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# **Current Issues**

## **Banking And Exchange**

From the viewpoint of capital the banks in Islamic countries can be of three kinds: (i) National bank, whose capital is owned by one or more persons. (ii) Government bank, which is purely financed by the State. (iii) Company bank. which is financed by the government and public.

**2856.** It is not permissible to take loan from such a bank on payment of interest, and it is also unlawful to accept profit from it. However, in order to avoid such an unlawful transaction the borrower will either:

- (i) Purchase something from the owner of the bank, or his agent, at a rate say 10% or 20% higher than the market rate, so that the bank may give him some money by way of loan
- (ii) or he may sell something to the bank at a price lower than the market rate subject to the condition that the bank will advance him a certain amount of money by way of loan, repayable by a stipulated date. In that event it is permissible to obtain the loan and it does not also amount to usury.

Similarly a gift may be given subject to the condition that one who fives the gift will be advanced a certain amount of money by way of loan, repayable on a particular date. However, a transaction does not cease to be unlawful if something is added to a certain amount of money and it is then sold for a larger amount of money. For example it is not lawful to sell a sum of \$ 100 together with a match box with the condition that a sum of \$ 100 will be payable in lieu thereof after the expiry of one month, because in fact it is an interest bearing loan although apparently it has been given the name of business transaction.

**2857.** It is unlawful to deposit money in a bank (in the savings bank account or current account) with a view to earn interest. However there is no harm in depositing the money if there is no stipulation for the payment of interest.

**2858.** If some property is taken from a government bank it is not lawful to utilize it without the permission

of the mujtahid (Jurist) or his representative.

**2859.** It is also unlawful to obtain loan from a government bank on payment of interest whether or not it is obtained by mortgaging some property. However, there is no harm in obtaining loan from such a bank with the permission of the jurist or his representative, although the person obtaining the loan may be aware that, whether he likes it or not, the bank will charge some additional amount from him, and even though he will have to pay the additional amount when the bank demands it, he can take the loan from the bank.

**2860.** It is not lawful to deposit money in a government bank to earn interest. However, there is no harm in making such a deposit without making a stipulation for payment of interest i.e. if one intends not to demand interest in case the bank does not pay him the same. However, if the bank gives him profit he can accept it with the permission of the mujtahid or his representative as derelict property (Malul Majhul) This also clarifies the position of a bank whose capital is jointly owned by the government and the public i.e. its property is to be treated as derelict and the same orders apply to such a bank as they apply to a government bank.

These are the orders relating to the Islamic banks. As regards the banks belonging to the non–Muslims, however, property may be obtained from them without the intention of taking loan and without obtaining permission for doing so from the mujtahid. Nevertheless, as regards depositing money in such banks, the same rules apply to them as they apply to the Islamic banks.

#### **Letter Of Credit For Export**

**2861.** It is lawful for one to obtain an L/C from a bank for import and export business and it is also apparently lawful for a bank to provide foreign exchange on payment of commission and to charge commission, because from the point of view of jurisprudence such a commission will either be called 'wage'2 or 'agreement'3 and it is also possible to treat it as sale and purchase. As the bank pays the price of the goods by means of foreign currency it is possible that the bank may sell the foreign currency payable by an importer at such a price that it may also earn its own commission from it and as the transaction takes place with regard to two different things it is in order. In this regard another alternative can be that tile persons engaged in import and export business may obtain information through the bank and then the bank may continue to provide the goods and pay its price on the basis of L/C. In such circumstances it will also be lawful.

**2862.** If the bank pays the price of the imported goods on behalf of the L/C holder and does not treat it as loan advanced to him and obtains some profit from the importer on the condition that it will not demand from him the price of the goods till a stipulated date, such a transaction will apparently be in order, because the importer becomes liable for it on account of his having asked the bank to pay the price of the goods. In case, however, he has obtained loan from the bank and the bank charges interest on it and, in such circumstances, the bank advances a loan to the L/C holder and stipulates payment of

profit by him and performs the task of import on his behalf, it is not lawful for it to charge profit. These rules also apply to the businessmen who perform this task.

# **Safety Of Goods**

**2863.** If the bank performs the task of storage of goods or exchange of invoices on behalf of an importer, for example, an agreement is reached between the businessmen, and thereafter the bank pays the price of the goods, and sends the papers to the buyer on the arrival of the goods, and stores the goods in the event of the buyer delaying to take delivery of the goods and renders these services on taking wages from the buyer or an the responsibility of the seller, for example, before an agreement is reached between two businessmen the seller supplies a list of goods to the bank and the bank shows that list to other businessmen and they want to purchase the goods and an agreement is concluded and the bank claims wages for this service from the owner of the goods, it is lawful for the bank to render these services in both the cases and also to claim wages for that, provided that the payment of wages is agreed upon at the time of concluding the agreement or wages are taken in such cares according to common custom, or the bank renders these services on the request of the seller or the buyer of goods. In case, however, these conditions are not fulfilled the bank is not entitled to claim wages.

Some times a buyer does not take delivery of the goods and the bank, after informing him, sells the goods to someone else and deducts from the sale proceeds the amount to which it is entitled. As in such cases the bank is considered to be the agent of the owner of the goods, and usually both the parties (the buyer and the seller) are agreeable to such an arrangement the aforesaid transaction is lawful.

## **Bank Guarantee**

If, for example, a person contracts to carry out some work for a government or non-government organization and agrees to pay a stipulated amount as damages in the event of his not completing the work according to the conditions agreed upon by both the parties and a bank stands surety for the payment of the damages it is called 'bank guarantee'.

- (i) Such a guarantee is in order when the bank expresses its willingness in this behalf by word or action and the owner accepts it along with all the agreed conditions. It makes no difference that the bank may undertake that the person for whom it has stood surety will repay his loan or will fulfill the conditions which have been agreed upon.
- (ii) It is obligatory upon the person who undertakes to perform the task that if he does not complete it, he would act according to the agreed condition, provided that he has accepted this condition which is binding on him and in the event of his not fulfilling the condition the owner will be entitled to lay a claim to his right against the surety i.e. the bank, and as the bank stood surety on the request of the contractor, the loss suffered by the bank will have to be made good by the contractor.

(iii) As standing surety is an honorable act, it is permissible for a bank to charge wages from a person for whom it stands surety. From the point of view of jurisprudence this transaction will apparently be treated juala (agreement) and it is also possible that it may fall under the category of hiring, but it will not be treated to be 'purchase and sale' or compromise.

#### **Sales Of Shares**

**2864.** If a bank charges wages for selling the shares of a company and transferring the documents, the transaction is in order, because from the point of view of jurisprudence it is either hiring 4 or the ju'ala (agreement). In case, therefore, the bank charges wages by mutual consent the transaction is valid and the bank is entitled to get wages.

**2865.** Similarly there is no harm in the transfer and sale of shares and other documents. However, if the transactions of the shareholders lend color to interest the purchase and sale of the shares and documents is not lawful.

### **Internal And External Drafts**

- (i) If a bank issues a draft as a consequence of which a person who has deposited money in the bank receives his money at another place, it may possibly be said that as the bank has a right to make payment to an account holder at the place where he deposited the money, it is entitled to receive some wages from the depositor for making payment at other place.
- (ii) If the bank issues a draft in favor of a person who has no account in the bank, it can charge wages from him, because it provides a means for him to obtain a loan from the internal or external agent and this assistance amounts to service rendered to that person. Furthermore, if the bank has provided foreign currency it is entitled to insist on repayment being made in foreign currency and in the event of its abandoning this right i.e. if it accepts local currency instead of foreign currency it can take wages for this and can realize the entire amount from the borrower including wages.
- (iii–a) If a person gives a sum of money to a bank and asks it to issue a draft in his favor for payment. elsewhere, either within the country or abroad, and the bank charges wages for rendering this service, it is in order in itself. and if the draft is for a foreign country it is possible that it may be treated to be purchase and sale which is lawful, and the bank can claim some "t by way of wages for the purchase and sale of this amount.
- (iii-b) it is possible that a bank may borrow some money and then repay a loan elsewhere. And as in the matter of loan when the lender charges something extra from the borrower, it is interest therefore, if the borrower takes something extra from the lender; it will not be called interest.
- (iv) If a person borrows home amount from a bank and issues its pay order elsewhere and the bank

accepts it on payment of wages, it will be lawful to charge wages if the following procedure is adopted:

(iv-a) In the case of foreign currency sale and purchase should take place i.e. the bank may purchase foreign currency and some additional amount from a person in order to provide him with local currency. In that event there is no harm in charging wages.

(iv-b) As a bank is entitled to get repayment of a loan given by it at the place where the loan was given, it can claim wages if it agrees to the repayment being made at some other place. Besides the banks, the above mentioned procedure and orders may? also be followed by the common people i.e. if a person gives some money to another person and asks him to give a pay order in the name of another person either in the same town or some other town, there is no harm if the person accepting the pay order charges some wages for this task. Similarly if a person takes some money from another person and gives him pay order on a third person to realize the amount from him the person on whom pay order has been given can claim wages from the person who gives the pay order.

**2866.** As regards the above statement it makes no difference whether the person, on whom pay order is given, is a debtor or not a debtor, but agrees to pay against the pay order.

### **Prizes Given By The Banks**

**2867.** If a bank, whether owned by government or by the public or by both gives prizes by means of lottery to encourage its customers or to attract others there is no harm in doing so, and the person who wins a prize can accept it with the permission of the mujtahid or his representative as derelict property. But if the bank is owned by a private party it is not necessary to obtain the permission of the mujtahid or his representative to accept the prize. However, if a condition is imposed in some matter on an account holder of the bank and prize is given on the fulfillment of the condition e.g. if some condition is imposed in the matter of loan it is not permissible to give the prize or to accept it.

## **Bill Of Exchange**

**2868.** If a bank realizes the amount of a bill of exchange on behalf of his customer and informs the person signing the bill of exchange about it before the expiry of the prescribed period, or if a person does not realize cash against a cheque and the bank gets the cheque encashed on his behalf, it is lawful for the bank to render this service and claim wages for it. However, it is not lawful for the bank to realize interest on the amount of the bill of exchange.

In the first case mentioned above, the transaction can be treated as agreement from the point of view of jurisprudence.

**2869.** If a person has a current account in a bank and he gives a bill of exchange to a person Saying that after the expiry of a fixed period, the bank should pay the amount to the creditor in cash, the

instructions given to the bank are as a pay order, and the bank is not entitled to claim wages for the acceptance of this pay order. As the bank is a debtor of the person issuing the bill of exchange the pay order will be effective even if the bank declines to accept it. But if the person obtaining the bill of exchange asks the bank to pay him its price or the person giving the bill of exchange has no account in the bank and the bank pays the price of the bill of exchange the bank will be entitled, in both the cases, to receive wages.

#### **Transaction Of Foreign Currency**

**2870.** In order that foreign currencies should be available in the market in sufficient quantity and they should earn profit from their purchase and sale, the banks undertake dealings therein. If a bank deals in foreign exchange and earns profit by selling a foreign currency at a price higher than that at which it is purchased, it is lawful and it makes no difference whether the transaction is in the form of loan or cash.

#### **Current Account**

**2871.** A person is entitled to withdraw from a bank an amount equivalent to that which he deposited in the bank. However, at times it so happens that a person can withdraw an amount from the bank although he may have no money in the bank. Hence, if the bank relying on the person, advances him money, in spite of his having no account in the bank, and takes profit on it, it will be interest bearing loan, which is unlawful. However this transaction can also be given a lawful form in accordance with what has been explained above with regard to banks.

(See: Article 2859).

# **Explanation Of Bill Of Exchange**

**2872.** A thing either carries real value such as edibles or face value such as currency notes, loan, purchase and sale etc. The difference is that in the case of sale a person is made the owner of a property against the payment of a particular price, and in the case of loan the property is given into the ownership of a person on his responsibility i.e. the debtor becomes responsible for payment of the particular quantity of the commodity or if the transfer takes place against price he becomes responsible to pay its price.

The second difference is that, in the event of sale, there must be difference between the thing sold and its price, but this is not necessary in the case of loan. For example it 100 eggs are sold against 110 eggs there must be difference between these eggs (e.g. they may be bigger or smaller), otherwise, although the exchange has taken place apparently in the form of purchase and sale, in reality, it is an interest bearing loan, and, therefore, unlawful.

The third difference is that, in the case of loan if the conditions of excess payment is imposed the

transaction becomes unlawful on account of interest, and it makes no difference whether or not the thing given on loan is one of those things which are sold by weighing or measuring. However, it is not so in the case of sale. If the things which are sold by weighing or measuring in exchange of the same commodity with an excess, it is interest, but otherwise it is not interest.

For example, if a person gives 100 eggs as loan to be repaid with 110 eggs the transaction is not lawful, but if he sells them one against the other the transaction is in order, provided that there is difference between them. The fourth difference between loan and transaction is that selling with interest makes the entire transaction void, but in the case of interest bearing loan the transaction about the excess amount only is void, and the principal amount of loan is in order.

**2873.** As the currency notes are not sold by weighing or measuring the creditor can sell the loan in cash at a price less than the real amount, for example, he can sell a loan of \$10 for \$ 9 in cash or a loan of \$10 for \$90 in cash.

**2874.** The bill of exchange, which is current among the businessmen, does not carry any value by itself, but it is used as a sort of evidence because the price of the goods is not treated to be paid on furnishing a bill of exchange, and if it is lost, the goods belong to the buyer and he is responsible to pay their price. However, if the price of the goods is paid in the shape of currency notes and those notes are lost by the seller of notes the buyer is not responsible to pay the price of the goods again.

**2875.** The bills of exchange are of two kinds.

- (i) A bill of exchange which is the proof of real loan.
- (ii) A bill of exchange which is the proof of an unreal loan.

In the first case the creditor can sell a loan payable on demand for a less amount of cash. For example he can sell a loan of \$ 100 payable after one month for \$ 80 in cash. On the basis of obligatory precaution, however, it is not permissible that the bill of exchange be sold for a limited time and then the bank or some other person may demand the amount from the lender (as it is not permissible to sell a loan on loan). In the second case when a bill of exchange is the proof of an unreal loan, the lender cannot sell it for cash, because in this the person giving the bill of exchange does not actually " anything, and it is just like a pay order given on a non-debtor.

This is so because in this case the person giving the fill of exchange is not in fact a debtor but has given a pay order on the bank in the name of the man, obtaining the bill of exchange, to enable him to get loan from the bank. As the person giving the bill of exchange has signed it himself, the bank will, so to say, realize its dues from him on the due date by way of pay order on behalf of the person obtaining the bill of exchange from him, although he (the person giving the bill of exchange) is not already the bank's debtor.

Now if the bank takes wages for realizing the amount of such a bill of exchange, it will not be lawful for it

to do so, as this will amount to an interest-bearing loan. However, one method to avoid interest can be that the realization of the price of the bill of exchange may be treated to be sale. For example, the person giving the bill of exchange may make the person obtaining the bill of exchange his agent, and authorize him to sell it at a lower price, and it must also be ensured that there is difference between the thing to be exchanged i.e. the price of the bill of exchange should not be in the currency mentioned in the bill of exchange.

However, if there is no difference between the things to be exchanged this method, too, will not hold good But if the bank treats the amount reduced from the price of the bill of exchange to be its wages for the services rendered by it and later the person giving the bill of exchange realizes its full price from the person obtaining this bill of exchange, the deal will be in order.

#### **Banking Business**

**2876.** There are two kinds of banking business: One of them is that in which interest is involved. It is not permissible to intervene or participate in it and those working in it are also not entitled to wages. The second kind is that in which interest is not involved. It is permissible to take part in it and to work in it on wages. In the matter of interest it makes no difference whether the bank belongs to a Muslim or to a non–Muslim. The only difference is that in the case of a Muslim bank, interest will be treated to be derelict property and permission by the mujtahid or his representative will be required for its utilization, but in the case of a non Muslim bank no such permission is needed for the utilization of the interest, because property can be taken from such a bank with the intention of taking out money from its hands.

## **Bill Of Exchange Or Pay Order**

**2877.** A borrower is entitled to give the lender a pay order on the bank with which he holds his account or he may give instructions to the bank in writing to transfer the amount of loan to the lender. The bank is also entitled to give that person a pay order on a foreign or domestic branch and to ask him to realize the amount from that branch.

The bank may realize wages for this service. In fact this transaction consists of two pay orders i.e. one by the borrower addressed to the bank and the other by the bank addressed to a foreign or domestic branch. In either case the pay order is in order. As regards the wages taken by the bank, it may be said about their admissibility from the point of view of Jurisprudence that the bank is entitled to decline to take the responsibility of giving a pay order in the name of a foreign or domestic branch and it can, therefore, take wages for rendering this service.

However, if the person giving pay order does not ask the bank to give a pay order for another place, but instructs it to make payment out .f the money available in his account in the bank, the bank cannot charge wages, because it is not permissible for a borrower to take anything on repaying the loan in his own town. However, if the person concerned has no account in the bank and the bank accepts the pay

order and makes payment, there is no harm in its claiming wages.

**2878.** In the above problems it makes no difference whether the bank is owned by public or by government or by both.

#### **Insurance**

**2879.** When it is agreed upon between government or an insurance company on the one hand and a policy holder on the other that the policy holder will pay a specific amount every month or every year and, in case he sustains loss, government or the Insurance company shall compensate him for it, such a transaction is called 'insurance'. Insurance may be for life, property, fire, aeroplane, ship etc. There are other kinds of insurance also but it is not necessary to mention them here because the orders which apply to the aforesaid kinds of insurance also apply to them.

**2880.** Such a transaction consists of the following components:

- (i) Offer by the Company.
- (ii) Acceptance by the policy holder.
- (iii) The thing insured viz.life etc.
- (iv) Installments payable by the policy holder every month or every year.
- **2881.** It is necessary that the thing insured should be specific and it should also be stated for what kind of loss government or the Insurance company will be under obligation to compensate e.g. sinking, catching fire, theft, falling sick, death etc. The amount of the installment payable by the policy holder should also be specified and the period of insurance, i.e. its commencement and termination should also be fixed.
- **2882.** All kinds of insurance can be treated to be conditional gift i.e. the policy holder is required to pay the Insurance company a fixed amount in installments by way of gift (premium) that if during the currency of the transaction the policy holder sustains the aforesaid losses, the company will compensate him for the fame. In that event it if obligatory on the company to honor this condition, all sorts of insurance made in this manner are legally valid.
- **2883.** If Government or the Insurance Company does not honor the aforesaid condition the policy holder is entitled to repudiate the transaction and to claim refund of the installments paid by him.
- **2884.** If the policy holder does not pay the installments regularly, it is not obligatory for the Insurance company to compensate him in the event of an accident, and he cannot also claim refund of the installments already paid by him.

**2885.** No specific period is necessary for the validity of an insurance agreement, and any period agreed upon between the Insurance company and the policy holder mutually is in order.

**2886.** If the shareholders of the company invest their money in it on the condition that if any one of them sustains a particular loss, the company will compensate him for it, it is obligatory for the company to honor that condition.

#### Some Problems Concerning The Rule Of Ilzam

\*According to the jurist this term means that if a person is the follower of a particular school it is obligatory for him to act according to the rules laid down by that school, but those rules are not binding on the followers of other schools.

The following are a few examples of the rule of 'llzam':

- (i) It is obligatory amongst the Sunnis that nikah (marriage) ceremony should take place in the presence of two witnesses. This is not, however, necessary amongst the Shi'ah. Hence, if a Sunni contracts a marriage in the absence of two witnesses his marriage, according to his belief, will be invalid and a Shi'ah may contract marriage with such a woman.
- (ii) According to Sunnis it is unlawful for a man to marry the niece (daughter of a brother or of a sister) of his wife in her presence but such a marriage is valid amongst the Shi'ah, if the wife accords permission. Hence, if a Sunni marries the niece of his wife in her presence the marriage is unlawful and a Shi'ah can marry such a woman.
- (iii) It is obligatory amongst the Sunnis that if sexual intercourse takes place with a woman who is a ya'isa (menopause) or a minor, she should observe the waiting period after being divorced, but this is not necessary among the Shi'ah. Hence, if a Sunni woman, who is a yaisa or a minor, is given revocable divorce by her Sunni husband and she becomes Shi'ah she can claim subsistence from her Sunni husband for the waiting period. Similarly if the husband of a Sunni woman becomes Shi'ah he can marry her sister etc. without observing her waiting period.
- (iv) If a Sunni divorces his wife in the absence of two witnesses or divorces her on one of the limbs of her body (e.g. on her finger) the divorce is valid according to Sunni jurisprudence. However, among the Shi'ah the divorce is invalid in both the cases. According to the rule of ilzam, therefore, a Shi'ah can marry such a divorced woman after the expiry of her waiting period.
- (v) If a Sunni divorces his wife during menses or when she is fee from menses (and he has had sexual intercourse with her) the divorce is valid according to the Sunnis. Hence, according to the rule of ilzam, a Shi'ah man can marry that woman after the expiry of her waiting period.
- (vi) A divorce given under coercion is valid only according to Hanafi jurisprudence. Hence according to

the rule of ilzam a Shi'ah can marry a woman who has been divorced under coercion in the light of Hanafi jurisprudence.

- (vii) If a Sunni takes an oath that if he performs a particular act his wife will stand divorced, she will stand divorced according to Sunni jurisprudence in the event of his performing that act, and a Shi'ah can marry her. Similarly a written divorce is valid among the Sunnis but according to Jafariah Jurisprudence divorce cannot take place by correspondence. Hence, a Shi'ah can marry a Sunni woman who is divorced in writing.
- (viii) According to Shafai Jurisprudence if a commodity is purchased on the basis of qualities as mentioned by the seller and on seeing it is found that it does possess those qualities, even then the transaction can be canceled under the rule of Khiyarur Ruiyat, Hence if a Shi'ah purchases a commodity from a Shafai and finds in it, on inspection, the qualities as stated by the seller, even then he can cancel the transaction under the rule of ilzam.
- (ix) According to Shafai Jurisprudence if either the buyer or the seller in a transaction sustains loss, he is not entitled to cancel the transaction. According to Ja'fariah Jurisprudence, however, the transaction can be canceled in such circumstances under the rule of "Khiyar ghabn", Hence, if one party to a transaction is a Shafai and the other is a Ja'fari and the Shafai sustains loss and the Ja'fari is not prepared to cancel the transaction he cannot be compelled to cancel it. (x) According to Abu Hanifa it is a condition precedent for the validity of "Bay' Musallam" (i.e. delivering the sold goods to the buyer on a later date) that the goods sold should be available, but according to Ja'fariah Jurisprudence this is not necessary. Hence, if a Ja'fari purchases a commodity from a Hanafi in the aforesaid manner the Hanafi can be compelled to cancel the transaction.
- (xi) If a Sunni leaves behind a daughter and a brother and if in case the brother has become a Shi'ah or becomes a Shi'ah after the death of the said Sunni, then as the daughter gets half of the property of the deceased the rest will, according to Sunni Jurisprudence, be inherited by the brother under the law of Ta'sib. According to Ja'fariah Jurisprudence, however, if the deceased leaves behind any offspring, his brother will not inherit anything from him. Similarly if the deceased has a real sister, and an uncle from his father's side, but the uncle is a Ja'fari or becomes a Ja'fari after the passing away of the deceased Sunni he benefit in the matter of inheritance under the rule of Ta'sib (although the rule of Ta'sib is void according to Ja'fariah Jurisprudence). The same orders apply to other cases of Tasib.
- (xii) According to Sunni Jurisprudence a wife inherits from out of the entire movable and immovable property left by her deceased husband. According to Ja'fariah Jurisprudence, however she does not inherit from land itself or itself price, but she gets a share out of buildings and price of the trees. Hence, if the wife is a Shi'ah she can inherit from the entire property of her Sunni husband because this is the rule followed by the Sunnis.

#### **Good Will**

Nowadays transactions on the basis of payment of good will are very common amongst the businessmen and tradesmen. The rule about the validity or otherwise of such transactions is that, if the owner has the right to increase the rent of the premises and to get the same vacated at the appointed time, and the tenant is under obligation to pay the rent or to vacate the premises, it is not permissible to take good will, and it is unlawful to occupy the rented premises without the permission of the owner. However, if the owner is not entitled to increase the rent or eject the tenant, it is lawful for the landlord to take good will. The matter in this regard will become clear in the problems to be explained later.

**2887.** If anyone has given a house on rent before the enactment of law by government that the owner of a house can neither increase the rent nor get the premises vacated and no condition regarding the increase of rent has also been imposed, the owner of the house can, according to religious law, increase the rent and also get the house vacated. However, if the tenant does not now agree, in the light of the present law, either to increase the rent or to vacate the house when the rent of such house has increased considerably even then the tenant is not entitled, according to religious law, to take good will from another person and his occupation of the house without the permission of the owner amounts to usurpation, and it is unlawful.

**2888.** If houses are given on rent after the enactment of the said governmental law and suppose their rent per annum is \$ 1000 per month but the owner of the house has, for some reason, fixed the rent of his house at \$ 200 per month and has taken a sum of \$ **10**.000 from the tenant as good will and has also agreed that the lease deed will be renewed every year, at the same rent whether in favor of the original tenant or any other person to whom he transfers the possession of the house, the tenant is entitled to hand over the house to a third person after obtaining from him good will equal to or more or less than that which was paid by him and, according to the agreed conditions, the owner of the house cannot also restrain him from doing so.

**2889.** Sometimes houses are leased out without taking goodwill and the following conditions are settled with the tenant:

- (i) The owner of the house cannot get it vacated and the tenant will be entitled to remain in occupation of the house.
- (ii) The owner of the house will renew the lease every year at the original late of rent.

In these circumstances if a person gets the house vacated by giving the tenant some money in lieu of his relinquishing his right and then takes the house from the owner on payment of rent, the tenant can take goodwill for surrendering the house, but he cannot take goodwill for handing over the house to another person.

### **Orders Regarding Postmortem**

**2890.** It is not permissible to dissect the dead body of a Muslim (i.e. to conduct postmortem). If it is dissected it is obligatory for the person dissecting it to pay compensation (Diyah) according to the relevant rules.

**2891.** It is permissible to dissect the dead body of a non–Muslim and the same order applies if it is doubtful whether the dead body is that of a Muslim. It makes no difference whether the problem arises in an Islamic State or in a non Islamic State.

**2892.** If the life of a Muslim depends upon dissecting the dead body of a Muslim and it is also not possible to dissect the body of a non Muslim, or a person whose being a Muslim is doubtful, and there is also no other way to save the life of the Muslim, it is permissible to dissect the dead body of a Muslim.

### **Orders Regarding Operation**

**2893.** It is not permissible to amputate a limb of the dead body of a Muslim (e.g. eye) to fix it in the body of living person. However, it is permissible to amputate the limb if the life of a Muslim depends upon amputating it, but it is obligatory for the person amputating the limb to pay compensation. If a person commits a sin on account of amputating the limb, it is apparently permissible to fix that limb in the body of a living person, and as that limb becomes a part of the body of the living person the orders applicable to a living body will apply to it after it as been fixed. Here the question arises as to what will be the position if the deceased has made a will with regard to the amputation of his limb. Apparently it is permissible to do so and the person amputating the limb is not required to pay compensation.

**2894.** If a person is willing that one of his limbs be amputated during his lifetime and could be fixed to the body of another person, the following orders apply. Such amputation is not permissible if the limb to be amputated is one of the major limbs e.g. eye, hand, foot etc. However, if it is not one of the major limbs (e.g. if it is skin or flesh) its amputation is permissible. It is also permissible to receive compensation for giving a part of the body as gift.

**2895.** It is permissible to receive compensation for giving one's blood to a sick person. It is also permissible to give one's blood free of cost to a sick person who cannot afford to pay its price.

**2896.** It is permissible to amputate the limbs of the dead body of a non-Muslim or of a person whose being a Muslim is doubtful and to fix it in the body of a Muslim by means of an operation. The same order applies to the limbs of an unclean (Najis) animal i.e. if the limb of an unclean animal is amputated and fixed in the body of a person it will be treated to be a part of his body and the presence of such a limb does not hinder the offering of prayers.

#### **Artificial Means Of Procreation**

**2897.** It is not permissible to inject the semen of a stranger into the womb of a woman, and it makes no difference whether this is done by her husband or someone else. A child born in this way will also be treated as the offspring of the man whose semen was injected into the womb of the woman and all orders regarding pedigree and inheritance which apply to that man's other children will also apply to this child.

A child who is deprived of inheritance is the one who is born as a result of adultery, but here the matter is different. Although the method of such procreation is unlawful, the woman will be treated to be the mother of the child and all orders regarding motherhood will apply to her. There will be no difference between that child and her other children. Similarly if a woman makes the semen of her husband reach the womb of another woman by some means (for example by means of clitorism) (Musahiqa) and that woman becomes pregnant the father of the child will be the man whose semen was utilized. All orders applicable to a mother and a child will also apply to such mother and child.

**2898.** If the semen of a man is placed in an artificial womb (called baby tube) the action is permissible and apparently the father of the child will be the person whose semen it was and all orders applicable to a father and a child will be applicable to them. The difference between such a child and other children is that such a child does not have a mother.

**2899.** Making the semen of a husband reach the womb of his wife artificially is permissible and the child thus born is like all other children. However, if the person who injects the semen is a stranger and the injection involves seeing or touching the private parts of the woman, the action is not permissible.

# **Roads Constructed By The Government**

**2900.** It is apparently lawful to walk on the roads which are constructed by the government after demolishing the private houses and property, because now these places fall under the category of perished and wasted property like broken earthenware etc. Although even now the owner will have a preferential right over that land etc., but it is also permissible for other people to utilize it. As regards the small pieces of the owner's land, which are left here and there after the construction of the road, their purchase and sale is not permissible it the government puts them on sale after usurping them.

**2901.** If while a public road is being constructed, a masjid happens to be on the way, and it is demolished and the road is constructed the orders relating to a masjid do not apply to it e.g. it is not unlawful to go there while one is ceremonially unclean, or to pollute it, although as a matter of precaution, orders pertaining to a masjid should be followed with regard to that place.

As the masjid is a charitable (Waqf) property, it is not lawful to take possession of, or buy or sell, its other things except that permission should be obtained from the mujtahid or his representative to utilize

them for another nearby masjid. The above orders also apply to those religious (Mazhab) schools and halls (Imambaras) which are made a part of a road.

**2902.** It is lawful to walk on the roads which have been constructed on masjids, religious schools and imambaras.

**2903.** If a masjid is demolished and a part thereof remains and prayers can be offered or other acts of worship can be performed on it, the orders applicable to a masjid will apply to that part. But if some unscrupulous person makes alterations in that part in such a way that it cannot be used as a masjid e.g. if he converts it into a shop, a place of business, or a house, the following orders will apply to it: If its possession and utilization is not opposed to the orders relating to a masjid e.g. if it is used for boarding and lodging purposes it is undoubtedly permissible to put it to such ".

As the usurper has prevented it from being a masjid, it is no longer possible to use it for prayers and worship, but there is no harm in utilizing it otherwise. For example, a forsaken masjid, which is no longer visited by the people, may be used for purposes not opposed to the orders relating to a masjid (such as using it as agricultural land or shop). However, it is not permissible to utilize it for purposes which are not in keeping with the sanctity of masjid (such as converting it into a play ground).

**2904.** If a road is constructed through a graveyard of Muslims and the land is owned by someone the same orders will apply to it as mentioned above. In case, however, it is waqf5 the orders relating to endowments will be applicable to it.

This is subject to the condition that passing from there and crossing the graveyard is not a source of disrespect to the dead Muslims, otherwise it is not permissible to pass from there. If the land of the graveyard is an endowed property and does not belong to anyone and passing through it is also not a source of disrespect to the dead Muslims, it is permissible to pass through it. As regards the remaining part of the graveyard the same orders apply to it as mentioned above. (See: Article 2901)

# **Prayers And Fasting**

**2905.** If a person travels by air towards west after completing his fast of the month of Ramazan, and reaches a place where sunset has not yet taken place, it is apparently not obligatory on him to observe rule, of fasting till sunset at the place of his arrival, because his fast has already been completed in his own town, and the Qur'anic verse "complete the fast till night" (Surah al-Baqarah, 2:187) does not apply in this case.

**2906.** If a person travels towards east after offering dawn prayers and reaches a place where dawn has not yet appeared and similarly if he travels after offering noon or evening prayers and reaches a place where it is not yet time to offer noon or evening prayers he should, on the basis of precaution, offer prayers de novo (again) in all these cases.

**2908.** If the direction of the Qibla can be ascertained in an aeroplane and other conditions necessary for offering prayers are also fulfilled, it is permissible to offer prayers these. However, if sufficient time is available to offer prayers and necessary conditions for offering prayers do not also exist, it is not permissible to offer prayers (in the aeroplane). In case, however, time is short and it is not possible to get out of the aeroplane, then if the person concerned can locate the direction of the Qibla, it will be better, but otherwise he should offer prayers turning his face in the direction of Qibla as guessed by him. And if the direction of Qibla cannot be ascertained or guessed he may offer prayers facing any side, although in such circumstances precaution lies in that he should offer prayers turning his face in all the four direction. These orders apply when it is possible to face Qibla, otherwise the condition regarding facing Qibla ceases to be operative.

**2909.** If a person travels by an aeroplane whose speed is equal to the speed of the earth and flies round the earth for some time from east to west, he should, on the basis of precaution, offer five prayers during twenty four hours. In such circumstances fasting is apparently not obligatory. This is obvious if the journey is performed at night, and if it is performed during daytime there is no proof of its being obligatory during such a journey. But if the speed of the aeroplane is such that it goes round the world during every twelve hours it is difficult to prove by legal argument that offering every particular prayer is obligatory when its time arrives. On the other hand one should, on the basis of precaution, offer five prayers during every twenty–four hours.

If an aeroplane flies from west to east and its speed is equal to or less than that of the earth, it is evident that offering of five prayers during the period of twenty-four hours will be obligatory. But if the speed of the aeroplane is more than that of the earth e.g. if it goes round the earth once during a period of three hours or less than that, the prayers will be regulated by the orders contained in the foregoing article.

**2910.** If a traveler is one of those travelers upon whom it is obligatory to fast and after having observed fast at dawn he travels by air and reaches a place where dawn has not yet appeared it is apparently not obligatory on him to continue his fast because fasting during night is, not permissible.

**2911.** If a person Who is fasting departs from his home town after the midday and reaches a place where the sun has not yet set (although it has already set in his own town) it is apparently obligatory on him not to break his fast but complete it, because the order for a person who departs from his home town after midday is that he should observe the fast till night.

**2912.** If one who lives in a polar region, where the days and nights are of six months, it is obligatory on him to migrate to a place where he can offer his prayers and observe fast, otherwise, on the basis of precaution, he should offer his daily prayers five times in every twenty four hours.

## **Lottery Tickets**

At times a company sells tickets and undertakes to give prizes to the buyers by means of drawing lots.

The orders with regard to such tickets are as follows:

**2913.** If a person purchases such a ticket on the assumption that he will get the prize, it is undoubtedly unlawful to purchase the ticket. And if one gets a prize as a consequence of this unlawful act and the company concerned belongs to the government, the prize will be treated to be derelict property, and it is not permissible to appropriate it without the permission of the mujtahid or his representative.

In case, however, the company belongs to the public and it is agreeable to award the prize, it is permissible to appropriate the prize (without the permission of the mujtahid). And if one who purchases the ticket gives the money gratis e.g. if his intention is to participate in a charitable deed and not to get the prize and the prize is given by a company belonging to government it can be appropriated with the permission of the mujtahid or his representative, and if the company is a private one, such a permission is not necessary.

In case, however, a person purchasing a ticket pays the price of the ticket with the intention of advancing loan, and he her a right to get his money back after the drawing of the lots, but the loan is subject to the condition that he should also purchase a ticket from the company to participate in the draw, and as a result of the draw he wins a prize on that ticket, the transaction is unlawful, because it amounts to interest bearing loan.

# Vow

- **2914.** The position with regard to the persons who in respect of their vow place some amount of money by the side of a pulpit or in a charity box without pronouncing the legal formula is as follows:
- (i) The person who dedicates some money in accordance with his vow should declare himself that it should be spent on any charitable deed or for some special purpose.
- (ii) The person who holds charge of the pulpit or of the box should mention before or after the payment of the money that it will be spend on any charitable deed or for some special purpose and the person dedicating it should express his sanction to it or remain quiet.
- (iii) A person may dedicate some amount of money to anyone of the Imams or to Hazrat Abbas without pronouncing the legal formula or may drop money in a box maintained in their names without making any intention and may authorize the person who appropriates the money to spend it in the manner he likes, or to settle the mode of its disposal later.
- (iv) A person may place a wreath on the 'Alam' (standard) without pronouncing the legal formula and may later permit the person appropriating it to utilize the same in connection with meetings held to mourn the death of the martyrs. All the deeds mentioned in the above cases are lawful.

#### **Birth Control And Abortion**

**2915.** It is permissible for a woman to use such contraceptives as are not very harmful, though her husband may not agree to their use. Abortion is not, however, permissible even if pregnancy is at the stage of sperm only. (See: Article 2897)

### **Imported Leather And Shoes**

**2916.** If a piece of leather or a pair of shoes is imported from a non Muslim country or is bought from a Muslim who has purchased it from a non Muslim, and it is not known whether its hide is of the animal who was slaughtered according to the religious laws or not, the leather or the shoe is pure, and one's body or dress does not become impure if its wetness touches it. It is not, however, permissible to offer prayers on it.

#### **Alcohol**

**2917.** Alcohol or spirit obtained from wood or something else is pure. Similarly perfumes and the wax mixed in polish which, contain alcohol are also pure.

#### **Installments**

**2918.** When the cash and credit prices of goods are different 'from each other and when at the time of selling and buying goods it is known that the transaction is being made on cash payment or on credit, and what the price payable is, the transaction is in order whether the payment is made in lump sum or by installments.

## **Use Of Gold As Ornament**

**2919.** It is not permissible for a man to wear gold (e.g. to use a chain, a locket, a ring, chain of the watch or a frame of the spectacles which is made of gold) but there is no harm in his mixing a cover of gold on his tooth even though it may be for the purpose of adornment.

# **Shaving One's Beard**

**2920.** It is unlawful on the basis of obligatory precaution to shave one's beard, and it is also unlawful to get wages for shaving the beard of another person. However, if a person who does not shave his beard is made a target of ridicule and has to suffer humiliation which is intolerable in the eyes of the wise persons, it is permissible for him to shave his beard.

#### A Husband Who Does Not Give Subsistence To His Wife

**2921.** If a husband does not provide subsistence to his wife on account of cruelty, hatred, dishonesty, or financial hardship, and does not also divorce her, the mujtahid or his representative can order him either to divorce her, or to provide her subsistence, and in case he declines to comply with the order, the mujtahid or his representative can pronounce the formula of divorce. The same order applies in the case of a woman who does not go to her husband's house on account of his maltreatment, fear for life, and severe hardship, and claims subsistence from him. If the husband does not provide her subsistence, the mujtahid or his representative may order him to provide the same and, if he disobeys the order, may enforce their divorce.

- 1. Property where owner is nor known.
- 2. because a businessman hires a bank for a particular task. In case, however, the bank is not a domestic one the hiring will be valid only with the permission of the mujtahid or his representative (wakil).
- 3. To promise payment of some amount on one's performing a particular task.
- 4. Because it may be said that the shareholders of the company hire the bank for this task.
- 5. Property that is endowed for pious purposes.

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