another child, the latter does not become *maḥram* to anyone;
3. the child suckles the milk from the breasts of the woman. Therefore, if the milk is poured into the child's mouth, it has no effect;
4. the milk must be pure and it must not be mixed with anything;
5. the amount of milk that is required for someone to become *maḥram* must all be related to one husband. Therefore, if a nursing mother is divorced and then marries another man and becomes pregnant by him, and until she gives birth the milk that she has from her first husband still remains [in her body], and, for example, before giving birth she breastfeeds the child eight times with the milk that is related to the first husband, and after giving birth she breastfeeds the child seven times with the milk that is related to the second husband, then in such a case, the child does not become *maḥram* to anyone;
6. the child must not vomit the milk. If it does, it has no effect;
7. the child must be breastfed to the extent that its bones become firm by the milk and the milk has made the flesh of his body grow. If it is not known whether the child has been breastfed to this extent or not, in the event that the child breastfeeds to its fill for one day and one night or fifteen times in accordance with the next ruling, it is sufficient. However, if it is known that the milk has not

had an effect on making the bones firm and on growing the flesh of the child's body even though the child breastfed for one day and one night or fifteen times, then obligatory precaution must be observed; i.e. in such a case, the child must not marry [those who would become *maḥram* to him by means of breastfeeding] and nor must he look at them as *maḥram*s would;

8. the child has not completed two years of age. If he is breastfed after he completes two years, he does not become *maḥram* to anyone. In fact, if, for example, before he completes two years he is breastfed eight times and after that he is breastfed seven times, he does not become *maḥram* to anyone. However, in the event that more than two years pass from the time a woman gives birth and she still carries milk, then, if she breastfeeds a child, this child becomes *maḥram* to those who were mentioned above.

Ruling 2491. It is clear from the previous ruling that the amount of milk that causes someone to become *maḥram* is based on three possible criteria:

1. [based on the amount that is suckled if] it is to the extent that it can commonly be said to have caused the flesh to grow and the bones to become firm; the condition here is that [the flesh growing and bones becoming firm] is based on the milk, not on food that is fed with the milk. However, a small amount of food that does not have an effect is no problem. If the child breastfeeds from two women and [a particular] amount of the growth of flesh or firming of bones is based on the milk of one of them and [a particular] amount based on [the milk of] the other, then both of them will be the child's nursing mothers. But if the growth of flesh or firming of bones [in general] is based on the milk of both of them together, then it does not result in the child becoming *maḥram*;
2. based on time; the condition here is that the child does not breastfeed from another woman nor eat any food during the

one day and night period. However, there is no problem if the child drinks water, or takes some medicine, or eats some food to the extent that it cannot be said to have 'eaten food within [the one day and night period]'. Furthermore, the child must have regularly drank milk during the day and night when it needed or wanted to, and it was not delayed in doing so. In fact, based on obligatory precaution, the start of the day and night period must be counted from the time the child was hungry and the end of the period must be considered to be the time it became full;

3. based on number; the condition here is that the child must suckle the milk of one woman fifteen times, and between those times it must not suckle from another woman. However, there is no problem if it eats some food or an interval occurs in between those fifteen times. Furthermore, each time the child breastfeeds, it must do so fully, meaning that it must go from being hungry to becoming completely full without an interval. However, there is no problem if while the child suckles it takes new breaths or stops a little such that from the time it puts the nipple in its mouth to the time it becomes full it can be counted as one go.

Ruling 2494. If a woman breastfeeds a child from the milk that is related to her husband and later marries another man and then breastfeeds another child from the milk that is related to her second husband, the two children do not become *maḥram* to each other.

Ruling 2495. If a woman breastfeeds a number of children with the milk that is related to one husband, all of them become *maḥram* to one another, to the husband, and to the woman who breastfed them.

Ruling 2496. If a person has a number of wives and all of them breastfeed a child and fulfil the conditions mentioned previously, then all of the children become *maḥram* to one another, to the man, and to all the women.

Ruling 2497. If a person has two nursing mothers and, for example, one of them breastfeeds a child eight times and the other breastfeeds it seven times, the child does not become *maḥram* to anyone.

Ruling 2498. If a woman fully breastfeeds a boy and a girl from the milk that is related to one husband, then the brothers and sisters of the girl do not become *maḥram* to the brothers and sisters of the boy.

Ruling 2499. A man cannot marry women who have become his wife's nieces by means of breastfeeding without the permission of his wife. Furthermore, if a man sodomises a boy who is not of the age of legal responsibility (*bāligh*), he cannot marry the boy's nursing daughter, sister, mother, or grandmother, i.e. those who are his daughter, sister, mother, or grandmother by means of breastfeeding. The same applies, based on obligatory precaution, in the event that the sodomiser is not *bāligh* or the sodomised individual is *bāligh*.

Ruling 2500. A woman who has breastfed a man's brother does not become *maḥram* to that man.

Ruling 2501. A man cannot marry two sisters, even if they are nursing sisters, meaning that they are sisters to each other by means of breastfeeding. And in the event that he marries two sisters and later realises that they are sisters, then if the marriage contracts were concluded at the same time, both marriage contracts are void. However, if they were not concluded at the same time, the marriage contract of the first is valid (*ṣaḥīḥ*) and the marriage contract of the second is void.

Roling 2502. If a woman breastfeeds the following people with the milk that is related to her husband, her husband does not become unlawful for the woman:

1. her brothers and sisters;

2. her paternal and maternal uncles and aunts and their offspring;
3. her grandchildren, although if she were to breastfeed her daughter's child, it would cause her daughter to become unlawful for her own husband;[3]
4. her nephews and nieces;
5. her husband's brothers and sisters;
6. her husband's nephews and nieces;
7. her husband's paternal and maternal uncles and aunts;
8. her husband's grandchildren from his other wives.

Ruling 2503. If a woman breastfeeds the daughter of a man's paternal or maternal aunt, she does not become *maḥram* to him.

Ruling 2504. If a man has two wives and one of them breastfeeds the child of the other wife's paternal uncle, then the wife whose paternal uncle's child breastfed the milk does not become unlawful for her husband.

THE ETIQUETTES OF BREASTFEEDING

Ruling 2505. The initial right to breastfeed a child belongs to the child's mother. The father does not have the right to give the child to another woman [to breastfeed it] unless the mother wants a wage for breastfeeding the child and the father finds a wet nurse who does it free of charge or for a lower wage. In this case, the father can entrust the child to the wet nurse [to breastfeed it]. Afterwards, if the mother does not accept this and wishes to breastfeed the child herself, she cannot claim a wage from him.

Ruling 2506. It is recommended (*mustaḥabb*) that a wet nurse who is chosen to breastfeed a child be Muslim, sane (*ʿāqilah*), and possess admirable physical, mental, and moral qualities. It is not befitting to choose a wet nurse who is a disbeliever (*kāfirah*), feeble-minded, aged, or bad looking. And it is disapproved (*makrūh*) to choose a wet nurse of illegitimate birth or whose milk is the result of a child born from fornication.

3 See Ruling 2490.

MISCELLANEOUS RULINGS ON BREASTFEEDING

Ruling 2507. It is better that a woman does not breastfeed every child because it is possible that she may forget whom she has breastfed, and afterwards [as a result] two persons who are *maḥram* to each other may get married to each other.

Ruling 2508. It is recommended to breastfeed a child for twenty complete months, and it is not befitting to breastfeed a child for more than two years.

Ruling 2509. If a man's rights are violated due to his wife breastfeeding someone else's child, his wife cannot breastfeed the child without his permission.

Ruling 2510. If a woman's husband marries a girl who is being breastfed and his [first] wife breastfeeds the girl, then based on obligatory precaution the woman becomes forever unlawful for him, and as a precautionary measure he must divorce the woman and never marry her again. If the milk is related to him, the girl who is being breastfed also becomes forever unlawful for him. And if the milk is related to the woman's previous husband, then based on obligatory precaution the marriage contract is invalid.

Ruling 2511. If someone wants his brother's wife to become *maḥram* to him, some [jurists (*fuqahāʾ*)] have said that he must contract a temporary marriage (*mutʿah*) with a breastfeeding girl for two days, for example, and in those two days - while fulfilling the conditions that were mentioned in Ruling 2492 - his brother's wife must breastfeed the girl so that she becomes the nursing mother of his wife. However, this rule (*ḥukm*), in the event that the brother's wife breastfeeds the girl wilh the milk that is related to the brother, is problematic (*maḥall al-ishkāl*) [i.e. based On obligatory precaution, this rule is not established in this case].[4]

4 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2512. If before a man marries a woman he says that by means of breastfeeding she is unlawful for him - for example, he says that he has breastfed the milk of her mother - then in the event that it is possible to substantiate his statement, he cannot marry the woman. And if he says this after the conclusion of the marriage contract and the woman accepts his statement, the marriage contract is void. Therefore, if the man has not had sexual intercourse with her, or he has but at the time of intercourse the woman knew that she was unlawful for him, she is not entitled to any dowry (*mahr*). However, if she realises after sexual intercourse that she was unlawful for him, then the husband must pay her a dowry that amounts to the dowry usually given to women like her.

Ruling 2513. If before the marriage contract is concluded a woman says that by means of breastfeeding a child she is unlawful for a particular man, in the event that it is possible to substantiate her statement, she cannot marry the man. And if she says this after the conclusion of the marriage contract, it is just like the case where a man says after the conclusion of the marriage contract that the woman is unlawful for him; the rule for such a case was mentioned in the previous ruling (*masʾalah*).

Ruling 2514. Being *maḥram* by means of breastfeeding is established in two ways:

1. by the report of someone, or some people, from whom one attains certainty (*yaqīn*) or confidence (*iṭmiʾnān*);
2. the testimony of two just (*ʿādil*) men; however, they must describe the circumstances in which the child was breastfed. For example, they must say, 'We have seen such and such child breastfeeding from the breasts of so-and-so woman for twenty-four hours and the child did not eat anything during that period.' Similarly, Liley rnusl also explain the other conditions that were mentioned in Ruling 2492. As for establishing that a child was breastfed by the testimony of one man and two women, or four women, all of whom are just, this is problematic; therefore, precaution must be exercised here.

Ruling 2515. If one doubts (i.e. has a *shakk*) whether or not a child has breastfed a quantity of milk that causes someone to become *maḥram*, or if one merely supposes (i.e. has a *ẓann*) that a child has breastfed that amount, the child does not become *maḥram* to anyone. However, it is better to exercise precaution.

CHAPTER TWENTY-NINE

Divorce

Ruling 2516. A man who divorces his wife must be of the age of legal responsibility (*bāligh*) and sane (*ʿāqil*). If a ten-year-old child divorces his wife, then observing precaution (*iḥtiyāṭ*) in this case must not be abandoned. A man must also divorce his wife of his own volition (*ikhtiyār*), and if he is compelled to divorce his wife, the divorce is invalid (*bāṭil*). Furthermore, he must have an intention (*qaṣd*) to divorce his wife; therefore, if, for example, a person says the divorce formula (*ṣīghah*) jokingly or while intoxicated, it is not valid.

Ruling 2517. At the time of divorce, the wife must be clear of menstruation (*ḥayḍ*) and lochia (*nifās*), and her husband must not have had sexual intercourse with her in the period that she was clear [of *ḥayḍ* and *nifās*]. The details of these two conditions will be mentioned in subsequent rulings (*masāʾil*).

Ruling 2518. The divorce of a woman who is in the state of *ḥayḍ* and *nifās* is valid in the following three cases:

1. since getting married, her husband has not had sexual intercourse with her;
2. she is known to be pregnant. If she is not known to be pregnant and her husband divorces her while she is in the state of *ḥayḍ* and she later realises that she was in fact pregnant, the divorce is void (*bāṭil*), although it is better that precaution be observed here, albeit by means of another divorce.
3. the man is unable to determine whether or not his wife is clear of *ḥayḍ* or *nifās* owing to his absence or some other reason, even if that be because his wife is hiding. However, in such a situation, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), the man must wait at least one month from the time of separation from his wife and then divorce her.

Ruling 2519. If a man knows his wife to be clear of *ḥayḍ* and divorces her but later realises that she was in the state of *ḥayḍ*

at the time of the divorce, the divorce is void except in the aforementioned scenario [in the previous ruling]. If he knows her to be in the state of *ḥayḍ* but divorces her nonetheless and it later becomes known that she was not in the state of *ḥayḍ* the divorce is valid.

Ruling 2520. If a person knows that his wife is in the state of *ḥayḍ* or *nifās* and he separates from her - for example, he goes on a journey - and he wishes to divorce her, he must wait until he attains certainty (*yaqīn*) or confidence (*iṭmi'nān*) that she is clear of *ḥayḍ* or *nifās* and then, in the event that he knows she is clear [of *ḥayḍ* or *nifās*], he can divorce her. The same applies if he doubts (i.e. has a *shakk*) [that she is clear of *ḥayḍ* or *nifās*] as long as he observes what was said in Ruling 2518 about divorce by an absent man.

Ruling 2521. If a man who has separated from his wife wishes to divorce her and he is able to find out whether or not his wife is in the state of *ḥayḍ* or *nifās*, albeit by means of her menstrual habit or other signs that have been specified in Islamic law, then, if he divorces her and it later becomes known that she was in the state of *ḥayḍ* or *nifās*, the divorce is not valid.

Ruling 2522. If a man has sexual intercourse with his wife, irrespective of whether or not she was in the state of *ḥayḍ* or *nifās*, and he wishes to divorce her, he must wait until she experiences *ḥayḍ* again and she becomes clear of it. However, if a man divorces a girl who has not completed nine lunar years or a woman who is known to be pregnant after having sexual intercourse with her, there is no problem. The same applies if she is postmenopausal (*yā'isah*) (the meaning of which was explained in Ruling 2466).

Ruling 2523. If a man has sexual intercourse with a woman who is clear of *ḥayḍ* and *nifās* and he divorces her during the period of her being clear, in the event that it later becomes known that she was pregnant at the time of the divorce, the divorce is invalid. However, it is better that precaution be observed, albeit by means of another divorce.

Ruling 2524. If a man has sexual intercourse with a woman who is clear of *ḥayḍ* and *nifās* and he then separates from her - for example, he goes on a journey - then, in the event that he wishes to divorce her while he is away but is unable to find out about her state, he must wait long enough for her to experience *ḥayḍ* once more and become clear of it. And the obligatory precaution is that the period of time [he waits] must not be less than one month. Furthermore, if he divorces her having observed what was said and it then becomes known that the divorce took place during the first period of her being clear, there is no proble.

Ruling 2525. If a man wishes to divorce his wife who does not menstruate due to a congenital defect, an illness, breastfeeding, taking medicine, or some other reason, and if it is usual for women of her age to menstruate, then the man must refrain from having sexual intercourse with her for three months from the time he last had sexual intercourse with her and then divorce her.

Ruling 2526. The divorce formula must be said in correct Arabic and it must employ the word '*ṭāliq*' (divorced). Furthermore, two just (*ʿādil*) men must hear it. If the husband wishes to say the divorce formula himself and the name of his wife is Fāṭimah, for example, he must say:

زَوْجَتِي فَاطِمَةُ طَالِقٌ

zawjatī fāṭimah ṭāliq
My wife Fāṭimah is divorced.

If he appoints an agent (*wakīl*) [to say the divorce formula on his behalf], the agent must say:

زَوْجَةُ مُوَكِّلِي فَاطِمَةُ طَالِقٌ

zawjatu muwakkilī fāṭimah ṭāliq
Fāṭimah, the wife of my client, is divorced.

In the event that the wife is specified, it is not necessary to mention her name. And if she is present, it is sufficient for him to say the following while indicating her:

هٰذِهِ طَالِقٌ

hādhihi ṭāliq
This woman is divorced.

Or, he must say the following while addressing her:

أَنْتِ طَالِقٌ

anti ṭāliq
You are divorced.

In the event that a man can neither say the divorce formula in Arabic nor appoint an agent, he can divorce his wife using any words that are synonymous with the Arabic formula in any language.

Ruling 2527. There is no divorce in a temporary marriage (*mutʿah*). Instead, the woman is released when the marriage period comes to an end or when the man gives the remaining period to her; for example, he says, 'I give the marriage period to you'. Furthermore, it is not necessary to have any witnesses nor is it necessary for the woman to be clear of *ḥayḍ*.

THE PRESCRIBED WAITING PERIOD (*ʿIDDAH*) OF A DIVORCE

Ruling 2528. There is no *ʿiddah* for a girl who has not completed nine lunar years nor for a postmenopausal woman. This means that even if their husbands have had sexual intercourse with them, they can marry immediately after becoming divorced.

Ruling 2529. If a husband divorces his wife with whom he has had sexual intercourse and who has completed nine lunar years and is not postmenopausal, she must observe *ʿiddah* after the divorce. The *ʿiddah* of a woman for whom there is a gap of less than three months between two of her menstruation cycles is as follows: after her husband has divorced her during a time when she was clear of [of *ḥayḍ* and *nifās*], she must wait long enough for

her to experience *ḥayḍ* once more and to become clear of it, and when she experiences *ḥayḍ* for a third time, her *ʿiddah* comes to an end and she can marry again. However, if her husband divorces her before having sexual intercourse with her, there is no *ʿiddah*, meaning that she can marry immediately after her divorce unless the semen of her husband has entered her vagina, in which case she must observe *ʿiddah*.

Ruling 2530. If a woman does not menstruate even though it is usual for women of her age to menstruate, or, if a woman menstruates but the gap between two of her menstruation cycles is three months or more, then, in the event that her husband divorces her after having had sexual intercourse with her, she must observe *ʿiddah* for three lunar months after the divorce.

Ruling 2531. If a woman whose *ʿiddah* is three months is divorced at the beginning of the lunar month, she must observe *ʿiddah* for three complete months. However, if she is divorced in the middle of the month, she must observe *ʿiddah* for the rest of that month, and for the two months after that, and then in the fourth month she must observe *ʿiddah* for the number of days that had passed in the first month before she started to observe *ʿiddah* so that three complete months are observed. For example, if she was divorced at the time of sunset on the twentieth of the month and that month had thirty days, then her *ʿiddah* would come to an end at sunset on the twentieth of the fourth month. And if the first month had twenty-nine days, the obligatory precaution is that she must observe *ʿiddah* for twenty-one days in the fourth month so that the number of days for which she observed *ʿiddah* in the first month equals thirty days [with the addition of the days from the fourth month].

Ruling 2532. If a pregnant woman is divorced, her *ʿiddah* comes to an end when the child is born or is miscarried. Therefore, if, for example, her child is born one hour after her divorce, her *ʿiddah* will have ended. However, this applies when the child is the legal offspring of the husband; therefore, if a woman becomes pregnant

from adultery and her husband divorces her, her *ʿiddah* does not end with the birth of her child.

Ruling 2533. If a woman who has completed nine lunar years and is not postmenopausal is married in a temporary marriage, and if her husband has sexual intercourse with her and the period of the temporary marriage comes to an end or the husband gives her it, then she must observe *ʿiddah*. Therefore, if she experiences *ḥayḍ*, she must observe *ʿiddah* for two menstruation cycles and must not marry during this period. And based on obligatory precaution, (observing *ʿiddah* for only) one menstruation cycle is not sufficient. However, if she does not experience *ḥayḍ*, she must observe *ʿiddah* for forty-five days before getting married. Furthermore, in the event that she is pregnant, her *ʿiddah* comes to an end when her child is born or is miscarried, although the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that she should observe *ʿiddah* for whichever is the longer period between giving birth and forty-five days.

Ruling 2534. The *ʿiddah* of a divorce begins from the moment the formula for divorce is said, irrespective of whether the woman knows that she has been divorced or not. Therefore, if she finds out after the *ʿiddah* period has ended that she has been divorced, she does not have to observe another *ʿiddah*.

THE *ʿIDDAH* OF A WOMAN WHOSE HUSBAND HAS DIED

Ruling 2535. If a woman whose husband has died is not pregnant, she must observe *ʿiddah* for four lunar months and ten days. This means that she must refrain from marrying another man during this period, even if she is a minor (*ṣaghīrah*), postmenopausal, a temporary wife (*mutʿah*), a disbeliever (*kāfirah*), or a woman who has been given a revocable divorce (*al-muṭallaqah al-rijʿiyyah*) and is observing *ʿiddah*, or her husband had not had sexual intercourse with her, even if her husband is a child or is insane. If she is pregnant, she must observe *ʿiddah* until she gives birth. However, if the child is born before the passing of four lunar

months and ten days, then she must wait until four lunar months and ten days have passed after the death of her husband. This *ʿiddah* is known as 'the *ʿiddah* of a widow' (*ʿiddat al-wafāt*).

Ruling 2536. It is unlawful (*ḥarām*) for a woman who is observing the *ʿiddah* of a widow to wear clothes that are an adornment (*zīnah*), or to apply kohl, or to do something else that would be considered an adornment. However, leaving the house is not unlawful for her.

Ruling 2537. If a woman is certain that her husband has died and after she has observed the *ʿiddah* of a widow she marries again, then in the event that it becomes known that her husband died at a later time and the second marriage contract was in fact concluded while her first husband was still alive or while she was observing the *ʿiddah* of a widow, she must separate from her second husband and, based on obligatory precaution, she must observe two *ʿiddah*s. This means that if has become pregnant by her second husband, she must observe *ʿiddah* until childbirth; this *ʿiddah* is for intercourse that has ensued from a mistake (*waṭʾ al-shubhah*). Its duration is the same as the *ʿiddah* of a divorce. Then, she must observe the *ʿiddah* of a widow or complete her previous *ʿiddah*. If she is not pregnant, and if her first husband died before she had sexual intercourse with her second husband, she must first observe the *ʿiddah* of a widow and then observe the *ʿiddah* of intercourse that has ensued from a mistake. But if she had sexual intercourse before her first husband died, then the *ʿiddah* of intercourse that has ensued from a mistake must be observed first.

Ruling 2538. If a husband is absent or if he comes under the rule (*ḥukm*) of being absent, the *ʿiddah* of a widow begins the moment the wife becomes aware of her husband's death, not from the time of her husband's death. However, with regard to a girl that has not reached the age of legal responsibility (*bulūgh*) or is insane, this rule is problematic (*maḥall al-ishkāl*)[1] and it is obligatory (*wājib*) to observe precaution in such a case.

1 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2539. If a woman says, 'My *ʿiddah* has come to an end', her word is to be accepted unless she is believed to be someone whose word cannot be accepted in this case, in which case, based on obligatory precaution, her word is not to be accepted. For example, if she claims that she experienced bleeding three times in one month, her claim is not to be accepted unless her female relatives substantiate that her menstrual habit was like that.

IRREVOCABLE (*BĀʾIN*) AND REVOCABLE (*RIJʿĪ*) DIVORCE

Ruling 2540. An irrevocable divorce is one in which the husband does not have the right to return to his wife after the divorce, meaning that he cannot remarry her without a new marriage contract. This divorce is of six types:

1. the divorce of a girl who has not completed nine lunar years;
2. the divorce of a postmenopausal woman;
3. the divorce of a woman who did not have sexual intercourse with her husband after the conclusion of the marriage contract;
4. the third divorce, which will be explained in Ruling 2545;
5. a *khulʿ* or *mubārāt* divorce, the laws (*aḥkām*) of which will be mentioned later;
6. a divorce given by a fully qualified jurist (*al-ḥākim al-sharʿī*) to a woman whose husband is neither prepared to pay her living expenses nor divorce her.

Apart from these, divorce is revocable, meaning that as long as the wife is observing *ʿiddah*, her husband can return to her.

Ruling 2541. It is unlawful for a man who has given his wife a revocable divorce to expel his wife from the house in which she resided at the time of the divorce. However, in certain cases, such as when a wife has committed adultery, there is no problem in expelling her from the house. It is also unlawful for the wife

to leave the house without the permission of her husband for non-essential tasks. Furthermore, it is obligatory on the husband to pay for her living expenses during her *ʿiddah*.

LAWS OF RETURNING TO ONE'S WIFE

Ruling 2542. In a revocable divorce, a man can return to his wife in two ways:

1. he says something that means he has re-established the marriage with her;
2. he does something with the intention of returning to her. Having sexual intercourse ascertains this even if he does not have the intention of returning to her. As for kissing and touching with lust, this is problematic, and based on obligatory precaution, if he does not intend to return to her he must divorce her again.

Ruling 2543. In order to return to his wife, it is not necessary for a man to have a witness or to inform his wife; in fact, even if he returns to her without anyone knowing, his return is valid. However, if after completion of the *ʿiddah* the man says, 'I returned to her during her *ʿiddah*' but the wife does not substantiate his claim, the man has to prove his claim.

Ruling 2544. If a man who has given his wife a revocable divorce takes some property from her and arrives at a settlement (*ṣulḥ*) with her that he will not return to her, then although this settlement is valid and it is obligatory on him to not return to her, his right to return to her is not abolished. Therefore, if he does return to her, the marriage will be re-established.

Ruling 2545. If a man divorces his wife twice and returns to her, or he divorces her twice and after each divorce he concludes a marriage contract with her, or he returns to her after one divorce and concludes a marriage contract with her after the other divorce, then after the third divorce the woman becomes unlawful for him.

However, if she marries another man after the third divorce, she becomes lawful for the first husband - meaning that he can marry her again - on fulfilment of five conditions:

1. the marriage to the second husband is a permanent one; if it is a temporary marriage, then after her second husband separates from her, the first husband cannot marry her;
2. the second husband has had sexual intercourse with her; and the obligatory precaution is that it must be vaginal intercourse, not anal;
3. the second husband divorces her or dies;
4. the *ʿiddah* of divorce or the *ʿiddah* of a widow with respect to the second husband comes to an end;
5. based on obligatory precaution, the second husband is *bāligh* when they have sexual intercourse.

KHULʿ DIVORCE

Ruling 2546. The divorce of a wife who is not fond of her husband and has an aversion to him and gives him her dowry (*mahr*) or some of her other property so that he divorces her is known as a '*khulʿ*' divorce. In a *khulʿ* divorce, it is a requirement that the wife's aversion to her husband be at such a level that it is a threat to her fulfilling her marital duties.

Ruling 2547. If the husband wishes to say the formula of a *khulʿ* divorce himself, then, if the name of his wife is Fāṭimah, for example, he must say the following after the property has been given:

زَوْجَتِي فَاطِمَةُ خَلَعْتُهَا عَلَىٰ مَا بَذَلَتْ

zawjatī fāṭimah khalaʿtuhā ʿalā mā badhalat
I give my wife Fāṭimah a *khulʿ* divorce upon accepting what she has given.

And based on recommended precaution, he should also say:

فَهِيَ طَالِقٌ

fahiya ṭāliq
And so she is divorced.

In case the wife is specified, it is not necessary to mention her name. The same applies in a *mubārāt* divorce [the laws of which will be mentioned later).

Ruling 2548. If a wife appoints an agent to give her dowry to her husband and the husband appoints the same person to divorce his wife, in the event that the name of the husband is Muḥammad and the name of the wife is Fāṭimah, for example, the agent must say the formula of the divorce in the following manner:

عَنْ مُوَكِّلَتِي فَاطِمَةَ بَذَلْتُ مَهْرَهَا لِمُوَكِّلِي مُحَمَّدٍ لِيَخْلَعَهَا عَلَيْهِ

ʿan muwakkilatī fāṭimah badhaltu mahrahā limuwakkilī muḥammad liyakhlaʿahā ʿalayh
On behalf of my client Fāṭimah, I give her dowry to my client Muḥammad so that he gives her a *khulʿ* divorce upon accepting it.

Thereafter, the agent says:

زَوْجَةُ مُوَكِّلِي خَالَعْتُهَا عَلَىٰ مَا بَذَلَتْ فَهِيَ طَالِقٌ

zawjatu muwakkilī khalaʿtuhā ʿalā mā badhalat fahiya ṭāliq
I give the wife of my client a *khulʿ* divorce upon accepting what she has given, and so she is divorced.

If the wife appoints an agent to give something other than her dowry to her husband so that he divorces her, then instead of saying مَهْرَها [*mahrahā*] he must mention that property. For example, if she has given £100, he must say: بَذَلْتُ مِائَةَ جُنَيْهٍ إِسْتَرْلِيْنِي [*badhaltu miʾata junayhin istarlīnī*] ('I give £100').

MUBĀRĀT DIVORCE

Ruling 2549. If a husband and wife do not want each other and have an aversion to each other and the wife gives some property to her husband so that he divorces her, this is known as a '*mubārāt*' divorce.

Ruling 2550. If the husband wishes to say the formula, in the event that the name of his wife is Fāṭimah, for example, he must say:

بَارَأْتُ زَوْجَتِي فَاطِمَةَ عَلَىٰ مَا بَذَلَتْ

bāraʾtu zawjatī fāṭimah ʿalā mā badhalat
I give my wife Fāṭimah a *mubārāt* divorce
upon accepting what she has given.

And based on obligatory precaution, he must also say:

فَهِيَ طَالِقٌ

fahiya ṭāliq
And so she is divorced.

If the man apooints an agent, the agent must say:

عَنْ قِبَلِ مُوَكِّلِي بَارَأْتُ زَوْجَتَهُ فَاطِمَةَ عَلَىٰ مَا بَذَلَتْ فَهِيَ طَالِقٌ

ʿan qibali muwakkilī bāraʾtu zawjatahu fāṭimah ʿalā mā badhalat fahiya ṭāliq
On behalf of my client, I give his wife Fāṭimah a *mubārāt* divorce upon accepting what she has given, and so she is divorced.

In both cases, there is no problem if instead of عَلَىٰ مَا بَذَلَتْ [*ʿalā mā badhalat*] he says بِمَابَذَلَتْ *[bimā badhalat*].

Ruling 2551. If possible, the formula of the *khulʿ* and *mubārāt* divorce must be said in correct Arabic. And in the event that it is not possible, the rule is the same as the rule for divorce, which was mentioned in Ruling 2526. However, there is no problem if the wife says the following in English, for example, for giving her property to her husband: 'I give such and such property to you for divorce'.

Ruling 2552. If during the *ʿiddah* of a *khulʿ* or *mubārāt* divorce a wife declines to give the property to her husband, her husband can return to her and re-establish the marriage without a new marriage contract.

Ruling 2553. The property that a husband acquires in a *mubārāt* divorce must not be greater than the dowry; in fact, based on

obligatory precaution, it must be less than the dowr y. However, in a *khulʿ* divorce, there is no problem if it is greater than the dowry.

MISCELLANEOUS RULINGS ON DIVORCE

Ruling 2554. If a man has sexual intercourse with a woman who is not his wife supposing that she was his wife, the woman must observe *ʿiddah*, irrespective of whether she knew that he was not her husband or supposed that he was her husband.

Ruling 2555. If a man fornicates with a woman whom he knows is not his wife and the woman knows that he is not her husband, it is not necessary for her to observe *ʿiddah*. However, if she supposes that he is her husband, then the obligatory precaution is that she must observe *ʿiddah*.

Ruling 2556. If a man deceives a woman into not fulfilling her marital duties towards her husband so that her husband is led into divorcing her and she marries the man, the divorce and the marriage are valid. However, both of them will have committed a grave sin.

Ruling 2557. If a woman stipulates a condition in the marriage contract that she has right to divorce in certain circumstances - for example, if her husbund travels for a long time, or does not pay her expenses for six months, or is sentenced to a long imprisonment - then such a condition is invalid. However, if she stipulates a condition that in certain circumstances, or without any restriction or condition, she is to be his agent in being able to divorce herself, then such a condition is valid and her husband cannot later depose her of her agency (*wikālah*), and if she divorces herself the divorce is valid.

Ruling 2558. If a wife's husband has disappeared and she wishes to marry another man, she must refer to a just jurist (*mujtahid*).[2]

2 A *mujtahid* is a person who has attained the level of *ijtihād*, qualifying him to be an authority in Islamic law. *Ijtihād* is the process of deriving Islamic laws from authentic sources.

And in certain circumstances that are mentioned *Minhāj al-Ṣāliḥīn*,[3] the jurist can divorce her.

Ruling 2559. The father and paternal grandfather of a man who is permanently insane can divorce his wife if that is in his interests.

Ruling 2560. If the father or paternal grandfather of a child marries him to a girl in a temporary marriage, he can give the remaining period of the marriage to the girl if it is in the interests of the child. This applies even if part of the period includes a time when the boy is *bāligh*; for example, a father marries his fourteen-year-old son to a girl for a period of two years. However, the father or paternal grandfather cannot divorce the child's permanent wife.

Ruling 2561. If a person considers two people to be just on the basis of something that is legally authoritative (*al-ḥujjah al-sharʿiyyah*) [such as the statement of a reliable person), and he divorces his wife in their presence, then in such a situation, another man can marry that woman himself or he can marry her to another man after her *ʿiddah* comes to an end if he doubts in the two witnesses being just but deems it probable that the man who divorced the woman considered them to be just. However, if he is certain about the two witnesses not being just, then he cannot marry the woman.

Ruling 2562. If a man gives his wife a revocable divorce, she is still considered to be his legal wife until her *ʿiddah* comes to an end. Therefore, she must not prevent her husband from deriving any sexual pleasure that is his right. Also, it is permitted (*jāʾiz*) - rather, it is recommended (*mustaḥabb*) - for her to make herself look attractive for him, and it is not permitted for her to leave the house without his permission. As for the husband, it is obligatory on him to pay for her maintenance (*nafaqah*) if she is not recalcitrant (*nāshizah*),[4] and her shroud (*kafan*) and *fiṭrah* alms tax (*zakāt al-fiṭrah*) are also his responsibility. And in the event

3 This is al-Sayyid al-Sistani's more detailed work on Islamic law.

4 A recalcitrant wife is one who does not perform her obligatory marital duties, which are explained in Ruling 2430.

of death of one of them, the other inherits from the deceased. Furthermore, the man cannot marry the woman's sister while the former is observing *ʿiddah*.

CHAPTER THIRTY

Usurpation (*Ghaṣb*)

Usurpation is when a person unjustly takes control over the property or right of someone else. It is something that the intellect, Qur'an, and traditions all judge to be unlawful (*ḥarām*). It has been reported that the most noble Messenger (Ṣ) said: 'Whosoever usurps one span of land from another, seven layers of that land will be hung around his neck like a collar on the Day of Resurrection.'

Ruling 2563. If a person does not allow people to make use of a mosque, school, bridge, or any other place that has been built for public use, he will have usurped their right. And if a person reserves a place for himself in a mosque and someone drives him out of that place and does not allow him to make use of it, he will have committed a sin.

Ruling 2564. If a depositor and a depositee agree that the item that has been deposited [as security] will remain in the depositee's possession or in the possession of a third party, the depositor cannot take back the item before paying off his debt. If he does, he must return it immediately.

Ruling 2565. If an item that has been deposited with someone is usurped by a third party, both the owner of the property and the depositee can claim the usurped item from the usurper. And in the event that they take the item back, it will be considered to be a deposited item once again.

Ruling 2566. If a person usurps something, he must return it to its owner. And if the item is destroyed and it was of some value, he must replace it for the owner as per the explanation in Rulings 2576 and 2577.

Ruling 2567. If some gain is acquired from an item that has been usurped - for example, a usurped sheep gives birth to a lamb - it will belong to the owner. Similarly, if a person usurps a house, for example, he must pay its rent (*ijārah*) even if he does not reside in it.

Ruling 2568. If a person usurps property that belongs to a child or to an insane person, he must return it to their guardian (*walī*). And if the property is destroyed, he must replace it.

Ruling 2569. If two people usurp something together and each of them has complete control over it, they are both responsible (*ḍāmin*) for it even if neither of them could have usurped the property on their own.

Ruling 2570. If a person mixes something that he has usurped with something else - for example, he mixes wheat that he has usurped with barley - then, in the event that it is possible to separate the two items, even if it requires some effort, he must separate them and return the usurped item to the owner.

Ruling 2571. If a person usurps a piece of gold that has been crafted, such as an earring, and melts it, he must return it to the owner along with the difference in its value before and after it was melted. And if he does not pay the difference in value but says, 'I will make it like it was', the owner does not have to accept his offer. Also, the owner cannot compel him to make it like it was.

Ruling 2572. If a person changes something that he has usurped into something better - for example, he makes an earring from gold that he has usurped - then, in the event that the owner says, 'Give me the item as it is', the usurper must give it to him and he cannot claim any wages for his efforts. Also, a person does not have the right to revert an item to its original form without the consent of the owner. However, if he reverts the item to its original form or changes it to another form without the consent of the owner, then it is not known whether or not he is responsible for the difference in value between the two states.

Ruling 2573. If a person changes something that he has usurped into something better and the owner says, 'You must revert it to its original form', then, if the owner has a purpose for saying that, it is obligatory (*wājib*) on the usurper to revert it to its original

form. And in the event that its value depreciates due to the changes made to it, he must pay the difference to the owner. Therefore, if he makes an earring from gold that he has usurped and the owner says, 'You must revert it to its original form', in the event that its value after he has melted it is lower than what it was before he made it into an earring, he must pay the difference.

Ruling 2574. If someone farms on land that he has usurped or plants trees on it, thc crops that he cultivates, the trees, and their fruits belong to him. However, if the owner of the land does not consent to the crops or trees remaining on his land, the usurper must immediately remove them. He must also pay rent to the owner for the time the crops and trees are there. Furthermore, he must repair any damage done to the land; for example, he must fill in any holes caused by removing the trees. And if the value of the land depreciates due to the damage, he must pay the difference and he cannot compel the owner of the land to sell or rent it to him. Similarly, the owner of the land cannot compel the person to sell the trees or the crops to him.

Ruling 2575. If an owner of some land consents to crops and trees remaining on his land, it is not necessary for the usurper of the land to remove them. However, he must pay rent for using the land from the time he usurped it until the time the owner gave his consent.

Ruling 2576. If an item that has been usurped is destroyed and it was a non-fungible item, such as cows and sheep, the usurper must pay its value. An item is regarded as being 'non-fungible' when there are not many other items like it in terms of those particulars that effect its desirability. And in the event that its market value varies according to supply and demand, the usurper must pay for the item's value at the time it was destroyed.

Ruling 2577. If an item that has been usurped is destroyed and it was a fungible item, such as wheat and barley, the usurper must replace it with another item like it. An item is regarded as being

'fungible' when there are many other items like it in terms of those particulars that effect its desirability. However, the thing that the usurper gives must have the same type of particulars that effect the item's desirability as that of the usurped and destroyed item. For example, if a person usurps high grade rice, he cannot replace it with lower grade rice.

Ruling 2578. If a person usurps a non-fungible item and it is destroyed, in the event that it acquired a quality that increased its value while it was with the usurper - for example, [it was an animal and] it gained weight - and if it is then destroyed, he must pay the amount it was worth when it had gained weight. This applies as long as the gain in weight was a result of him better tending to it. However, it was not a result of him better tending to it, then it is not necessary for him to pay the increase in value.

Ruling 2579. If a person usurps an item and another individual usurps it from him and it is destroyed, the owner can claim its replacement from either of the two usurpers, or he can claim some of it from each of them. And in the event that he takes its replacement from the first usurper, the first usurper can claim what he gives him from the second usurper. However, if the owner takes the replacement from the second usurper, the second usurper cannot claim what he gave him from the first usurper.

Ruling 2580. If one of the conditions of a valid transaction (*muʿāmalah*) is not fulfilled in a sale - for example, an item that must be bought and sold by weight is sold without weighing it - the transaction is invalid (*bāṭil*). Despite this, in the event that the seller and the buyer consent to the other having disposal over the property, there is no problem. Otherwise, [if they do not consent], the thing that they have taken from each other is like usurped property and must be returned to the other. And in case the property of one of them perishes while it is in the possession of the other, the latter must replace it, whether he knows the transaction is invalid or not.

Ruling 2581. If a person takes some property from a seller in order to look at it or to keep it for a while so that if he likes it he will buy it, and if that property perishes, then based on the well-known (*mashhūr*) juristic opinion, he must give its replacement to the owner.

CHAPTER THIRTY-ONE

Found Property

Ruling 2582. If a person finds some property, other than an animal, and the property does not possess any identifying features by which the owner can be known - irrespective of whether or not its value is less than one dirham (12.6 *nukhud*[1] of minted silver) - he can take the property for himself. However, the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that he should give it to the poor (*fuqarā'*) as alms (*ṣadaqah*) on behalf of the owner. This is also the case with money that does not bear any signs [as to whom it belongs]; however, if the amount and the particulars of the time and place [where it was found] give an indication, then the person must announce it, as will be explained in the next ruling (*mas'alah*).

Ruling 2583. If a person finds some property that possesses identifying features by which the owner can be known, then even if he knows that the owner is a disbeliever (*kāfir*) whose property is inviolable, he must announce it in a public place for one year from the day he found it if its value is one dirham or more. But if its value is less than one dirham, then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) he must give it to the poor as alms on behalf of the owner. If the owner is found [after the property has been given as alms], in the event that the owner does not consent to him having given the property to the poor as alms, he must replace it.

Ruling 2584. If a person does not wish to make an announcement [about finding some property] himself, he can ask someone else whom he trusts to make the announcement on his behalf.

Ruling 2585. If a person makes an announcement for one year and the owner of the property is not found, then in case the property was found in a place other than the sacred precinct (*ḥaram*) of Mecca, he can safeguard it for the owner [with the intention of] returning it to him whenever he is found. During this period, there is no problem in him using the property while looking after it. Alternatively, he can give it to the poor as alms on

1 A *nukhud* is a measure of weight equal to approximately 0 .195 grams. Therefore, 12.6 nukhuds is equivalent to approximately 2.46 grams.

behalf of the owner. The obligatory precaution is that he must not take it for himself. If the property is found in the sacred precinct of Mecca, the obligatory precaution is that he must give it to the poor as alms on behalf of its owner.

Ruling 2586. If after a person has made an announcement for one year but the owner is not found and the finder safeguards the property for the owner but it is destroyed nonetheless, in the event that he was not negligent in safeguarding it and did not transgress - i.e. he was not excessive - he is not responsible (*ḍāmin*). However, if he has given it to the poor as alms on behalf of the owner [and afterwards the owner is found], the owner can choose to consent to the act of charity or claim for the item to be replaced; if he chooses the latter, the reward for the act of charity will belong to the person who gave the alms.

Ruling 2587. If a person who finds some property intentionally (*ʿamdan*) does not announce it as per the instructions that were mentioned, he will have committed a sin. And in the event that he deems it probable that announcing it will be beneficial, it is still obligatory (*wājib*) on him to announce it.

Ruling 2588. If an insane person or a child that is not of the age of legal responsibility (*bāligh*) finds something that possesses identifying features and it has a value of up to one dirham, then his guardian (*walī*) can announce it. In fact, it is obligatory on him to announce it if he has taken the item from the child or the insane person. And if he announces it for one year and the owner is not found, he must act in accordance with what was mentioned in Ruling 2585.

Ruling 2589. If a person loses hope in finding the owner during the year in which he makes the announcement, he must - with the permission of a fully qualified jurist (*al-ḥākim al-sharʿī*), based on obligatory precaution - give it to the poor as alms.

Ruling 2590. If the item is destroyed during the year in which a

person announces [that he has found the property], in the event that he was negligent in safeguarding it or made use of it, he is responsible to replace it for the owner and he must continue to announce it. However, if he was not negligent nor made use of it, then nothing is obligatory on him [concerning this matter].

Ruling 2591. If a person finds some property that possesses identifying features and it has a value of one dirham or more, and if the place where the property was found is such that were he to announce [that he has found the property] the owner would still not be found, then in such a case, he must give the property to the poor as alms on behalf of the owner from the day he found it. Based on obligatory precaution, this must be done with the permission of a fully qualified jurist, and the finder must not wait until the year ends.

Ruling 2592. If a person finds some property and takes it thinking that it belongs to him but afterwards realises that it is not his property, then the laws (*aḥkām*) that were mentioned in the previous rulings (*masā'il*) will apply to him.

Ruling 2593. A person who finds some property must announce it in such a way that were the owner to hear it he would deem it probable that the property belongs to him. This is something that varies from case to case. For example, sometimes it is sufficient for the person to say, 'I have found something'. However, in some cases, the person must also specify the type of thing he has found; for example, he must say, 'I have found a piece of gold'. And in some other cases, he must add some particulars; for example, he must say, 'I have found a gold earring'. In any case, he must not mention all the particulars of the property in case it becomes individuated. Furthermore, he must make the announcement in a place where he deems it probable that news of it will reach the owner.

Ruling 2594. If a person finds something and another individual says, 'It belongs to me' and describes some of its identifying

features , the finder must only give it to him if he is confident (i.e. he has *iṭmi'nān*) that it belongs to him. In this case, it is not necessary for the claimant to describe those features of it that an owner would not usually notice.

Ruling 2595. If a person finds something that has a value of one or more dirhams, in the event that he does not announce it and he places it in a mosque or some other public place and the item is destroyed or is taken by another person, the person who found it is responsible for it.

Ruling 2596. If a person finds something that cannot not remain for a year, he must take care of it for as long as it remains while protecting all those particulars that effect its price. And the obligatory precaution is that during this period he must announce [that he has found the property]. In the event that the owner is not found, the finder can specify a value for it and take it for himself, or he can sell it and keep the money. In both cases, he must continue to make the announcement. If the owner is found, he must give him the value of it. But if the owner is not found for one year, he must act according to what was said in Ruling 2585.

Ruling 2597. If at the time of performing ablution (*wuḍū'*) or prayers (*ṣalāh*) a person has with him something that he has found, his ablution or prayers does not become invalid (*bāṭil*) even if he does not wish to hand the property over to the owner.

Ruling 2598. If a person takes someone else's shoes and replaces them with another pair, then in the event that the person whose shoes were taken knows that the shoes that are left with him belong to the person who took his shoes and he consents to taking those shoes in lieu of his own shoes that were taken, he can take those shoes in lieu of his own. The same applies if he knows that his shoes were unrightfully and unjustly taken. However, in this case, the value of the shoes he takes must not be more than the value of his own shoes. If it is, the law (*ḥukm*) of an item whose owner is unknown (*majhūl al-mālik*) applies to the extra amount.

In cases other than these two, the law of items whose owner is unknown applies to the shoes.

Ruling 2599. If a person is in possession of some property that belongs to an unknown owner and it is not regarded as being 'lost property', then in case he is confident that the owner would consent to him having use of the property, it is permitted (*jā'iz*) for him to use the property in any way to which he knows the owner would consent. Otherwise, he must look for the owner for as long as he deems it probable that he will be found. If he loses hope in finding him, he must give the property to the poor as alms, and the obligatory precaution is that he must do this with permission of a fully qualified jurist. Furthermore, with the permission of a fully qualified jurist, he can give the value of the property to the poor as alms. If the owner is found afterwards but he does not consent to the person giving it to the poor as alms, then based on obligatory precaution the person must replace the property for the owner.

CHAPTER THIRTY-TWO

Slaughtering and Hunting Animals

Ruling 2600. If either a wild or domesticated animal whose meat is lawful (*ḥalāl*) to eal is slaughtered in accordance with the instructions that will be mentioned later, then after it dies, its meat is lawful to eat and its body is pure (*ṭāhir*). In order for a camel, fish, and locust to become lawful to eat, there are other ways; these will be mentioned in the following rulings (*masāʾil*).

Ruling 2601. If a wild animal whose meat is lawful to eat, such as a deer, partridge, or mountain goat, is killed by hunting in accordance with the instructions that will be mentioned later, it becomes pure and lawful to eat. The same applies to a domesticated animal whose meat is lawful to eat and has turned wild, such as a domesticated cow or camel that fled and has become wild or unyielding and cannot be caught. However, a domesticated animal whose meat is lawful to eat, such as a sheep or a hen, and a wild animal whose meat is lawful to eat and has been domesticated through training, does not become pure or lawful to eat if it is killed by hunting.

Ruling 2602. A wild animal whose meat is lawful to eat can only become pure and lawful to eat by hunting it if it is able to flee or fly away. Therefore, a fawn [a baby deer] that cannot flee or a cheeper [a baby partridge] that cannot fly away, does not become pure and lawful to eat if it is killed by hunting. If a person kills a deer and its fawn that is unable to flee using one arrow, the deer is lawful to eat but the fawn is unlawful (*ḥaram*).

Ruling 2603. If an animal whose meat is lawful to eat and whose blood does not gush out [when its jugular vein is cut], such as a fish, dies on its own accord, it is pure but its meat cannot be eaten.

Ruling 2604. An animal whose meat is unlawful to eat and whose blood does not gush out, such as a snake and lizard, is pure when it is dead; therefore, killing it by hunting or slaughtering it does not change this.

Ruling 2605. Slaughtering a dog or a pig or killing it by hunting

does not make it pure as these animals cannot be made pure. Furthermore, it is unlawful to eat their meat. Similarly, the flesh and skin of small animals that live in nests in the ground and have blood that gushes out, such as mice and ferrets, does not become pure if such animals are killed by hunting.

Ruling 2606. The flesh and skin of animals whose meat is unlawful to eat - except those mentioned in the previous ruling (*mas'alah*) - becomes pure if they are slaughtered or killed by hunting with a weapon, whether the animal is a predatory one or not. This applies even to elephants, bears, and apes (about which there is a difference of opinion from a jurisprudential perspective). However, if animals whose meat cannot be eaten are killed by hunting dogs, then to consider them as being pure is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), they are not considered pure].[1]

Ruling 2607. If a dead baby animal is delivered or taken out from the womb of a live animal, it is unlawful to eat its meat.

METHOD OF SLAUGHTERING AN ANIMAL

Ruling 2608. The method of slaughtering an animal is that four ducts must be severed completely:

1. the windpipe (trachea);
2. the food pipe (oesophagus);
3-4. the two thick arteries that are on the two sides of the oesophagus and trachea. Based on obligatory precaution, simply making an incision in them or severing only the trachea is not sufficient. Severing these four ducts can only happen by severing from below the protrusion from which the trachea and oesophagus separate.

Ruling 2609. It is not sufficient to sever some of these four ducts,

1 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

wait for the animal to die, and then to sever the remaining ducts. However, if the four ducts are severed before the animal dies, the animal is pure and lawful to eat even if all the ducts were not severed in continuous succession.

Ruling 2610. If a wolf tears apart a sheep's throat such that none of the four ducts remain, the sheep becomes unlawful to eat. The same applies if nothing of the windpipe remains. In fact, if a wolf tears apart some of a sheep's throat and the four ducts are left hanging from the head or connected to the body, then based on obligatory precaution the sheep is unlawful to eat. However, if another part of its body is torn apart and the sheep remains alive and it is then slaughtered according to the instructions that will be mentioned later, it is lawful to eat and is pure. This rule (*ḥukm*) is not exclusive to wolves and sheep.

CONDITIONS OF SLAUGHTERING AN ANIMAL

Ruling 2611. Slaughtering an animal has the following conditions:

1. the person slaughtering the animal must be a Muslim man or woman. The child of a Muslim who is *mumayyiz* - i.e. able to discern between right and wrong - can also slaughter an animal. And if an animal is slaughtered by a disbeliever (*kāfir*) who is not from among the People of the Book (*ahl al-kitāb*),[2] or by someone who is subject to the rules applicable to disbelievers, such as a *nāṣibī*,[3] the animal does not become lawful to eat. In fact, if an animal is slaughtered by a disbeliever from among the People of the Book, even if he says '*bismillāh*', based on obligatory precaution the animal does not become lawful;
2. as far as it is possible, the animal must be slaughtered with something made of iron; and based on obligatory precaution, a steel knife is not sufficient. However, if

2 As mentioned in Ruling 103, the 'People of the Book' are Jews, Christians, and Zoroastrians.

3 In Ruling 103, *nawāṣib* (pl. of *nāṣibī*) are defined as 'those who show enmity towards the Imams ('A).'

an item made of iron is not available, the animal can be slaughtered using something sharp enough to sever the four ducts, such as a piece of glass or a stone, even if it is not urgent to slaughter the animal;

3. the animal must face the *qibla*[4] at the time of being slaughtered. Therefore, if the animal is sitting or standing, it must face qibla in the same way that a person faces *qibla* in prayers (*ṣalāh*). If the animal is lying on its right or left side, the point where it is cut and its stomach must face *qibla*, but it is not necessary for its hands, feet, and face to face *qibla*. If someone knows that an animal must be slaughtered facing qibla and intentionally (*ʿamdan*) does not make it face *qibla*, the animal is unlawful to eat. However, there is no problem if he forgets or does not know the ruling about this or mistakes the direction of *qibla*. And if a person does not know the direction of *qibla* or cannot make the animal face *qibla* even with the help of someone else, then in case the animal is unruly or is in a well or has fallen down a pit and one is compelled to slaughter it, there is no problem in slaughtering it in any direction. The same applies if one fears that the delay caused by making it face *qibla* will result in its death. If a Muslim does not believe that an animal must be slaughtered while facing *qibla*, the slaughter is still correct (*ṣaḥīḥ*) even if he does not make it face *qibla*. The recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is for the person slaughtering the animal to also face *qibla*;
4. at the time of slaughtering the animal or before it at a time that is connected to the act of slaughtering the animal, the person slaughtering the animal must mention the name of Allah, and it is not sufficient for someone else to mention it. It is sufficient to say '*bismillāh*' or '*allāhu akbar*'; in fact, if he only says '*allāh*', it is sufficient, although this goes against precaution (*iḥtiyāṭ*). If he mentions the name of Allah without an intention (*qaṣd*) to slaughter the animal, or if due to not knowing the ruling he does not mention the name of Allah, the animal is not lawful to eat. However,

4 *Qibla* is the direction towards the Kaʿbah in Mecca.

there is no problem if he does not mention the name of Allah due to forgetfulness;

5. the animal must make some movement after it has been slaughtered, even if that be by moving its eyes or tail or striking its foot against the ground. Fulfilment of this condition is necessary only when there is a doubt as to whether the animal is alive or not at the time of being slaughtered; otherwise, it is not necessary.
6. a normal amount of blood must drain out of the animal's body. Therefore, if its blood congeals in its veins and does not drain out, or, if the amount of blood that drains out is relatively little for an animal of its type, thc animal is not lawful to eat. However, if the amount of blood that drains out is relatively little due to the animal having bled before it was slaughtered, there is no problem;
7. a person must sever the throat of the animal with the intention of an Islamic slaughter. Therefore, the animal is not lawful to eat if a knife falls from someone's hand and happens to sever the throat of the animal, or if the person who is slaughtering the animal is asleep, intoxicated, or unconscious, or he is a child or a non-*mumayyiz* insane person, or if the knife draws against the throat of the animal for some other reason and it happens to sever its throat.

Ruling 2612. Based on obligatory precaution, the head of an animal must not be separated from its body before the spirit (*rūḥ*) has left its body, although this does not make the animal unlawful to eat. However, there is no problem if the animal's head is separated from its body accidentally or owing to the sharpness of the knife. Similarly, [it is not permitted,] based on obligatory precaution, to break the animal's neck or to cut its spinal cord before the spirit has left its body. The spinal cord is like a white thread that runs between the lumbar vertebrae and extends from the animal's neck to its tail.

METHOD OF SLAUGHTERING A CAMEL

Ruling 2613. In order for a camel to become lawful to eat and

pure, it must be slaughtered [in a specific way, which is termed '*naḥr*']. The instructions for this are as follows: while fulfilling the aforementioned conditions of slaughtering an animal, the person slaughtering the camel must thrust a knife - or something else that is made of iron and is sharp - into the hollow area between the camel's neck and chest. It is better that the camel be standing when it is slaughtered.

Ruling 2614. If a person severs the four ducts [as mentioned Ruling 2608] of a camel instead of performing *naḥr* [as described in the previous ruling], or, if a person performs *naḥr* on a sheep, cow, or similar animal, then their meat is unlawful to eat and their body is impure (*najis*). However, if a person slaughters a camel according to Islamic law (*dhabḥ*) and before the camel dies he performs *naḥr*, its meat is lawful to eat and its body is pure. Also, if *naḥr* is performed on a cow, sheep, or similar animal and before the animal dies a person severs the four ducts, its meat is lawful to eat and its body is pure.

Ruling 2615. If an animal becomes unruly and cannot be slaughtered in accordance with the instructions of Islamic law, or, for example, it falls into a well and it is deemed probable that it would die in the well and killing it in accordance with the instructions of Islamic law is not possible, then wherever a wound is inflicted on its body and it dies on account of that wound, it becomes lawful to eat. In such a case, it is not necessary to make it face *qibla*. However, the other conditions that were mentioned with regard to slaughtering an animal must be fulfilled.

RECOMMENDED (*MUSTAḤABB*) ACTS WHEN SLAUGHTERING AN ANIMAL

Ruling 2616. Jurists (*fuqahā'*) - may Allah's pleasure be with them - have considered a number of things to be recommended when slaughtering an animal:

1. when slaughtering a sheep, both its front legs and one

of its back legs should be tied together and the other leg should be left free. When slaughtering a cow, all its front and back legs should be tied and its tail should be left free. When slaughtering a camel, if it is sitting, its front legs should be tied together from the lower part of its leg up to its knees or to below the top of its leg, and its back legs should be left free. And if it is standing, its left leg should be tied. It is recommended that a chicken be let free after it is slaughtered so that it can flap its wings;
2. before slaughtering the animal, water should be placed in front of it;
3. the animal should be slaughtered in a manner that reduces its suffering. For example, the knife should be well sharpened and the animal should be slaughtered swiftly.

DISAPPROVED (*MAKRŪH*) ACTS WHEN SLAUGHTERING AN ANIMAL

Ruling 2617. In some traditions, a number of things are considered to be disapproved when slaughtering an animal:

1. to remove the hide of an animal before the spirit (*rūḥ*) has left its body;
2. to slaughter an animal in a place where a similar animal can see it being slaughtered;
3. to slaughter an animal at night or before midday (*ẓuhr*) on Friday. However, it is not disapproved in case of necessity;
4. for a person to slaughter a quadruped that he has trained himself.

LAWS RELATING TO HUNTING WITH WEAPONS

Ruling 2618. If a wild animal whose meat is lawful to eat is hunted with a weapon and it dies, its meat is lawful to eat and its body is pure on the fulfilment of five conditions:

1. the hunting weapon must be sharp like a knife or a sword,

or it must be like a spear or an arrow that can pierce the body of an animal. With regard to the latter [i.e. hunting weapons that pierce the body of an animal,] if the weapon does not have a spearhead, then in order for the animal to be lawful to eat, it is a condition that the weapon wounds and pierces the body of the animal. But if the weapon does have a spearhead, it is sufficient that the weapon kills the animal even though it does not wound it. If an animal is hunted using a trap, a piece of wood, a stone, or something similar and it dies, the animal does not become pure and it is unlawful to eat. The same applies, based on obligatory precaution, if the animal is hunted using something sharp that is not a weapon, such as a knitting needle, a fork, a skewer, or something similar. If an animal is hunted using a gun, in the event that the bullet sinks into and tears the animal's body, it is pure and lawful to eat irrespective of whether or not the bullet is sharp and conical in shape. And it is not necessary that the bullet be made of iron. However, if the bullet does not sink into the animal's body but rather the striking force of it kills the animal, or the heat of it burns the animal's body and the animal dies, then it being pure and lawful to eat is problematic;

2. the person hunting the animal must be a Muslim or the child of a Muslim on condition that the child is capable of discerning good from evil. If he is a disbeliever who is not from among the People of the Book, or if he is subject to the rules applicable to disbelievers, such as a *nāṣibī* the animal that is hunted is not lawful. In fact, even if a disbeliever who is from among the People of the Book hunts an animal and mentions the name of Allah, based on obligatory precaution, the hunted animal is not lawful to eat;
3. the weapon must be used for hunting an animal. Therefore, if, for example, a person aims at a particular target and incidentally kills an animal, the animal is not pure and eating it is unlawful. However, if he shoots an arrow with the intention of hunting a particular animal but kills another animal instead, that animal is lawful to eat;

4. at the time of using the weapon, the person must mention the name of Allah. And in the event that he mentions the name of Allah before the animal is hit, it is sufficient. If he does not intentionally mention the name of Allah, the animal does not become lawful; but there is no problem if he forgets to do so;
5. the hunter must reach the animal after it has died, or, if it is still alive, there must not be enough time to slaughter it. And in the event that there is enough time to slaughter it but he does not do so before it dies, it is unlawful to eat.

Ruling 2619. If two people hunt an animal and one of them fulfils the aforementioned conditions but the other does not - for example, one of them mentions the name of Allah but the other intentionally does not - the animal is not lawful to eat.

Ruling 2620. If, for example, an animal falls into some water after it is hit by an arrow and one knows that the animal has died as a result of being hit by both the arrow and falling into the water, the animal is not lawful to eat. In fact, if he does not know that the animal died solely as a result or the arrow, it is not lawful to eat.

Ruling 2621. If a person hunts an animal with a dog or a weapon that is usurped (*ghaṣbī*), the animal is lawful to eat and it belongs to him. However, in addition to the fact that he has committed a sin, he must pay a fee to the owner for using the weapon or the dog.

Ruling 2622. If a person uses a sword or some other hunting weapon to cut off some parts of an animal's body, such as its front and back legs, those parts are unlawful to eat. However, if the animal is slaughtered having fulfilled the conditions mentioned in Ruling 2618, then the rest of its body is lawful to eat. If the hunting weapon cuts the animal's body in two and the aforementioned conditions are fulfilled and its head and neck remain on one part and the hunter reaches the animal after it has died, then both parts of the body are lawful to eat. The same applies if the animal is alive but there is insufficient time to

slaughter it. However, if there is sufficient time to slaughter it and it is possible that it may live for some time, then the part that does not have the head and neck is unlawful to eat. As for the part that has the head and neck, it is lawful to eat if the animal is slaughtered in accordance with the instructions that were mentioned earlier; otherwise, that part is also unlawful to eat.

Ruling 2623. If an animal is cut in two with some wood, stone, or something else with which it is not correct to hunt an animal, the part that does not have the head and neck is unlawful to eat. As for the part that has the head and neck, it is lawful to eat if the animal is alive and it is possible that it will stay alive for a while and if it is slaughtered in accordance with the instructions that were mentioned earlier; otherwise, that part is also unlawful to eat.

Ruling 2624. If an animal is killed by hunting or is slaughtered and a live offspring is taken out of its womb, in the event that the offspring is slaughtered in accordance with the instructions that were mentioned earlier, it is lawful to eat; otherwise, it is unlawful to eat.

Ruling 2625. If an animal is killed by hunting or is slaughtered and a dead offspring is taken out of its womb, it is pure and lawful to eat in the event that it did not die before its mother was killed or as the result of a delay in taking it out of its mother's womb, and its development is complete and hair or wool has grown on its body.

HUNTING WITH A HUNTING DOG

Ruling 2626. If a hunting dog hunts a wild animal that is lawful to eat, the hunted animal is pure and lawful to eat if six conditions are fulfilled:

1. the dog must be trained in a manner that whenever it is sent to hunt, it goes, and whenever it is restrained, it stays. However, there is no problem if it cannot be restrained once it is has drawn close to the prey and has seen it. There is also no problem if it has a habit of eating the prey before its

owner reaches it. Similarly, there is no problem if it has a habit of drinking the blood of the prey. However, based on obligatory precaution, the condition is that if its owner wishes to take the prey from it, it must not have a habit of preventing its owner and opposing him;

2. its owner must have sent it [to hunt the prey]. Therefore, if the dog hunts the prey of its own accord and kills it, it is unlawful to eat it. In fact, if it hunts the prey of its own accord and thereafter its owner calls it to catch the prey quicker, then even if the dog hastens to the prey on account of its owner's call, based on obligatory precaution one must refrain from eating the prey;
3. the person who sends the dog must be a Muslim as per the details mentioned in the conditions relating to hunting with a weapon;
4. when the hunter sends the dog, or before the dog reaches the prey, the hunter must mention the name of Allah. If he intentionally does not mention the name of Allah, the prey is unlawful to eat. However, there is no problem if he forgets;
5. the prey must die as a result of the wound inflicted by the dog's teeth. Therefore, if the dog suffocates the prey or if the prey dies as a result of running or of fear, it is not lawful to eat;
6. the person who sent the dog must reach the prey after it has died, or, if it is still alive, there should not be enough time to slaughter it as long as he has not delayed in reaching the prey for an abnormal length of time. However, if when he reaches the prey there is enough time to slaughter it but he does not, it is not lawful to eat.

Ruling 2627. If the person who sent the dog reaches the prey when there is enough time for him to slaughter it, then in the event that some time passes while he does some things that are preliminary to slaughtering it, such as taking out his knife, and the prey dies, it is lawful to eat it. However, if he does not have anything with him with which to slaughter the prey and it dies, then based on obligatory precaution it is not lawful to eat it. Of course, if in this

situation he lets the prey go so that the dog kills it, it becomes lawful to eat.

Ruling 2628. If a person sends a number of dogs to hunt a prey together and all of them fulfil the conditions mentioned in Ruling 2626, the prey is lawful to eat. But if one of the dogs does not fulfil those conditions, the prey is unlawful to eat.

Ruling 2629. If a person sends a dog to hunt an animal and the dog hunts another animal instead, that animal is lawful to eat and it is pure. Also, if the dog hunts that animal as well as another animal, both of them are lawful to eat and are pure.

Ruling 2630. If a number of people together send a dog for hunting and one of them intentionally does not mention the name of Allah, the prey is unlawful to eat. And if one of the dogs that is sent has not been trained in the manner described in Ruling 2626, the prey is unlawful to eat.

Ruling 2631. If a hawk or another animal other than a hunting dog hunts an animal, that animal is not lawful to eat. However, if the hunter reaches the animal while it is still alive and he slaughters it in the manner that was mentioned earlier, it is lawful to eat.

FISHING AND HUNTING LOCUSTS

Ruling 2632. If a fish is of the type that has scales - even though its scales may have fallen off due to some incident - and it is caught alive in the water and it dies out of the water, it is pure and lawful to eat. And in the event that it dies in the water, it is pure but it is unlawful to eat even if it dies by means of something, such as poison; however, if it dies in a fishing net in the water, it is lawful to eat. As for for fish without scales, they are unlawful to eat even if they are caught alive in the water and they die out of the water.

Ruling 2633. If a fish springs out of the water, or a wave throws it out, or the water recedes and the fish is left stranded on dry land, then in the event that someone catches it with his hands or by

some other means before it dies, it is lawful to eat after it dies. But if it dies before it is caught, it is unlawful to eat.

Ruling 2634. It is not necessary for a fisherman to be a Muslim [in order for the fish to be lawful to eat], nor does he have to mention the name of Allah at the time of catching the fish. However, a Muslim must witness - or attain confidence (*iṭmi'nān*) in some other way - that the fish was caught alive in the water or that it died in the net in the water.

Ruling 2635. If it is not known whether a dead fish was caught alive or dead in the water, in the event that it is in the hands of a Muslim who has disposal over it, which is proof of it being lawful to eat - for example, he sells or buys it - it is lawful. However, if the fish is in the hands of a disbeliever, then even if he says, 'I caught it alive', it is unlawful to eat unless one is confident that he caught it alive in the water or that it died in the net in the water.

Ruling 2636. It is permitted (*jā'iz*) to eat a live fish.

Ruling 2637. If a fish is roasted alive or it is killed out of the water before it dies [by itself], it is permitted to eat it.

Ruling 2638. If a fish is cut in two out of the water and one part falls in the water while it is still alive, it is permitted to eat the part that is out of the water.

Ruling 2639. If a person catches a locust alive in his hands or by some other means, it is lawful to eat it after it dies. It is not necessary that the person who catches it be a Muslim, nor does he have to mention the name of Allah at the time of catching it. However, if a dead locust is in the hands of a disbeliever and it is not known whether he caught it alive or not, it is unlawful to eat it even if he says, 'I caught it alive'.

Ruling 2640. It is unlawful to eat a locust that has not developed wings and is unable to fly.

CHAPTER THIRTY-THREE

Eating and Drinking

Ruling 2641. It is inlawful (*ḥarām*) to eat all birds of prey that have talons, such as falcons, eagles, hawks, and vultures. Similarly, all types of crows, even choughs, are unlawful to eat, based on obligatory precaution (*al-iḥtiyāṭ al-wājib*). Also, every bird that flaps its wings less than it glides while flying and has talons is unlawful to eat. However, every bird that flaps its wings more than it glides while flying is lawful (*ḥalāl*) to eat. Therefore, birds that are unlawful to eat can be distinguished from those that are lawful to eat by considering how they fly. However, if it is not known how a particular bird flies, then, if that bird has a crop, gizzard, or a spur at the back of its feet, it is lawful to eat, and if it does not have any of these, it is unlawful to eat. As for other birds, apart from the ones that have been mentioned, such as chickens, pigeons, sparrows, and even ostriches and peacocks, they are all lawful to eat. However, killing some birds is disapproved (*makrūh*), such as hoopoes and swallows. As for animals that fly but do not have feathers, such as bats, they are unlawful to eat, and so too are bees, mosquitoes, and flying insects, based on obligatory precaution.

Ruling 2642. If something [from an animal's body] that contains life is separated from the animal - for example, a person cuts off the tail fat or some flesh from a living sheep - it is impure (*najis*) and unlawful to eat.

Ruling 2643. Some parts of those animals that are lawful to eat must not be eaten. These things are fourteen in number:

1. blood;
2. droppings;
3. penis;
4. vagina;
5. uterus;
6. glands;
7. testicles;
8. pituitary gland;
9. spinal cord;
10. the two nerves that are on either side of the vertebral column, based on obligatory precaution;

11. gallbladder;
12. spleen;
13. urinary bladder;
14. iris of the eye.

All these things are from animals whose meat is lawful to eat excluding birds, fish, and locusts. With regard to birds, their blood and droppings are definitely unlawful; apart from these two things, in the case of birds, all the other things mentioned in the list above are unlawful based on obligatory precaution. Similarly, based on obligatory precaution, the blood and droppings of fish and the droppings of locusts are unlawful; apart from these, nothing else of them is unlawful.

Ruling 2644. It is unlawful to drink the urine of animals whose meat is unlawful to eat. The same applies to the urine of animals whose meat is lawful to eat, even that of camels, based on obligatory precaution. However, there is no problem in drinking the urine of camels, cows, and sheep if it is for the purposes of medical treatment.

Ruling 2645. It is unlawful to eat mud. The same applies to soil and sand, based on obligatory precaution. If one is compelled to, there is no problem in eating Daghistani or Armenian mud, or other mud than these, for the purposes of medical treatment. It is permitted (*jā'iz*) to eat a little - i.e. up to the size of an average chickpea - of the *turbah*[1] of His Eminence al-Sayyid al-Shuhadā' [Imam al-Ḥusayn] ('A) for medicinal purposes. If the *turbah* is not taken from the sacred grave itself or from around it, then even if it can be called '*turbah* of Imam al-Ḥusayn ('A)', based on obligatory precaution, it must be dissolved in some water and suchlike until it becomes diluted and then drunk. Similarly, this precaution (*iḥtiyāṭ*) must be observed when one does not have confidence (*iṭmi'nān*) that the *turbah* is from the sacred grave of His Eminence and there is no proof to verify it.

1 A *turbah* is a piece of earth or clay on which one places his forehead when prostrating.

Ruling 2646. It is not unlawful to swallow nasal mucus or phlegm that has gathered in the mouth. Similarly, there is no problem in swallowing food particles that become dislodged from between the teeth when using a toothpick.

Ruling 2647. It is unlawful to eat or drink anything that would cause death or inflict significant harm to a person.

Ruling 2648. It is disapproved to eat the meat of a horse, mule, or donkey. If someone has sexual intercourse with these animals, their meat becomes unlawful. Similarly, their milk and offspring after intercourse with them become unlawful to consume, based on obligatory precaution, and their urine and dung become impure. Such animals must be taken out of the city and sold elsewhere. If the person who had sexual intercourse with the animal is not its owner, he must pay the value of the animal to its owner. The money that is received from the sale of the animal belongs to the person who had sexual intercourse with it. If a person has sexual intercourse with an animal whose meat is usually eaten, such as a cow, sheep, and camel, their urine and dung become impure and it is unlawful to eat their meat. Similarly, based on obligatory precaution, drinking their milk and the milk of their offspring is unlawful. Furthermore, the animal must be killed and burnt, and if the person who had sexual intercourse with it is not its owner, he must pay its value to its owner.

Ruling 2649. If a kid [i.e. a baby goat] suckles milk from a pig to the extent that its flesh and bones are strengthened by the milk, the kid and its offspring become unlawful to eat and their milk becomes unlawful to drink. In case a kid suckles milk to a lesser extent, then based on obligatory precaution it must undergo a process of *istibrā'* and after that it becomes lawful to eat. The process of *istibrā'* for a kid is that it must suckle pure milk for seven days. If it does not need milk, it must eat grass for seven days. Based on obligatory precaution, a suckling calf, lamb, and the young of other animals whose meat is lawful to eat comes under the same rule (*ḥukm*) as a kid. It is unlawful to eat the meat of an excrement-eating animal, but in the event that it undergoes the process of *istibrā'*, it becomes

lawful to eat. The process of *istibrā'* for such animals was explained in Ruling 219.

Ruling 2650. Drinking wine [and other alcoholic beverages] is unlawful. In some traditions, it is considered to be one of the gravest sins. It has been reported from Imam al-Ṣādiq (ʿA) that he said: 'Wine is the root of evil and the origin of sins. A person who drinks wine loses his intellect, and at that moment he does not know Allah, he does not fear any sin, he does not keep the respect of anyone, he does not observe the rights of his near relatives, and he does not turn away from openly obscene acts. If he takes a sip of it, Allah, the angels. the prophets, and the believers curse him. And if he drinks until he becomes intoxicated, the spirit of belief and the ability to know Allah leave him, and the spirit of filthy evil takes their place. His prayers (*ṣalāh*) are not accepted for forty days (even though it is obligatory (*wājib*) on him to perform his prayers and his prayers are valid (*ṣaḥīḥ*))'.

Ruling 2651. It is unlawful to eat something from a table on which wine is being consumed. Similarly, [it is unlawful,] based on obligatory precaution, to sit at such a table.

Ruling 2652. It is obligatory on every Muslim to give food and water to another Muslim who is on the verge of dying from hunger or thirst and to save him from death if his own life is not in danger. The same applies if the person is not a Muslim and is someone whom it is not permitted to kill.

ETIQUETTES OF EATING

Ruling 2653. With regard to eating and drinking, the following things are recommended (*mustaḥabb*) for one to do:

1. to wash both hands before eating;
2. to wash both hands after eating and to dry them with a piece of cloth;
3. the host should start eating before everyone else and he

should stop eating after everyone else. Before eating, the host should wash his hands first, then the person seated to his right [should wash his], and so on until the turn comes to the person seated to the left of the host. After eating, the person seated to the left of the host should wash his hands first, and so on until the turn comes to the host;

4. to say '*bismillāh*' at the beginning of the meal. If there is a variety of dishes on the table, one should say '*bismillāh*' before eating each of them;
5. to eat with the right hand;
6. to eat with three or more fingers and to avoid eating with two fingers;
7. if a number of people are seated at a table, each person should eat the food that is in front of him;
8. to eat small morsels;
9. to sit for a long time at the table and to prolong the meal;
10. to chew the food properly;
11. to praise the Lord of the worlds after the meal;
12. to lick one's fingers;
13. to use a toothpick after the meal. However, one should not pick his teeth with a toothpick made from a sweet basil plant, a pomegranate tree, a reed, or the leaves of a date palm;
14. to gather and eat the pieces of food that have fallen on the table cloth. However, if one is having a meal outdoors, it is recommended to leave the pieces of food for birds and animals;
15. to eat at the start of the day and at the start of the night and to avoid eating during the day and during the night;
16. to lie on one's back after a meal and to place the right foot over the left foot;
17. to eat salt at the start of the meal and at the end of it;
18. to wash fruit before eating it.

THINGS THAT ARE DISCOURAGED (*MADHMŪM*) WHEN EATING

Ruling 2654. The following things are discouraged when eating:

1. to eat when one is full;
2. to eat until one is full; it is reported that the Lord of the worlds detests a full stomach more than anything else;
3. to look at the faces of other people while [they are] eating;
4. to eat [very] hot food;
5. to blow on something that one is eating or drinking;
6. to wait for another dish after bread has been placed on the table;
7. to cut bread with a knife;
8. to place bread under a utensil for food;
9. to clean the meat off a bone to the extent that nothing remains on it;
10. to peel the skin of fruit that is eaten with its skin;
11. to throw away fruit before it is completely eaten.

ETIQUETTES OF DRINKING

Ruling 2655. A number of things are considered to be etiquettes of drinking:

1. to drink water by sipping it;
2. to drink water during the day while standing;
3. to say '*bismillāh*' before drinking water and to say 'alḥamdu lillāh' after drinking it;
4. to drink water in three gulps;
5. to drink water when one desires it;
6. after drinking water, to remember His Eminence Abā ʿAbdillāh [Imam al-Ḥusayn] (ʿA) and his household and to curse his killers.

THINGS THAT ARE DISCOURAGED (*MADHMŪM*) WHEN DRINKING

Ruling 2656. It is discouraged to drink a lot of water, to drink water after eating fatty food, and to drink water at night while standing. It is also discouraged to drink water with the left hand and to drink from a broken side of the vessel or from the place of its handle.

CHAPTER THIRTY-FOUR

Vow (*Nadhr*) and Covenant (*ʿAhd*)

Ruling 2657. A vow is when a person makes it obligatory (*wājib*) on himself for the sake of Allah to perform a good deed or to refrain from doing something that is better not to do.

Ruling 2658. In a vow, a formula (*ṣīghah*) must be said. It is not necessary that the formula be said in Arabic; therefore, if a person says [in English, for example], 'Should such and such sick person get better, it is incumbent upon me to give £100 to a poor person (*faqīr*) for the sake of Allah', his vow is valid (*ṣaḥīḥ*). And ifhe says, 'For the sake of Allah I vow to do such and such a thing', then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) he must do that thing. However, if he does not mention the name of Allah and only says, 'I make a vow', or, if he mentions the name of one of the Friends (*awliyā'*) of Allah, the vow is not valid. If a vow is valid and a *mukallaf*[1] intentionally (*'amdan*) does not act according to it, he will have committed a sin and he must give recompense (*kaffārah*). The *kaffārah* for not fulfilling one's vow is the same as the *kaffārah* for not fulfilling one's oath (*qasam*), which will be mentioned later.[2]

Ruling 2659. A person who makes a vow must be of the age of legal responsibility (*bāligh*), and sane (*'āqil*). He must also make the vow of his own volition (*ikhtiyār*) and have the intention (*qaṣd*) to make it. Therefore, a vow is not valid if it is made by someone who has been compelled to make it, or who in his anger made it unintentionally or did not make it of his own volition.

Ruling 2660. With regard to a person who is foolish with finances (*safīh*) - i.e. someone who spends his wealth in futile tasks - if, for example, he vows to give something to the poor (*fuqarā'*), it is not valid. The same applies with regard to someone who has been proclaimed bankrupt (*mufallas*); therefore, if he vows to, for example, give something to the poor from his property over which he has been prohibited from having disposal, it is not valid.

Ruling 2661. The vow made by a wife without prior permission

1 A *mukallaf* is someone who is legally obliged to fulfil religious duties.
2 See Ruling 2687.

from or subsequent consent of her husband on a matter that infringes on his conjugal rights is not valid, even if she made the vow before getting married. As for the validity of a wife's vow made with respect to her own wealth without the consent of her husband, this is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution, it is not valid].[3] Therefore, in such a case, precaution (*iḥtiyāṭ*) must be observed except with respect to [a vow made for] performing hajj, giving alms tax (zakat), giving alms to the poor (*ṣadaqah*), being benevolent to her mother and father, and maintaining good family ties (*ṣilat al-arḥām*).

Ruling 2662. If a wife makes a vow with the consent of her husband, he cannot annul her vow or prevent her from fulfilling it.

Ruling 2663. The vow of a child is not conditional on the consent of the father. However, if the father or mother prohibit him from doing the act that he has vowed to do and their prohibition is due to their compassion for him and his opposition would annoy them, then his vow becomes invalid (*bāṭil*).

Ruling 2664. A person can only vow to perform something that is possible for him to perform. Therefore, if a person who, for example, is unable to walk to Karbala vows to do so, his vow is not valid. And if at the time of making a vow one is able to perform it but later becomes unable to do so, his vow becomes void (*bāṭil*) and nothing is obligatory on him [concerning this matter]. The exception to this is if he vows to keep a fast, in which case if he cannot do so, the obligatory precaution is that he must either give 750 grams of food to the poor for every day [that he had vowed to fast but was unable to], or he must give 1.5 kilograms of food to someone to fast on his behalf

Ruling 2665. If a person vows to do something that is unlawful (*ḥarām*) or disapproved (*makrūh*), or to refrain from doing something that is obligatory (*wājib*) or recommended (*mustaḥabb*), his vow is not valid.

3 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2666. If a person vows to do - or refrain from doing - something that is permissible (*mubāḥ*), in the event that doing it and refraining from doing it are legally (*sharʿan*) the same from all aspects, his vow is not valid. However, if doing it is legally better from some aspect and a person makes a vow intending that aspect - for example, he vows to eat something that would give him strength to worship (*ʿibādah*) - his vow is valid. Similarly, if refraining from doing it is legally better from some aspect and a person makes a vow to refrain from doing that thing and intends that aspect - for example, he vows to refrain from smoking as it is harmful and an obstacle to performing religious duties in the best way - his vow is valid. However, if afterwards refraining from smoking becomes harmful for him, his vow becomes invalid.

Ruling 2667. If a person vows to perform his obligatory prayers (*ṣalāh*) in a place where there is no particular reason for one to receive more reward for performing prayers there - for example, he vows to perform prayers in an ordinary room - then, in the event that performing prayers there is legally better from some aspect - for example, due to the solitude there one is able to perform prayers with presence of heart - in such a case, if he makes a vow with respect to this aspect, his vow is valid.

Ruling 2668. If a person vows to do something, he must do it in the manner that he vowed to do it. Therefore, if he vows to give alms to the poor on the first day of the month, or to fast on that day, or to perform the prayer for the first of the month, in the event that he does the vowed act before or after that day, it does not suffice. Also, if he vows to give alms to the poor once a particular sick person gets better, in the event that he gives the alms before the sick person gets better, it is not sufficient.

Ruling 2669. If a person vows to keep a fast but does not specify when and for how long, in the event that he fasts for one day, it is sufficient. If he vows to perform prayers but does not specify how many prayers or their particulars, in the event that he performs

a single two unit (*rakʿah*) prayer, or the *witr* prayer,[4] it is also sufficient. If he vows to give alms to the poor but does not specify the type of thing he will give or its quantity, in the event that he gives something about which it could be said, 'He has given alms to the poor', he will have fulfilled his vow. And if he vows to do something for the sake of Allah, then in case he performs one prayer or fasts for one day or gives something to the poor as alms, he will have fulfilled his vow.

Ruling 2670. If a person vows to fast on a specific day, he must fast on that day. And in case he intentionally does not fast on that day, he must not only make it up [i.e. keep a *qaḍāʾ* fast], he must also give *kaffārah*. However, he can choose to travel on that day and not fast, and in the event that he is already on a journey, it is not necessary for him to make an intention to stay [for ten or more days] and fast. And in case a person does not fast due to travelling or some other legitimate excuse (*ʿudhr*) such as sickness or menstruation (*ḥayḍ*), it is necessary for that person to keep a *qaḍāʾ* fast but there is no *kaffārah*.

Ruling 2671. If a person volitionally does not fulfil his vow, he must give *kaffārah*.

Ruling 2672. If a person vows to refrain from an act for a specific period of time, then once the period comes to end, he can do the act. If before the period comes to an end he does the act owing to forgetfulness or necessity, then nothing is obligatory on him [concerning this matter]; however, he must still not do the act [again] until the period comes to an end. And in the event that he does the act again without a legitimate excuse before the period comes to an end, he must give *kaffārah*.

Ruling 2673. If a person vows to refrain from an act but does not specify a time period for it, then in the event that he does the act owing to forgetfulness, necessity, negligence, error, or because

4 This is the one *rakʿah* prayer that is performed as part of the night prayer. See Ruling 752.

someone compelled him, or he was inculpably ignorant (*al-jāhil al-qāṣir*),[5] in any of these cases, it is not obligatory on him to give *kaffārah*. However, the vow remains in place; therefore, if from then onwards he does the act volitionally, he must give *kaffārah*.

Ruling 2674. If a person vows to fast on a specific day every week, such as Friday, then in the event that *Eid al-Fiṭr* or *Eid al-Aḍḥā*[6] falls on a Friday, or, if on Friday the person has another legitimate excuse to not fast, such as travelling or *ḥayḍ*, he/she must not fast on that day but must keep a *qaḍā'* fast.

Ruling 2675. If a person vows to give a specific amount of alms to the poor, in the event that he dies before he is able to give the alms, it is not necessary for that amount to be given as alms to the poor from his estate. It is better, however, that his *bāligh* heirs give the amount on behalf of the deceased from their share [of the inheritance].

Ruling 2676. If a person vows to give alms to a specific poor person, he cannot then give it to another poor person. And if the specified poor person dies, it is not necessary for the person who made the vow to give the alms to his heirs.

Ruling 2677. If a person vows to visit [i.e. go for *ziyārah* to] the burial place of a specific Imam (ᶜA), such as His Eminence Abā ᶜAbdillāh [Imam al-Ḥusayn] (ᶜA), in the event that he goes for *ziyārah* of another Imam (ᶜA), it is not sufficient. And if he is unable to go for *ziyārah* of that particular Imam (ᶜA) owing to a legitimate excuse, nothing is obligatory on him [concerning this matter].

Ruling 2678. If a person vows to go for *ziyārah* but does not vow to perform the ritual bathing (*ghusl*) for *ziyārah* nor to perform the prayer for *ziyārah*, it is not necessary for him to perform them.

5 Inculpably ignorant' (*al-jāhil al-qāṣir*) is a term used to refer to someone who has a valid excuse for not knowing; for example, he relied upon something that he thought was authoritative but in fact was not.

6 *Eid al-Fiṭr* is on the 1st of Shawwāl and *Eid al-Aḍḥā* is on the 10th of Dhū al-Ḥijjah. It is unlawful to fast on these days. See Ruling 1707.

Ruling 2679. If a person vows to give something to the shrine (*ḥaram*) of one of the Imams (ʿA) or one of the children of the Imams (ʿA) but does not have a specific intention in mind as to how it should be spent, then it must be spent for constructing, illuminating, and carpeting the shrine, or for any similar use. If this is not possible or the shrine is totally needless of the vowed item, it must be used in helping needy visitors to the shrine.

Ruling 2680. If a person vows to give something in the name of the Messenger of Allah (Ṣ), or one of the Imams (ʿA), or one of the children of the Imams (ʿA), or one of the previous scholars, etc., then in the event that he intends for it to be spent in a specific manner, he must give it to be spent in that manner. However, if he does not intend for it to be spent in any specific way, he must give it to be spent on something that is associated with that distinguished personality, such as helping poor visitors to his shrine, or he must give it to be spent on his shrine or in a way that would elevate his name.

Ruling 2681. If a person vows to give a sheep to the poor as alms, or to give it in the name of one of the Imams (ʿA), then in the event that it gives milk or gives birth before it is given to fulfil the vow, the milk/lamb belongs to the person who made the vow, unless his intention [when he made the vow] included the milk/lamb. However, the sheep's wool and the amount of weight it gains are part of the vow.

Ruling 2682. If a person vows that if a sick person gets better or a traveller returns [safely from his journey] he will do some act, then in the event that it becomes known that before he made the vow the sick person had got better or the traveller had returned, it is not necessary for him to fulfil the vow.

Ruling 2683. If a father or mother vows to marry his/her daughter to a *sayyid*[7] or to someone else, their vow with respect to their

7 A *sayyid* is a male descendant of Hashim, the great grandfather of Prophet Muḥammad (Ṣ).

daughter is not valid and it does not place any responsibility (*taklīf*) on her.

Ruling 2684. If a person makes a covenant with Allah that he will do some act if a particular legitimate need of his is fulfilled, then once his need is fulfilled, he must do the act. Also, if he makes a covenant to do something without mentioning any need, it becomes obligatory on him to do the act.

Ruling 2685. As with a vow, a formula must be said in a covenant. For example, a person says, 'I make a covenant with Allah to do such and such act.' It is not necessary that the act the person covenants to do be legally better; rather, it is sufficient that it is not something that has been legally prohibited and would be preferred in the opinion of rational people, or it is in the person's interest that it be done. And if after the covenant is made the act is no longer in the person's interest or it is no longer legally preferred, even though it may not have become disapproved, then it is not necessary to fulfil the covenant.

Ruling 2686. If a person does not fulfil his covenant, he will have committed a sin and must give *kaffārah*. The *kaffārah* is either feeding sixty poor people, or fasting two consecutive months, or freeing a slave.

CHAPTER THIRTY-FIVE

Oath (*Qasam*)

Ruling 2687. If a person takes an oath to do something or to refrain from doing something - for example, he takes an oath to keep a fast or to stop smoking - then in the event that he intentionally (*ʿamdan*) does not fulfil his oath, he will have committed a sin and he must give recompense (*kaffārah*). That is, he must either free a slave, or feed ten poor people (*fuqarāʾ*), or clothe them. And if he cannot do any of these, he must fast for three consecutive days.

Ruling 2688. An oath must fulfil the following conditions [in order for it to be valid (*ṣaḥīḥ*)]:

1. i. the person taking the oath must be of the age of legal responsibility (*bāligh*), and sane (*ʿāqil*). He must also have an intention (*qaṣd*) to take the oath and must take it of his own volition (*ikhtiyār*). Therefore, an oath taken by a child, or an insane or intoxicated person, or someone who has been compelled, is not valid. The same applies [i.e. an oath is not valid) if it is taken by someone who in his anger took it unintentionally or did not take it of his own volition;
2. the act for which one takes an oath must not be unlawful (*ḥarām*) or disapproved (*makrūh*). And the act that one takes an oath to refrain from must not be an obligatory (*wājib*) or recommended (*mustaḥabb*) act. If a person takes an oath to do - or refrain from doing - something that is permissible (*mubāḥ*), in the event that doing it or refraining from doing it is something that would be preferred in the opinion of rational people or it is in the person's worldly interest, the oath is valid;
3. a person must swear by one of the names of the Lord of the worlds that is reserved exclusively for His Holy Essence, such as 'God' and 'Allah'. Alternatively, Allah may be invoked using words that describe attributes and actions exclusive to Him; for example, one can say, 'I swear by the one who created the heavens and the earth.' And if one swears by a name that is also used for a being other than Allah but it is used so frequently to refer to Allah that

whenever someone mentions it the Holy Essence of the Lord comes to mind - such as swearing by the 'Creator' (*al-Khāliq*) or the 'Sustainer' (al-Rāziq) - this too is valid. In fact, if one swears by a name that only comes to mind when one is taking an oath - such as 'The All-Hearing' (*al-Samīʿ*) and 'The All-Seeing' (*al-Baṣīr*) - then again the oath is valid:

4. one must verbally say the oath. However, if a dumb person takes an oath by using sign language, it is valid. And if a person who is unable to speak writes it down and intends it in his heart, it is sufficient. In fact, if a person who is able to speak writes it down, then based on obligatory precaution (*al-iḥtiyāṭ al-wājib*) he must fulfil it;
5. it must be possible for one to fulfil the oath. If at the time of taking the oath it is not possible for one to fulfil it but afterwards it becomes possible, it is sufficient. And if at the time of taking the oath it is possible for one to fulfil it but afterwards he becomes unable to fulfil it, then his oath becomes annulled from the time he became unable to fulfil it. The same applies if fulfilling the oath becomes so excessively difficult (*mashaqqah*) for him that he cannot endure what it takes to fulfil it. And if him not being able to fulfil the oath was due to his own free actions, or it was not due to his own free actions but he did not have a legitimate excuse (*ʿudhr*) for delaying the fulfilment of the oath when he was able to fulfil it, then he will have committed a sin and *kaffārah* is obligatory on him.

Ruling 2689. If a father prevents his son from taking an oath, or if a husband prevents his wife from taking an oath, then any oaths they take are not valid.

Ruling 2690. If a son takes an oath without the permission of his father, or if a wife takes an oath without the permission of her husband, the father and the husband can annul their oaths.

Ruling 2691. If a person does not fulfil his oath owing to forgetfulness, necessity, or negligence, it is not obligatory on him

to give *kaffārah*. The same applies if someone forces him to not fulfil his oath. Furthermore, if an obsessively doubtful person (*muwaswis*) takes an oath - for example, he says, 'By Allah! I will engage in performing prayers now' and due to his obsessive doubting he does not engage in performing his prayers, in the event that his obsessive doubting was such that he did not act of his own volition when he did not fulfil his oath, *kaffārah* is not obligatory on him.

Ruling 2692. If a person takes an oath in order to establish that what he is saying is the truth, in the event that his words are indeed true, the act of taking such an oath is disapproved; and if his words are false, it is unlawful. In fact, a false oath that is taken in order to resolve a dispute is one of the major sins. However, if one takes such an oath in order to save himself or another Muslim from the evil of an unjust person, there is no problem; rather, it sometimes becomes obligatory to do so. Furthermore, if someone is able to employ equivocation (*tawriyah*) while being aware of doing so, then the obligatory precaution is that he must do so. *Tawriyah* is when a person intends a meaning that is contrary to the apparent meaning of what he says, i.e. what he says does not indicate what he intends (but at the same time it is not, strictly speaking, a lie]. For example, an unjust person wishes to harass a particular individual and he asks someone, 'Have you seen him?' Now, even though the person being asked saw him an hour ago, he replies, 'I have not seen him' and by that he means he has not seen him in the last five minutes.

CHAPTER THIRTY-SIX

Charitable Endowment (*Waqf*)

Ruling 2693. If a person endows some property, it no longer belongs to him. Neither he nor anyone else can gift or sell the item, nor can anyone inherit it. However, in some cases, which are mentioned in Rulings 2104 and 2105, there is no problem in selling it.

Ruling 2694. It is not necessary for the formula (*ṣīghah*) of an endowment to be said in Arabic; rather, if a person says [in English], for example, 'I endow this book to students of the religious sciences', the endowment is valid (*ṣaḥīḥ*). In fact, an endowment can also be realised by an act. For example, an endowment is realised if a person places a *ḥaṣīr*[1] in a mosque with the intention (*qaṣd*) of making an endowment to the mosque, or if he builds a building in the way that mosques are built with the intention of making a mosque. However, an endowment is not realised by only making an intention. Also, acceptance is not necessary in an endowment, be it a public charitable endowment (*al-waqf al-ʿāmm*) or a private charitable endowment (*al-waqf al-khāṣṣ*).[2] Furthermore, an intention to attain proximity to Allah (*qaṣd al-qurbah*) is not necessary.

Ruling 2695. If a person specifies some property for an endowment but changes his mind or dies before he gives it as an endowment, then an endowment is not realised. The same applies if in a private charitable endowment, the beneficiary of the endowment (*al-mawqūf ʿalayh*) dies before he takes possession.

Ruling 2696. An endower (*wāqif*) of some property must endow it forever from the moment he makes the charitable endowment. Therefore, if, for example, he says, 'This property is to be a charitable endowment after my death', it is not valid because it

1 A *ḥaṣīr* is mat that is made by plaiting or weaving straw, reed, or similar materials of plant origin.

2 A 'general' charitable endowment is one that is made for a public interest - such as an endowment to a school - or to a general category of people, such as the poor. A 'specific' charitable endowment, on the other hand, is one that is made to a particular individual or individuals, such as an endowment to one's children.

is not an endowment from the moment he says the formula until his death. Similarly, if he says, 'This is a charitable endowment for ten years but not thereafter', or if he says, 'This is a charitable endowment for ten years; after that, it will not be a charitable endowment for five years; and after that, it will be a charitable endowment again', the endowment is not valid. However, in this case, if he makes the intention of a bequest (*ḥubs*),[3] then a bequest is realised.

Ruling 2697. A private charitable endowment is valid only if the endowed property (*al-ʿayn al-mawqūfah*) is placed at the disposal of the individuals for whom it has been endowed, or their agent (*wakīl*) or guardian (*walī*). It is sufficient if those who are alive from the first generation of beneficiaries have disposal over it; and if some of them have disposal over it, then the endowment is valid only with respect to them. If a person makes an endowment to his offspring who are minors (*ṣaghīr*s), then as long as the actual property is in his possession, it is sufficient and the endowment is valid.

Ruling 2698. In the case of public charitable endowments: such as those made to schools, mosques, and suchlike, possession is not a requirement and the endowment is realised merely by making the endowment.

Ruling 2699. An endower must be of the age of legal responsibility (*bāligh*), sane (*ʿāqil*), have an intention to make the endowment, and make it of his own volition (*ikhtiyār*). He must also legally (*sharʿan*) be able to have disposal over his own property. Therefore, if a person who is foolish with finances (*safīh*) - i.e. someone who spends his wealth in futile ways - endows something, it is not valid because he does not have right of disposal over his own property.

3 There are two main differences between a 'bequest' and a 'charitable endowment': firstly, in a bequest, the bequeathed property still belongs to the person who made the bequest, whereas in a charitable endowment, the endowed property no longer belongs to the person who made the endowment. Secondly, a bequest can be made for a temporary period of time, whereas a charitable endowment must be made forever.

Ruling 2700. If some property is endowed to a child that is still in the womb of its mother, the validity of it is problematic (*maḥall al-ishkāl*)[4] and it is necessary to observe precaution (*iḥtiyāṭ*) here. However, if some property is endowed for persons who are currently alive, and after them for those who will be born in the future, then the endowment is valid even if the latter are not in the wombs of their mothers at the time of making the endowment. For example, it is valid if a person endows something for his children, and after them for his grandchildren, and for each generation to use the endowment after the previous generation.

Ruling 2701. If a person endows something to himself - for example, he endows a shop to himself so that after his death the income from it would be spent on paying off his debts or to hire someone to perform his lapsed (*qaḍāʾ*) ritual acts of worship (*ʿibādāt*) - then such an endowment is not valid. However, if he, for example, endows a house to accommodate poor people (*fuqarāʾ*) and he himself becomes poor, he can reside in that house. But if he endows the property so that its rental income is to be distributed among the poor and he himself becomes poor, then for him to take from the rental income is problematic [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), he must not take from it].

Ruling 2702. If a person appoints a trustee (*mutawallī*) for the property that he has endowed, the trustee must act in accordance with the endowment. And if a person does not appoint anyone, in the event that he has endowed the property to specific individuals, such as his children, then the authority (*ikhtiyār*) to use the property lies with them. But if they are not *bāligh*, the authority lies with their guardian. Furthermore, it is not necessary to obtain permission from a fully qualified jurist (*al-ḥākim al-sharʿī*) in order to use the endowment. However, with respect to matters that pertain to the interest of the endowment or the interest of future generations - such as making repairs to the endowed property and giving it on rent (*ijārah*) for the benefit of subsequent generations - the authority for this lies with a fully qualified jurist.

4 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

Ruling 2703. If a person endows some property to the poor or to *sādāt*[5] or for its profits to be used for charitable causes, in the event that he does not appoint a trustee for the property, the authority over it lies with a fully qualified jurist.

Ruling 2704. If a person endows some property for specific individuals, such as his children, so that each generation uses it after the previous generation, in the event that the trustee of the endowmenl gives it on rent and dies thereafter, the rental agreement does not become void (*bāṭil*). However, if there is no trustee for the endowment and those from one of the generations for whom the property was endowed give it on rent and thereafter they die during the rental period, then, in the event that those from the next generation do not endorse the rental agreement, it will become void. And if the lessee of the rented property has paid the rent for the entire rental period, he can take back the amount he has paid from the time the agreement became void.

Ruling 2705. If the endowed property is ruined, it does not cease to be an endowment unless the endowment is conditional on a particular subject and that subject ceases to exist. For example, a person endows a garden on condition that it remains a garden; therefore, if the garden is ruined, the endowment becomes void and it reverts to the endower's heirs.

Ruling 2706. If part of a property has been endowed and part of it has not been endowed and the property has not been divided, the trustee of the endowment and the owner of the part that has not been endowed can separate the endowed part.

Ruling 2707. If the trustee of an endowment acts disloyally - for example, he does not spend the income from it in the way that was specified - then a fully qualified jurist can appoint a trustworthy individual (*amīn*) to join up with him in order to prevent him from acting disloyally. And if this is not possible, a fully qualified jurist

5 *Sādāt* (pl. of *sayyid*) are descendants of Hashim, the great grandfather of Prophet Muḥammad (Ṣ).

can depose him and appoint a trustworthy person as trustee in his place.

Ruling 2708. A rug that has been endowed to a *ḥusayniyyah*[6] cannot be taken to a mosque to be used for prayers (*ṣalāh*) even if the mosque is situated close to the *ḥusayniyyah*. However, if it is the property of the *ḥusayniyyah*, it can be taken to another place with the consent of the trustee.

Ruling 2709. If some property is endowcd for repairing a mosque but the mosque does not need any repairs and neither is it expected that it will need some repair work in the not too distant future, and if it is not possible to collect the income from the property and keep it so that it can be spent on repairing the mosque later on, then in such a case, the obligatory precaution is that the income from the property must be spent on a cause that is close to what the endower had in mind, such as securing items that are required by the mosque or repairing another mosque.

Ruling 2710. If a person endows some property so that the income from it can be used to repair a mosque and be given to the imam of the congregation (*jamāʿah*) and to the person who says the call to prayer (*adhān*) at the mosque, in the event that the endower has specified an amount for each one of them, the income must be spent in that way. But if the endower has not specified the amounts, then the income must first be spent on repairing the mosque. And if anything is left over, the trustee must divide it, as he sees fit, between the imam of the congregation and the person who says the *adhān*. However, it is better that these two people arrive at a settlement (*ṣulḥ*) on the division of the income.

6 A *ḥusayniyyah* is a congregation hall for Shia ceremonies.

CHAPTER THIRTY-SEVEN

Will (*Waṣiyyah*)

Ruling 2711. A will is an instruction by a person for certain tasks to be performed for him after his death. In a will, a person states that after his death something from his property is to be owned by someone, or that something from his property is to be transferred to someone or be spent on charitable and good causes, or that he appoints someone to be the custodian and guardian of his children and dependants. A person who gives effect to a will is called an 'executor' (*waṣī*).

Ruling 2712. If a person who is unable to speak conveys his intentions by indicating, he can make a will for any task. In fact, a will made by a person who is able to speak but who conveys his intentions by indicating is also valid (*ṣaḥīḥ*).

Ruling 2713. If a document is found with the signature or seal of the deceased, in the event that there are contextual indicators that make it appear to be the deceased's will, it must be acted upon.

Ruling 2714. A testator (*mūṣī*) [i.e. a person who makes a will] must be of the age of legal responsibility (*bāligh*) and sane (*ʿāqil*); he must not be foolish with finances (*safīh*)[1] and he must voluntarily make the will. Therefore, the will of a child who is not *bāligh* is not valid unless the child is ten years old and his will is for his close relatives or it is for spending on general charitable causes; in these two cases, the will is valid. However, if he makes a will for other than close relatives, or if the child is seven years old and he makes a will that pertains to a small part of his estate, then the validity of such a will is problematic (*maḥall al-ishkāl*);[2] therefore, precaution (*iḥtiyāṭ*) must be observed here. If the person is foolish with finances, his will pertaining to his wealth is ineffective but it is effective with regard to other matters, such as preparing his body for burial.

Ruling 2715. If a person injures himself with the intention of

1 Ruling 2091 provides further clarification of this term: it refers to someone who spends his wealth in futile tasks.

2 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

committing suicide or consumes deadly poison and then makes a will for part of his estate to be spent in a particular way and he then dies, his will is not valid unless he was performing jihad in the way of Allah. His will with respect to non-financial matters, however, is valid.

Ruling 2716. If a person makes a will that something from his property is to be owned by someone, and if the latter accepts the will - irrespective of whether he accepts it during the lifetime of the testator or after his death - then, as long as the item is not more than a third of the testator's estate, he becomes the owner of the item upon the testator's death.

Ruling 2717. Whenever a person notices the signs of his approaching death, he must immediately return those things that he was holding on trust (*amānah*) to their owners, or he must inform them as per the details mentioned in Ruling 2361. If he is indebted to someone and the date for repaying the debt is not yet due, or it is due but the creditor does not ask for it, or the creditor asks for it but he is unable to pay him, then in such cases, he must make arrangements such that he is confident (i.e. he has *iṭmi'nān*) that his debt will be paid to the creditor after his death. For example, in the case where his debt is not known to others, he must make a will [regarding this debt] and get someone to witness it. However, if he is able to pay the debt and its date is due and the creditor asks for it, he must immediately pay it even if he does not notice the signs of his approaching death.

Ruling 2718. If a person who notices the signs of his approaching death owes the one-fifth tax (*khums*), alms tax (*zakat*), or *maẓālim*[3] but is unable to pay it at present, in the event that he has sufficient wealth to pay it, or he deems it probable that someone else will pay it, he must make arrangements such that he is confident that his debt will be paid after his death. For example, he must make a will for a trusted individual [to pay it]. The same applies if *hajj* is

3 *Maẓālim* refers to property which has been unrightfully or unknowingly taken.

obligatory on him and he is unable to get a representative (*nāʾib*) [to perform hajj on his behalf] at the present time. However, if he is able to pay the debt of his religious dues at the present time, he must pay it without delay even if he does not notice the signs of his approaching death.

Ruling 2719. If a person notices the signs of his approaching death and has lapsed (*qaḍāʾ*) prayers (*ṣalāh*) and fasts (*sawm*), he must make arrangements such that he is confident that they will be made up on his behalf after his death. For example, he must make a will that someone is to be hired from his estate to perform them. In fact, if he does not have an estate but deems it probable that someone may perform them free of charge, again it is obligatory (*wājib*) on him to make a will [regarding this]. However, if there is someone, such as his eldest son, who he knows would perform his lapsed prayers and fasts were that person to be informed of them, then it is sufficient for that person to be informed and it is not necessary to make a will [regarding this].

Ruling 2720. If a person who notices the signs of his approaching death has kept some property with someone, or he has hidden it in a place not known to his heirs, the obligatory precaution (*al-iḥtiyāṭ al-wājib*) is that he must inform them of it. Furthermore, it is not necessary for him to appoint a custodian and guardian for his children who are minors (*ṣaghīr*); however, in the event that their property would perish or they themselves would be ruined, he must appoint a trustworthy (*amīn*) custodian for them.

Ruling 2721. An executor must be sane; and with regard to matters concerning the testator himself, and, based on obligatory precaution, matters concerning others, an executor must also be trustworthy. Furthermore, based on obligatory precaution, the executor of a Muslim must be Muslim. To appoint a minor to be an executor on his own is not correct (*ṣaḥīḥ*), based on obligatory precaution, if the testator intends the minor to have disposal over the estate while he is still a minor and without the permission of his guardian (*walī*). The minor's discretions over the estate must be

carried out with the permission of a fully qualified jurist (*al-ḥākim al-sharʿī*). But if the testator intends the minor to have disposal over the estate after he has reached the age of legal responsibility (*bulūgh*) or with the permission of his guardian, then there is no problem.

Ruling 2722. If a person appoints a number of executors for his will and gives permission for each of them to execute the will independently, it is not necessary for them to attain each other's permission in executing the will. However, if the testator does not give such permission, irrespective of whether or not he has stated that they should jointly execute the will, then they must execute the will in consultation with each other. If they are not prepared to jointly execute the will and there is no legal impediment that prevents each of them from doing so, then a fully qualified jurist may compel them to jointly execute the will. And if they fail to comply or have a legal impediment that prevents each of them from doing so, then the fully qualified jurist may appoint another person in place of any one of them.

Ruling 2723. If a person retracts his will - for example, he states that the one-third of his estate[4] is to be given to someone but then states that it must not be given to him - such a will becomes void (*bāṭil*). And if he changes his will - for example, he appoints a custodian for his children but then appoints someone else in his place - his first will becomes void and his second will must be acted upon.

Ruling 2724. If a person does something that demonstrates he has retracted his will - for example, he sells the house that he had left to someone in his will, or he appoints an agent (*wakīl*) to sell the house, contrary to what he had stated in his will - such a will becomes void.

Ruling 2725. If a person makes a will that a particular item is to be

4 This refers to the maximum amount of one's estate over which he has discretion in a will for it to be disposed of in accordance with his wishes after his death.

given to someone and thereafter makes a will that half of it is to be given to someone else, then half of that thing must be given to each of them.

Ruling 2726. If a person gifts part of his wealth to someone during the period of his terminal illness and makes a will that after his death some of his estate is to be given to someone else, then, in the event that one-third of his estate is insufficient to cover both [i.e. the gift and what was bequeathed in the will] and the heirs are not prepared to give permission for more than one-third to be given from the estate, first the property that was gifted must be taken out of the one-third, and then the remaining property must be dealt with in accordance with the will.

Ruling 2727. If a person makes a will that the one-third of his estate must be sold and the proceeds from it must be spent in a particular way, his words must be acted upon.

Ruling 2728. If a person states during his terminal illness that he owes an amount to someone, in the event that he is believed to have a vested interest in saying this, namely to inflict a loss on his heirs, they must give the specified amount from the one-third of his estate. However, if he is not believed to have such a vested interest, his avowal (*iqrār*)[5] is effective and they must pay the amount from his main estate.

Ruling 2729. If a person makes a will that something is to be given to a particular beneficiary, it is not necessary that the beneficiary be alive at the time the will was made. Therefore, if the beneficiary is alive after the testator's death, it is necessary that the thing be given to him. If, however, the beneficiary is not alive after the death of the testator, then, if it can be construed from the will that the thing can be used in other ways, it must be used in a way that is nearest to the testator's original intention; otherwise, the heirs can share it among themselves. However, if a person makes a will

5 An avowal in Islamic law is when someone admits to a right to his own detriment or denies a right for himself over someone else.

that something from his property is to be owned by a particular beneficiary after his death and that beneficiary is alive at the time of the testator's death - albeit as a foetus into which the soul has not yet entered - the will is valid; otherwise, it is void, and the heirs will share what was bequeathed among themselves .

Ruling 2730. If a person comes to know that someone has appointed him as his executor and he informs the testator that he is not prepared to execute his will, it is not necessary for him to execute the will after the testator's death. However, if he does not come to know before the testator's death that the testator had appointed him as his executor, or he comes to know this but does not inform the testator that he is not prepared to execute his will, then as long as it does not cause him excessive difficulty (*mashaqqah*), he must execute his will. And if the executor becomes aware before the testator's death but at a time when the testator is unable to appoint another executor due to the severity of his illness or for some other reason, then based on obligatory precaution he must accept to execute the will.

Ruling 2731. If a testator dies, his executor cannot appoint another person to execute the will and excuse himself from doing it. However, if the executor knows that the testator did not intend for him to perform the task himself but rather his intention was simply that the task be performed, then he can appoint another person on his behalf.

Ruling 2732. .If a person appoints two individuals as his executors and one of them dies, or becomes insane or a disbeliever (*kāfir*), then, if it can be understood from the wording of the will that in such a situation the other person is to act as executor on his own, the will must be executed in this way; otherwise, a fully qualified jurist will appoint another person in his place. If both of them die or become insane or apostate, the fully qualified jurist will appoint two people. However, if one person is able to execute the will, it will not be necessary for him to appoint two people.

Ruling 2733. If an executor cannot carry out the will of the deceased by himself, albeit by appointing an agent or hiring someone, a fully qualified jurist will appoint another person to assist him.

Ruling 2734. If some of the deceased's estate perishes in the possession of the executor, in the event that he was negligent in safeguarding it or he was excessive - for example, the testator had specified that a particular amount be given to the poor (*fuqarāʾ*) in a particular city but the executor takes the property to a different city and it perishes on the way - in such a case, the executor is responsible (*ḍāmin*). However, if he was neither negligent nor excessive, he is not responsible.

Ruling 2735. If a person appoints someone as his executor and says, 'Should this executor die, so-and-so is to be my executor', then after the first executor dies, the second executor must execute the will.

Ruling 2736. *Hajj* that had become obligatory on a deceased person on account of him being able (*mustaṭī*)[6] to perform it, and the debts and religious dues that are obligatory to pay - such as *khums*, *zakat*, and *maẓālim* - must be paid from his entire estate even if he has not made provision for these in his will. As for dues pertaining to recompense (*kaffārah*) and vow (*nadhr*), including *hajj* that had become obligatory on account of a vow, these are paid from the one-third of his estate if they have been mentioned in a will.

Ruling 2737. If the deceased's estate exceeds the amount required to pay for his debts, his obligatory *hajj*, and his obligatory religious dues like *khums*, *zakat*, and *maẓālim*, then, in the event that he has made a will that the one-third of his estate or part of the one-third of his estate should be spent for a particular purpose, his will must be executed accordingly. And if he has not made a will, the remaining amount belongs to his heirs.

6 See Ruling 2045, condition 4.

Ruling 2738. If the dispensation specified by a testator is more than one-third of his estate, his will with regard to the amount exceeding one-third will be valid only if his heirs give permission by words or action; heartfelt consent is not sufficient. If they give permission some time after his death, the will is valid. And in the event that some of his heirs give permission and others do not, the will is valid and effective only with regard to the shares of those who give permission.

Ruling 2739. If the dispensation specified by a testator is more than one-third of his estate and his heirs give permission for it, they cannot retract their permission. If during the lifetime of the testator they deny permission, they can give permission after his death. However, if after his death they deny permission, then permission given afterwards is ineffectual.

Ruling 2740. If a person makes a will that his *khums*, *zakat*, or other debts must be paid from the one-third of his estate and that someone should be hired to perform his lapsed prayers and fasts and recommended acts such as feeding the poor, then, first his debts must be paid from the one-third of his estate, and if anything remains thereafter, it must be used for hiring someone to perform his lapsed prayers and fasts. If anything still remains thereafter, it must be used for the recommended acts specified by the deceased. In the event that one-third of his estate is adequate only to pay for his debts and the heirs do not give permission for more than a third of his estate to be spent, then his will with regard to his lapsed prayers and fasts and recommend acts is invalid (*bāṭil*).

Ruling 2741. If a person makes a will that his debts are to be paid off, that someone is to be hired to perform his lapsed prayers and fasts, and that recommended acts are to be performed on his behalf, then, in the event that he does not stipulate in his will that these are to be paid from the one-third of his estate, his debts must be paid from his entire estate. If anything remains thereafter, one-third of it must be spent on the lapsed prayers and fasts and the recommended acts that he had specified. In case one-third

of the remaining wealth is not sufficient, then, if his heirs give permission, his wishes in his will must be executed. If they do not give permission, the lapsed prayers and fasts must be paid for from one-third of the remainder, and if anything remains thereafter it must be used for the recommended acts that he had specified.

Ruling 2742. If a person says, 'The deceased had willed for such and such amount to be given to me', then what is claimed by him must be given to him in the following cases:

1. two just (*ʿādil*) men verify his claim;
2. he takes an oath (*qasam*) and one just man verifies his claim;
3. one just man and two just women testify to his claim;
4. or four just women testify to his claim.

If one just woman testifies to his claim, then one-quarter of what he claims must be given to him; if two just women testify, half of it must be given to him; and if three just women testify, three-quarters of it must be given to him. If his claim is verified by two men from the People of the Book (*ahl al-kitāb*)[7] who are *dhimmī*s[8] and who are considered to be just according to their own religion, and there is no Muslim to testify, then what is claimed by him must be given to him.

Ruling 2743. If a person says, 'I am the executor of the deceased in disposing of his estate', his claim will be established if two just men verify it, or, if there is no Muslim to testify, two *dhimmī* men who are considered to be just according to their own religion verify his claim. Similarly, his claim will be established by the avowal (*iqrār*) of the heirs.

Ruling 2744. If a person makes a will that something from his estate is to be given to an individual and the latter dies before he can accept or reject it, his heirs can accept the property as long as

7 As mentioned in Ruling 103, the 'People of the Book' are Jews, Christians, and Zoroastrians.

8 *Dhimmī*s are People of the Book who have entered into a *dhimmah* treaty, i.e. an agreement that gives them rights as protected subjects in an Islamic state.

they have not rejected the will. However, this rule (*ḥukm*) applies when the testator does not retract his will; if he does retract it, they will have no right over the property.

CHAPTER THIRTY-EIGHT

Inheritance (*Irth*)

Ruling 2745. There are three groups of people who inherit from a deceased person on the basis of kinship.

The first group consists of the deceased's father, mother, and offspring, and in the absence of offspring, the grandchildren, however many generations they go forward; whoever from among them is nearer to the deceased inherits from him. And as long as there is even one person from this group, those in the second group do not inherit.

The second group consists of the deceased's grandfathers, grandmothers, sisters, and brothers, and in the absence of sisters and brothers, their offspring; whoever from among them is nearer to the deceased inherits from him. And as long as there is even one person from this group, those in the third group do not inherit.

The third group consists of the deceased's paternal uncles and paternal aunts, maternal uncles and maternal aunts, and their offspring. And as long as even one person from the paternal uncles and paternal aunts and maternal uncles and maternal aunts of the deceased is alive, their offspring do not inherit. However, if there is one paternal half-uncle from the father's side[1] and one full paternal cousin, and there are no maternal uncles or maternal aunts, then the paternal cousin inherits from him to the exclusion of the paternal half-uncle. But if there are a number of paternal uncles or a number of paternal cousins, or if the deceased's widow is alive, then this rule (*ḥukm*) is problematic (*maḥall al-ishkāl*) [i.e. based on obligatory precaution (*al-iḥtiyāṭ al-wājib*), the rule is not established in this case].[2]

Ruling 2746. If there are no paternal uncles, paternal aunts, maternal uncles, or maternal aunts, nor any of their offspring or grandchildren, then the deceased is inherited by the paternal uncles and paternal aunts and maternal uncles and maternal aunts

1 That is, a paternal half-brother of his father (see *al-Masā'il al-Muntakhabah*, p. 477, Ruling 1344).

2 As mentioned in Ruling 6, the term 'problematic' (*maḥall al-ishkāl*) amounts saying that the ruling is based on obligatory precaution.

of the deceased's parents. If they are not alive, their offspring inherit. If they are not alive, the paternal uncles and paternal aunts and maternal uncles and maternal aunts of the deceased's paternal grandparents inherit. And if they are not alive, their offspring inherit.

Ruling 2747. A husband and wife inherit from one another as per the details that will be mentioned later.

INHERITANCE OF THE FIRST GROUP

Ruling 2748. If there is only one heir of the deceased from the first group - for example, his father or mother, or one son or one daughter - then that person inherits the entire estate of the deceased. And if there is one son and one daughter, then the estate is divided among them in such a way that the son receives twice the share of the daughter.

Ruling 2749. If the only heirs of the deceased are his father and his mother, the estate is divided into three parts: two parts are inherited by his father and one part by his mother. However, if the deceased has two brothers or four sisters, or one brother and two sisters, and they are all Muslims and free [i.e. not slaves], and their father is also the father of the deceased even though their mothers may be different, and they have been born, then they do not inherit anything while the deceased's father and mother are alive. In such a case, his mother inherits one-sixth of the estate and his father inherits the rest.

Ruling 2750. If the only heirs of the deceased are his father, mother, and one daughter, in the event that the deceased does not have a brother or sister who fulfils the conditions mentioned in the previous ruling, the estate is divided into five parts: his father and mother inherit one part each and his daughter inherits three parts. If the deceased has a brother or sister who fulfils the conditions mentioned previously, then his father inherits one-fifth, his mother one-sixth, and his daughter three-fifths. With

regard to the one-thirtieth that remains - which is probably the share of the mother, just as it is probable that three-quarters of it is the share of his daughter and one-quarter of it the share of his father - based on obligatory precaution, they must arrive at a settlement (*muṣālaḥah*).

Ruling 2751. If the only heirs of the deceased are his father, mother, and one son, the estate is divided into six parts: his father and mother inherit one part each and his son inherits four parts. If the deceased has a number of sons or daughters, then the four parts must be divided equally among them. And if he has a son and a daughter, then the four parts must be divided among them in a way that each son receives twice the share of each daughter.

Ruling 2752. If the only heirs of the deceased are his father or his mother and one or a number of sons, the estate is divided into six parts: one part is inherited by his father or mother and five parts are inherited by his son. And if there are a number of sons, then the five parts are divided equally among them.

Ruling 2753. If the only heirs of the deceased are his father or his mother and a number of his sons and daughters, the estate is divided into six parts: one part is inherited by his father or mother and the remainder is divided among his sons and daughters in a way that each son receives twice the share of each daughter.

Ruling 2754. If the only heirs of the deceased are his father or his mother and one daughter, his estate is divided into four parts: one part is inherited by his father or mother and the rest is inherited by his daughter.

Ruling 2755. If the only heirs of the deceased are his father or his mother and a number of daughters, the estate is divided into five parts: one part is inherited by his father or mother and four parts are divided equally among his daughters.

Ruling 2756. If the deceased has no offspring, the child of his

son receives the share of the deceased's son even if she is a girl, and the child of his daughter receives the share of the deceased's daughter's share even if he is a boy. For example, if the deceased has a grandson from his daughter and a granddaughter from his son, the estate is divided into three parts: one part is inherited by the grandson from his daughter and two parts is inherited by the granddaughter from his son. With regard to grandchildren inheriting, it is not a condition that their father and mother be deceased.

INHERITANCE OF THE SECOND GROUP

Ruling 2757. The second group of persons who inherit on the basis of kinship consists of the deceased's grandfathers, grandmothers, brothers, and sisters; and if the deceased does not have any brothers or sisters, their offspring inherit.

Ruling 2758. If the only heir of the deceased is one brother or one sister, he or she inherits the entire estate. If he has more than one full brother or more than one full sister, the estate is divided equally between them. And if he has both full brothers and full sisters, then every brother receives twice the share of every sister. For example, if he has two full brothers and one full sister, the estate is divided into five parts: each brother receives two parts while the sister receives one part.

Ruling 2759. If the deceased has full brothers and full sisters, his half-brothers and half-sisters who have the same father as the deceased but a different mother do not inherit from him. If he has no full brothers or full sisters and has only one paternal half-sister or only one paternal half-brother, then the entire estate is inherited by him or her. If he has more than one paternal half-brother or more than one paternal half-sister alone, then the estate is divided equally between them. And if he has paternal half-brothers as well as paternal half-sisters, then every half-brother receives twice the share of every half-sister.

Ruling 2760. If the only heir of the deceased is one maternal half-sister or one maternal half-brother, their father being different to the father of the deceased, he or she inherits the entire estate. And if he has more than one maternal half-brother or more than one maternal half-sister, or more than one of both [i.e. more than one maternal half-brother and more than one maternal half-sister], then the estate is divided equally between them.

Ruling 2761. If the deceased has full brothers and full sisters as well as paternal half-brothers and paternal half-sisters and one maternal half-brother or one maternal half-sister, the paternal half-brothers and paternal half-sisters do not inherit. In this case, the estate is divided into six parts: one part is received by the maternal half-brother or maternal half-sister, and the remainder is divided among the full brothers and full sisters with every brother receiving twice the share of every sister.

Ruling 2762. If the deceased has full brothers and full sisters as well as paternal half-brothers and paternal half-sisters and more than one maternal half-brother and maternal half-sister, the paternal half-brothers and paternal half-sisters do not inherit. In this case, the estate is divided into three parts: one part is divided equally between the maternal half-brothers and maternal half-sisters, and the remainder is divided between the full brothers and full sisters with every brother receiving twice the share of every sister.

Ruling 2763. If the only heirs of the deceased are his paternal half-brothers and paternal half-sisters and one maternal half-brother or one maternal half-sister, the estate is divided into six parts: one part is received by the maternal half-brother or maternal half-sister, and the remainder is divided between the paternal half-brothers and paternal half-sisters with every brother receiving twice the share of every sister.

Ruling 2764. If the only heirs of the deceased are his paternal half-brother and paternal half-sister and more than one maternal half-brother and maternal half-sister, the estate is divided into

three parts: one part is shared equally between the maternal half-brothers and maternal half-sisters, and the remainder is received by the paternal half-brother and paternal half-sister with every brother receiving twice the share of every sister.

Ruling 2765. If the only heirs of the deceased are his brother, sister, and wife, the wife inherits as per the details that will be mentioned later, and the sister and brother inherit as stated in the previous rulings. Furthermore, if a woman dies and her only heirs are her sister, her brother, and her husband, the husband inherits half of the estate and the sister and the brother inherit as stated in the previous rulings. However, for the wife or husband to inherit, nothing is deducted from the share of the maternal half-brother and maternal half-sister, but there is a deduction from the share of the full brother and full sister or paternal half-brother and paternal half-sister. For example, if the heirs of the deceased are her husband, maternal half-brother and maternal half-sister, and full brother and full sister, then half of the estate is received by the husband, and one-third of the estate is received by the maternal half-brother and maternal half-sister, and whatever remains is the property of the full brother and full sister. Therefore, if the total estate of the deceased is £6000, £3000 goes to the husband, £2000 goes to the maternal half-brother and maternal half-sister, and £1000 is the share of the full brother and full sister.

Ruling 2766. If the deceased does not have a sister or a brother, their share of the inheritance is given to their offspring, and the share of the maternal half-brother's child and maternal half-sister's child is divided equally among them. As for the share of the paternal half-brother's child and paternal half-sister's child, or the child of the full sibling, based on the well-known (*mashhūr*) juristic opinion, every son receives twice the share of the daughter. However, it is not farfetched (*baʿīd*)[3] that the estate must be divided equally between them and, based on obligatory precaution, they must arrive at a settlement.

3 For practical purposes, a legal opinion that is termed 'not farfetched' equates to a *fatwa*.

Ruling 2767. If the only heir of the deceased is one grandfather or one grandmother, irrespective of whether they are paternal or maternal, the entire estate is inherited by him/her. The great grandfather of the deceased does not inherit as long as the grandfather is alive. If the only heirs of the deceased are his paternal grandfather and paternal grandmother, the estate is divided into three parts: two parts are inherited by the grandfather and one part by the grandmother. And if the heirs are his maternal grandfather and maternal grandmother, the estate is divided equally between them.

Ruling 2768. If the only heir of the deceased is one paternal grandfather or paternal grandmother as well as one maternal grandfather or maternal grandmother, the estate is divided into three parts; two parts are inherited by the paternal grandfather or paternal grandmother, and one part is inherited by the maternal grandfather or maternal grandmother.

Ruling 2769. If the heirs of the deceased are paternal grandparents and maternal grandparents, the estate is divided into three parts: one part is divided equally between the maternal grandfather and the maternal grandmother, and the remaining two parts are inherited by the paternal grandfather and the paternal grandmother with the paternal grandfather receiving twice the share of the paternal grandmother.

Ruling 2770. If the only heirs of the deceased are his wife and his paternal grandparents and his maternal grandparents, his wife inherits as per the details that will be mentioned later. One-third of the estate of the deceased is received by the maternal grandparents, divided equally between them. The remainder is received by the paternal grandparents with the paternal grandfather receiving twice the share of the paternal grandmother. If the heirs of the deceased are her husband and her paternal and maternal grandparents, the husband receives half of the estate and the grandparents inherit in accordance with the instructions that were mentioned in the previous rulings.

Ruling 2771. When there is a combination of one brother or sister, or some brothers or sisters with grandparents, there are a number of scenarios, as follows.

1. Each of the grandparents and brother or sister are all from the deceased's mother's side. In this case, the estate is divided equally between them even though some of them may be male and others female.
2. All of them are from the father's side. In this case also, the estate is divided equally between them provided that all of them are male or all of them are female. If they are of different genders, every male receives twice as much as every female.
3. Each of the grandfather or grandmother is from the deceased's father's side, and the brother or sister are siblings of the deceased. The rule (*ḥukm*) in this case is the same as the rule in the previous case. And it has previously been established that if the paternal half-brother or paternal half-sister of the deceased combines with a full brother or full sister, the paternal half siblings do not inherit.
4. The grandfathers or grandmothers, or both, paternal and maternal, are combined with brothers or sisters, or both, who are also paternal and maternal. In this case, one-third of the estate is received by the maternal relatives comprising of the brothers and sisters, grandfathers and grandmothers; this is to be divided equally between the males and the females. And two-thirds of the estate is received by the paternal relatives, with every male receiving twice as much as every female. If all of them are male or all of them are female, then it must be divided equally between them.
5. A paternal grandfather or grandmother combines with a maternal half-brother or maternal half-sister. In this case, if there is only one maternal half-brother or maternal half-sister, he/she receives one-sixth of the estate, and if there are more than one, then they receive one-third of the estate divided equally among them. The remainder is

inherited by the paternal grandfather or paternal grandmother, and if both the paternal grandfather and the paternal grandmother are alive, the paternal grandfather receives twice as much as the paternal grandmother.

6. The maternal grandfather or maternal grandmother, or both, combine with one or more paternal half-brothers. In this case, one-third is for the maternal grandfather or maternal grandmother, and if both are alive then that one-third is divided equally between them. And two-thirds is for the brother or brothers. If one paternal half-sister combines with those maternal grandparents, then she receives half, and if there are more than one, then they receive two-thirds. In all cases, the share of the maternal grandfather and maternal grandmother is one-third. Based on this, one-sixth of the estate will be left over if there is only one sister. And it is doubtful whether she inherits this or it is divided between her and the maternal grandfather and maternal grandmother; in this case, as an obligatory precaution, they must arrive at a settlement [concerning that remaining one-sixth].
7. The grandfathers or grandmothers, or both, some paternal and some maternal, are combined with one or more paternal half-brother or paternal half-sister. In this case, one-third is for the maternal grandfather or maternal grandmother. If there are more, it is divided equally among them even if some of them are male and others female. The remaining two-thirds of the estate is for the paternal grandfather or paternal grandmother and the paternal half-brother or paternal half-sister, with each male receiving twice the share of each female. If those grandfathers or grandmothers are combined with a maternal half-brother or maternal half-sister, then the share of the maternal grandfather or maternal grandmother and the maternal half-brother or maternal half-sister is one-third, to be divided equally among them even if some of them are male and others female. The share of the paternal grandfather or paternal grandmother is two-thirds, with the paternal grandfather receiving twice the share of the paternal grandmother.

8. There are brothers or sisters, some of whom are paternal half siblings and others maternal half siblings, as well as the paternal grandfather or paternal grandmother. In this case, one-sixth of the estate is for the maternal half-brother or maternal half-sister if there is only one of them, and one-third if there are more than one, to be divided equally among them. The remainder of the estate is for the paternal half-brother or paternal half-sister and the paternal grandfather or paternal grandmother with each male receiving twice the share of each female. If those brothers or sisters are combined with a maternal grandfather or maternal grandmother, the total share of the maternal grandfather or maternal grandmother and the maternal half-brother or maternal half-sister is one-third, to be divided equally among them. The share of the paternal half-brother or paternal half-sister is two-thirds, the male receiving twice the share of the female.

Ruling 2772. If the deceased has a brother or sister, their children do not inherit. However, this rule does not apply when the inheritance of a brother's child or sister's child does not clash with that of the brother or sister. For example, if the deceased has a paternal half-brother and maternal grandfather, the paternal half-brother inherits two-thirds and the maternal grandfather inherits one-third of the estate. In this case, if the maternal half-brother of the deceased has a son, then the maternal half-brother's son shares one-third of the estate with the maternal grandfather.

INHERITANCE OF THE THIRD GROUP

Ruling 2773. The third group of heirs consists of paternal uncles, paternal aunts, maternal uncles, maternal aunts, their offspring, and grandchildren. The persons in this group inherit when none of the persons belonging to the first two groups are alive.

Ruling 2774. If the only heir of the deceased is one paternal

uncle or one paternal aunt, irrespective of whether he or she is the full paternal uncle/aunt - i.e. he or she is from the same father and mother as the deceased's father - or he or she is the paternal half-uncle or paternal half-aunt from the father's side [i.e. a paternal half-brother/sister of the deceased's father] or the paternal half-uncle or paternal half-aunt from the mother's side [i.e. a maternal half-brother/sister of the deceased's father], he or she inherits the entire estate. If there is more than one paternal uncle, or more than one paternal aunt, and all of them are full paternal uncles/aunts, or all are paternal half-uncles/aunts from the father's side or all are paternal half-uncles/aunts from the mother's side, the estate is divided equally among them. If there is both a paternal uncle and a paternal aunt, each paternal uncle receives twice the share of each paternal aunt.

Ruling 2775. If the heirs of the deceased are paternal uncles and paternal aunts, some of them being paternal half-uncles/aunts from the father's or mother's side and others being full paternal uncles/aunts, then the paternal half-uncles/aunts from the father's side do not inherit. Therefore, if the deceased has one paternal half-uncle or one paternal half-aunt from the mother's side, the estate is divided into six parts: one part is given to the paternal half-uncle/aunt from the mother's side and the rest is given to the full paternal uncles/aunts. If they are not alive, it is given to the paternal half-uncles/aunts from the father's side. If the deceased has both a paternal half-uncle and a paternal half-aunt from the mother's side, then the estate is divided into three parts: two parts are given to the full paternal uncles/aunts, and if they are not alive it is given to the paternal half-uncles/aunts from the father's side, and one part is given to the paternal half-uncles/aunts from the mother's side. In each case, the paternal uncle receives twice the share of the paternal aunt.

Ruling 2776. If the deceased has only one maternal uncle or only one maternal aunt, he or she inherits the entire estate. If he has both a maternal uncle and a maternal aunt, whether they be full - i.e. they share the same father and mother with the

deceased's mother - or they be half-maternal uncles/aunts from either the father's or mother's side, then it is not farfetched that the maternal uncle inherits twice the share of the maternal aunt. But it is also probable that they inherit equally. Therefore, based on obligatory precaution, they must arrive at a settlement on the extra amount.

Ruling 2777. If the only heirs of the deceased are one or more maternal half-uncles and maternal half-aunts from the mother's side, and full maternal uncles and maternal aunts, and maternal half-uncles and maternal half-aunts from the father's side, then for the maternal half-uncles and maternal half-aunts from the father's side to not inherit is problematic. In any case, the maternal half-uncle or maternal half-aunt from the mother's side, if there is only one of them, receives one-sixth, and if there are more than one, they receive one-third of the estate. The remainder is given to the maternal half-uncle or maternal half-aunt from the father's side or the full maternal uncle and maternal aunt. In each case, it is probable that the maternal uncle inherits twice the share of the maternal aunt; however, based on obligatory precaution, they must arrive at a settlement.

Ruling 2778. If the heirs of the deceased are one or more maternal uncles, or one or more maternal aunts, or a maternal uncle and a maternal aunt with one or more paternal uncles or paternal aunts, or a paternal uncle and a paternal aunt, then the estate is divided into three parts: one part is given to the maternal uncle or maternal aunt or both of them, and the remainder is given to the paternal uncle or paternal aunt or both of them. The method of distribution among each group has already been mentioned.

Ruling 2779. If the deceased does not have any living paternal uncles or paternal aunts, or maternal uncles or maternal aunts, then their shares pass on to their offspring. Therefore, if the deceased has one female cousin from his paternal aunt and some male cousins from his maternal uncle, the female cousin receives two-thirds and the male cousins receive one-third to be divided

equally among them. This group - i.e. the children of paternal and maternal uncles and aunts - have priority over the deceased's father's and mother's paternal and maternal uncles and aunts.

Ruling 2780. If the heirs of the deceased are his father's and mother's paternal and maternal uncles and aunts, the estate is divided into three parts: one part is inherited by the deceased's mother's paternal and maternal uncles and aunts; in this regard, whether each of them receives an equal share or whether the males receive twice the share of the females is a matter of disagreement [amongst jurists]. Therefore, the obligatory precaution is that they must arrive at a settlement. The remaining two parts is divided into three parts: one part is received by the deceased's father's maternal uncle and maternal aunt to be divided between them in the same manner that was mentioned, and the remaining two parts is received by the deceased's father's paternal uncle and paternal aunt to be divided between them in the same manner that was mentioned.

INHERITANCE OF HUSBAND AND WIFE

Ruling 2781. If a woman dies without any offspring, half of her estate is inherited by her husband and the remainder by her other heirs. But if she has offspring from that husband or from another husband, then her husband inherits one-quarter of the estate and the remainder is inherited by her other heirs.

Ruling 2782. If a man dies without any offspring, a quarter of his estate is inherited by his wife and the remainder by his other heirs. But if he has offspring from that wife or from another wife, then his wife inherits one-eighth of the estate and the remainder is inherited by his other heirs. A wife does not inherit anything from the land of a house, garden, plantation, or from any other land, neither from the land itself nor from the value of it. Furthermore, she does not inherit from what stands on the land, such as buildings and trees; she does, however, inherit from their value. The same applies to the trees, crops, and buildings that are on the

land of a garden, plantation, or on any other land. However, she does inherit from the actual fruit that was present on the trees at the time of her husband's death.

Ruling 2783. If the wife wishes to have right of usage over things which she does not inherit, such as the land of a residential house, she must obtain permission from the other heirs. It is not permitted (*jā'iz*) for the other heirs - as long as they have not given the wife her share - to have right of usage without the permission of the wife over those things of which she inherits the value, such as [the value of] buildings and trees.

Ruling 2784. If the heirs wish to undertake the valuation of the buildings, trees, and similar things, they must do so in the way experts usually undertake valuations. That is, they must disregard the particulars of the land it is situated on, and not base their valuation on how much it would be worth if it were [*per impossibile*] uprooted from the land or if it remained unrented on the land.

Ruling 2785. The watercourses for subterranean canals and suchlike have the same rule as land, and the bricks and other things that were used for their construction have the same rule as buildings. As for the water itself, the actual water is inherited.

Ruling 2786. If the deceased has more than one wife and no offspring, then one-quarter of the estate must be divided equally among his wives. And if he has offspring, then one-eighth of the estate as per the explanation given previously must be divided equally among his wives. This rule applies even if the husband did not have sexual intercourse with all or some of them. However, if he married a woman during his terminal illness and did not have sexual intercourse with her, then that woman does not inherit from him and nor is she entitled to a dowry.

Ruling 2787. If a woman marries a man while she is ill and subsequently dies from that illness, her husband inherits from her even if he did not have sexual intercourse with her.

Ruling 2788. If a woman is given a revocable divorce (*al-ṭalāq al-rijʿī*) in the manner explained in the rulings pertaining to divorce, and she dies during the prescribed waiting period (*ʿiddah*), her husband inherits from her. Furthermore, if her husband dies during that *ʿiddah* period, his wife inherits from him. However, if one of them dies after the expiry of the *ʿiddah* period or during the *ʿiddah* period of an irrevocable divorce (*al-ṭalāq al-bāʾin*), then the other does not inherit from him/her.

Ruling 2789. If a husband divorces his wife while he is ill and dies before the expiry of twelve lunar months, his wife inherits from him on fulfilment of three conditions [as below], irrespective of whether the divorce was revocable or irrevocable.

1. During this time, she has not married another man. If she has married another man, she does not inherit, although the recommended precaution (*al-iḥtiyāṭ al-mustaḥabb*) is that they [the ex-wife and the heirs] arrive at a settlement.
2. The divorce has not taken place at the request of the wife, otherwise she does not inherit, irrespective of whether she paid her husband something to divorce her or not.
3. The husband died with the same illness he had when he divorced her, and he died due to that illness or some other cause. Therefore, if the husband recovers from that illness and dies later due to some other cause, the divorced wife does not inherit from him unless his death happened during the *ʿiddah* period of a revocable divorce.

Ruling 2790. The clothes that a husband buys for his wife to wear is treated as part of his estate after his death even though she may have worn them, unless he gave ownership of them to her. A wife is entitled to seek ownership of clothes from her husband as part of his obligations to provide maintenance (*nafaqah*) for her.

MISCELLANEOUS RULES OF INHERITANCE

Ruling 2791. The deceased's Qur'an, ring, sword, and clothes

which he had worn or had kept in order to wear, belong to the eldest son. If the deceased had more than one of the first three things - for example he left two copies of the Qur'an or two rings - the obligatory precaution is that the eldest son must arrive at a settlement with the other heirs regarding those things. The same applies to the reading stand (*riḥāl*) for the Qur'an and the gun, dagger, and other weapons. The sheath of the sword and bookmark for the Qur'an are regarded as being part of those items.

Ruling 2792. If the deceased has more than one eldest son - for example, two sons are born of two wives at the same time - the items mentioned earlier must be divided equally among them. This rule is specific to the eldest son even though there may be daughters older than him.

Ruling 2793. If the deceased has a debt which is equal to his estate or more, the eldest son must give those things mentioned earlier that belong to him to settle the debt, or he must pay their equivalent worth from his own wealth. If the debt of the deceased is less than his estate but his estate without those items that belong to the eldest son is not sufficient to settle his debt, then the eldest son must give from those items or from his own wealth to settle the debt. However, if the rest of his estate is adequate to clear the debt, then the obligatory precaution is that the eldest son must still participate in clearing the debt in the manner mentioned previously. For example, if the estate of the deceased is worth £600 and the items that belong to the eldest son are worth £200 and the deceased has a debt of £300, the eldest son must pay £100 from the items he received to pay off the debt.

Ruling 2794. A Muslim inherits from a disbeliever (*kāfir*) but a disbeliever does not inherit from a deceased Muslim, even if he is the deceased's father or son.

Ruling 2795. If a person kills one of his relatives intentionally (*'amdan*) and unjustly, he does not inherit from him. However, if the killing was justified - for example, it was a retributory

punishment (*qiṣāṣ*) [as sanctioned by a judge], or the legal execution of a punishment, or it was in self-defence - then he does inherit from him. The same applies if the killing was due to some error. For example, if he threw a stone in the air and by chance it hit one of his relatives and killed him, he inherits from him; however, he does not inherit from the blood money (*diyah*) that his relatives pay for the killing. As for manslaughter - i.e. killing someone, without intending to, by intentionally doing something to the person that would not usually result in death - this does not prevent him from inheriting.

Ruling 2796. Whenever it is proposed to divide the inheritance, the share of a child who is in its mother's womb and will inherit if it is born alive must be kept safe. This is on condition that it is known whether it is one child or more and whether it is male or female, even if this is discovered using scientific instruments. If it is not known but a reliable probability exists that there is more than one child in the womb, the share of one son multiplied by the probable number of children must be put aside. And in the event that, for example, one son or one daughter is born, the extra amount must be divided between the heirs.

adāʾ accomplishment of a religious duty within its prescribed time, as opposed to *qaḍāʾ*
adhān call to prayer
ʿādil a just person
ʿāhd covenant
aḥkām (pl. of *ḥukm*) laws; rules
ahl al-kitāb People of the Book i.e. Jews, Christians, and Zoroastrians
al-aḥwaṭ al-awlā more precautious and more preferred (for practical purposes, a 'more precautious and more preferred' juristic opinion is equivalent to recommended precaution).
ajīr a person who is hired to do something
amānah trust
ʿamdan intentionally
ʿamīl worker
amīn trustworthy
al-ʿaqd al-dāʾim permanent marriage contract
al-ʿaqd al-lāzim irrevocable contract
al-ʿaqd al-munqaṭiʿ temporary marriage contract
ʿāqil sane
aqwā stronger opinion (for practical purposes, where an opinion is stated to be stronger, a *fatwa* is being given)
ʿāriyah gratuitous loan; commodate
awliyāʾ Friends; Saints
al-ʿayn al-mawqūfah charitable endowed property
ʿayn al-najāsah intrinsic impurity; actual source of impurity
aẓhar more apparent ruling (for purposes in jurisprudential rulings, an opinion that is termed 'more apparent' equates to a *fatwa*)

baʿīd farfetched; unlikely (for practical purposes, a legal opinion that is termed 'not farfetched' equates to a *fatwa*)
bāligh someone who is of the age of legal responsibility; a major
bāṭil (1) invalid (2) void
bulūgh age of legal responsibility

dafn burial
dāʾimah permanent wife
ḍamān suretyship

ḍāmin (1) responsible (2) guarantor; surety
dayn debt
dhabḥ slaughtering of an animal according to Islamic law
dhimmī People of the Book (*ahl al-kitāb*) - i.e Jews, Christians, and Zoroastrians - who have entered into a *dhimmah* treaty i.e. an agreement that gives them rights as protected subjects in an Islamic state
diyah blood money
duʿāʾ supplication

faqīh (sing. of *fuqahāʾ*) jurist
faqīr (sing. of *fuqarāʾ*) a poor person i.e. someone who does not possess the means to meet his and his family's expenses for one year
faskh rescinding
fatwa religious verdict issued by a mujtahid
fuqahāʾ (pl. of *faqīh*) jurists
fuqarāʾ (pl. of *faqīr*) poor people i.e. those people who do not possess the means to meet their and their family's expenses for one year

ghasbī usurped
ghinā singing
ghusl ritual bathing

hajj visiting the House of Allah i.e. the Kaʿbah in Mecca, and performing the prescribed rituals there
al-ḥākim al-sharʿī fully qualified jurist
ḥalāl lawful
ḥalq shaving of the head performed by men as part of the *hajj* rituals
ḥaraj hardship
ḥaram (1) shrine (2) sacred precinct
ḥarām unlawful
ḥawālah transfer of debt
ḥayḍ menstruation; period
hibah gift
ḥubs bequest
al-ḥujjah al-sharʿiyyah legally authoritative; legal proof
ḥukm (sing, of *aḥkām*) law; rule
ḥusayniyyah congregation hall for Shia ceremonies

ʿibādah (sing, of *ʿibādāt*) ritual act of worship
ʿibādāt (pl. of *ʿibādah*) ritual acts of worship
ʿiddah prescribed waiting period for a woman before she can remarry
ʿiddat al-wafāt the *ʿiddah* of a widow i.e. the prescribed waiting period for a

woman whose husband has died

iḥrām state of ritual consecration of pilgrims during hajj

iḥtiyāṭ precaution

al-iḥtiyāṭ al-mustaḥabb recommended precaution

al-iḥtiyāṭ al-wājib obligatory precaution

ijārah hiring; renting; leasing

ijtihād (1) the process of deriving Islamic laws from authentic sources (2) the level of someone who is a jurist

ikhtiyār volition; authority

īqāʿ unilateral instigation

iqrār (1) avowal (2) admitting to a right to one's own detriment or denying a right for oneself over someone else

irth inheritance

iṭmiʾnān confidence

ʿiwaḍ payment in exchange

al-jāhil al-qāṣir inculpably ignorant person

jāʿil offeror

jāʾiz permitted

jamāʿah congregation

juʿālah reward

kafālah surety for the appearance of a debtor

kafan shroud

kaffārah recompense

kafīl surety, i.e. a person who undertakes to present a debtor whenever the creditor seeks him

kāfir (sing, of *kuffār*) disbeliever

khiyār option; the right to annul a transaction

khiyār al-ʿayb the option due to a defect

khiyār al-ghabn option due to cheating

khiyār al-ḥayawān option pertaining to animals

khiyār al-majlis option while meeting

khiyār al-ruʾyah option pertaining to seeing

khiyār al-sharṭ option due to a stipulated condition

khiyār al-shirkah option due to a partnership

khiyār ṭaʿadhdhur al-taslīm option due to an inability to hand over

khiyār al-tadlīs option due to deceit

khiyār takhalluf al-sharṭ option due to a breach of condition

khiyār al-taʾkhīr option due to delay

khulʿ the divorce of a wife who has an aversion to her husband and who gives him her dowry or some of

her other property so that he divorces her

khums the one-fifth tax

maḥall al-ishkāl problematic (for practical purposes, if a matter is said to be 'problematic' it amounts to saying the ruling is based on obligatory precaution)

al-maḥjūr ʿalayh someone who is prohibited from having disposal over his property

mahr dowry

mahr al-mithl the standard amount for a dowry

maḥram someone whom a person is never permitted to marry on account of being related to them in a particular way; for example, by being their parent or sibling

majhūl al-mālik unknown owner

makrūh disapproved

mālik owner

masāʾil (pl. of *masʾalah*) rulings

masʾalah (sing, of *masāʾil*) ruling

mashaqqah excessive difficulty

mashhūr well-known (used with regard to a juristic opinion)

al-mawqūf ʿalayh beneficiary of an endowment

maẓālim property that has been unrightfully or unknowingly taken

muʿāmalah (sing. of *muʿāmalāt*) transaction

muʿāmalāt (pl. of *muʿāmalah*) transactions

mubāḥ (1) permissible (2) not usurped

mubārāt a divorce that takes place when a husband and wife have an aversion to each other and the wife gives some property to her husband so that he divorces her

mubtadhilah a woman who does not observe hijab in front of non-*maḥram* men and does not take heed when she is forbidden from continuing with this behaviour

muḍārabah sleeping partnership; silent partnership

al-muḍārabah al-idhniyyah sleeping partnership that is based on the owner giving the worker permission to trade with his property

mufallas someone who has been proclaimed bankrupt

mughārasah tree planting contract

muʾjir a person who gives something on rent; lessor

mujtahid jurist; someone who has attained the level of *ijtihād*, qualifying him to be an authority in Islamic law
mukallaf someone who is legally obliged to fulfil religious duties; duty-bound
mumayyiz someone who is able to discern between right and wrong; a discerning minor
munqaṭīʿah temporary wife
murḍīʿah nursing mother
murtadd apostate
al-murtadd al-fiṭrī someone who was born to one or both Muslim parents and later became a disbeliever
al-murtadd al-millī someone who was born to one or both disbelieving parents and later became a disbeliever
muṣālaḥah arriving at a settlement with someone
musāqāt tree tending contract
mushāʿ joint ownership
mūṣī testator
mustaḥabb recommended
mustaʾjir a person who takes something on rent; tenant; hirer; lessee
mustaṭīʿ someone who is able to go for hajj
mutʿah temporary marriage; fixed-term marriage; a temporary wife
al-muṭallaqah al-rijʿiyyah a woman who has been given a revocable divorce
al-mutamattaʿ bihā temporary wife
mutawallī trustee
muwakkil principal (used with regard to agency)
muwaswis an obsessively doubtful person
muzāraʿah sharecropping

nadhr vow
nafaqah maintenance; alimony
naḥr slaughtering of a camel according to Islamic law
nāʾib representative
najis impure
naqd immediate exchange transaction; a transaction in which there is no lapse of time between a buyer paying for an item and receiving it
nāshizah a recalcitrant wife i.e. a wife who does not perform her obligatory marital duties
nasīʾah credit
nāṣibī (sing, of *nawāṣib*) someone who shows enmity towards the Imams (ʿA)
nawāṣib (pl. of *nāṣibī*) those who show enmity towards the Imams (ʿA)
nifās lochia i.e. blood discharge after childbirth

niyyah intention

qaḍāʾ (1) making up a religious duty that was not performed in its prescribed time, as opposed to *adāʾ* (2) a lapsed ritual act of worship
qasam oath
qaṣd intention
qaṣd al-inshāʾ intention to establish
qaṣd al-qurbah intention to attain proximity to Allah
qibla direction towards the Kaʿbah in Mecca
qiṣāṣ retributory punishment

radd al-maẓālim giving back property - which has been unrightfully or unknowingly taken - to its rightful owner, or if that is not possible, to the poor as *ṣadaqah* on behalf of the rightful owner
rahn security; deposit; collateral
rakʿah a unit of the prayer
rashīdah a mature female who has reached *bulūgh* and is able to determine what is in her interest
ribā usury; interest
rūḥ spirit
rushd ability to take care of one's wealth and use it in a correct way

ṣadaqah alms given to the poor; charity
sādāt (pl. of *sayyid*) descendants of Hashim, the great grandfather of Prophet Muḥammad (Ṣ)
safīh someone who is foolish with finances i.e. who spends his wealth in futile ways.
ṣaghīr a minor; a child who is not of the age of legal responsibility (*bāligh*)
ṣāḥib al-laban nursing father
ṣaḥīḥ (1) valid (2) correct
salaf prepayment transaction
ṣalāh prayer; ritual prayer
ṣawm fasting
sayyid (sing. of *sādāt*) a male descendant of Hashim, the great grandfather of Prophet Muḥammad (Ṣ)
shahādatayn the two testimonies i.e. the testimony to the oneness of Allah and to the prophethood of Prophet Muḥammad (Ṣ)
shakk doubt
sharʿan legally
sharīk partner
shirkah partnership
al-shirkah al-idhniyyah permission based partnership
al-shirkah al-muʿāwaḍiyyah exchange based partnership

shurakāʾ partners
ṣīghah formula
ṣilat al-arḥām maintaining good family ties
ṣubḥ morning
ṣulḥ settlement

ṭāhir pure
takbīr proclamation of Allah's greatness by saying *ʿallāhu akbar*ʾ
taklīf responsibility
al-ṭalāq al-bāʾin irrevocable divorce
al-ṭalāq al-rijʿī revocable divorce
tamyīz ability to discern between right and wrong
taqṣīr snipping one's hair or trimming one's beard or moustache as part of the *hajj* and *ʿumrah* rituals
ṭawāf al-nisāʾ an obligatory circumambulation of the Kaʿbah that is performed as part of the *hajj* rituals
tawriyah equivocation
turbah a piece of earth or clay on which one places his forehead when prostrating

ʿudhr legitimate excuse
ujrat al-mithl standard rate paid for the hired property or work
ʿumrah pilgrimage to Mecca that has fewer rituals than the *hajj* pilgrimage; the minor pilgrimage
ʿumrat al-mufradah recommended pilgrimage to Mecca that is performed independently of *hajj* at any time or the year

wadīʿah deposit
wājib obligatory
wakīl agent; representative
walī guardian
waqf charitable endowment
al-waqf al-ʿāmm public charitable endowment
al-waqf al-khāṣṣ private charitable endowment
wāqif endower
waṣī executor of the bequest of a deceased person
waṣiyyah will
waṭʾ al-shubhah sexual intercourse ensuing from a mistake
waṭan home town
wikālah agency
wilāyah (1) guardianship (2) vicegerency
wuḍūʾ ablution

yāʾisah a postmenopausal woman; in rulings pertaining to marriage and divorce, a woman who has reached the age of fifty (in rulings pertaining to menstruation, the age

is sixty), and due to her advanced age she does not experience menstruation and has no expectation of experiencing it again

yaqīn certainty

ẓāhir apparent ruling (for practical purposes in jurisprudential rulings, expressing an apparent ruling equates to giving a *fatwa*)

zakat alms tax

zakāt al-fiṭrah fiṭrah alms tax

ẓann supposition; conjecture

ziyārah visitation to the place of burial of a holy personality or to a holy place

ẓuhr midday

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