

Transactions

Orders Regarding Purchase and Sale

2059. It is proper for a business man to learn the rules with regard to matters with which one is confronted frequently in connection with various transactions. Imam Ja'far Sadiq is quoted to have said: "A person desirous of engaging himself in business should learn its rules and orders and in case he makes any transaction without learning them he will suffer On account of entering into a void or doubtful transaction".

2060. If a person is not aware, on account of being ignorant of the relevant orders of the transaction made by him being valid or void, he cannot appropriate the property which he has acquired.

2061. If a person does not possess wealth and it is obligatory on him to meet some expenses (e.g. of his wife and children), he should engage himself in business. Moreover, business is recommended for recommended acts like providing better means of livelihood to one's family and helping the indigent persons.

Recommended Acts

The following four things are recommended in connection with sale and purchase:

- (i) One should not discriminate between various Muslim buyers in connection with the price of a commodity.
- (ii) One should not be greedy in the matter of the price of a commodity ie. one should not sell it for high price.
- (iii) One should give a little more of the thing which one sells and should take a little less of the thing which one buys.

(iv) If the buyer regrets having purchased something and wishes to return it, the seller should take it back.

Abominable Transactions

2062. The following are some particular abominable transactions:

- (i) To sell one's property, except that one may purchase some other property with its sale proceeds.
- (ii) To adopt the profession of a butcher.
- (iii) To sell shrouds.
- (iv) To enter into transaction with vulgar people.
- (v) To transact between the call to dawn prayers and sunrise.
- (vi) To make it one's profession to buy or sell wheat or barley or other similar commodities.
- (vii) To intervene while a person is purchasing some commodity and to express one's own desire to purchase that commodity.

Unlawful Transactions

2063. The following six kinds of transactions are unlawful:

- (i) To sale and purchase basically impure (najis) things, e.g. intoxicating beverages, non-hunting dogs, a dead body era pig. As regards other impure things, their sale and purchase is permissible only if it is proposed to obtain lawful gain from them (e.g. manufacturing manure from faeces), although, as a precaution, their sale and purchase should also be avoided.
- (ii) Sale and purchase of usurped property.
- (iii) On the basis of precaution sale and purchase of those things which are not usually considered, to be merchandise is unlawful (for example, the sale and purchase of ferocious beasts).
- (iv) Any transaction which involves interest.
- (v) Sale and purchase of those things which are usually utilized for an unlawful act only (e.g. gambling tools).
- (vi) To sell a thing in which something else is mixed and it is neither possible to detect the adulteration nor the seller informs the buyer about it (e.g. to sell ghee mixed with fat). This act is called cheating (ghash) or adulteration. The holy Prophet of Islam has said: "If a person sells something to the Muslims

or harms them, or practices deceit upon them, he is not one of my' followers. And as and when a person cheats his brother Muslim (i.e. sells him an adulterated commodity) Allah deprives him of his livelihood, closes the means of his earnings and leaves him to himself (i.e. deprives him of His blessings).

2064. There is no harm in selling a pure thing which has become impure and can be purified by washing it with water. However, if the buyer wants to utilize it for a purpose for which purity is a condition precedent, for example if it is a kind of food which he wants to eat the seller should tell him about its being impure. In case, however, it is a dress it is not necessary that the buyer should be told about its being impure though he may use it for offering prayers, because in prayers the apparent purity of body and dress is sufficient.

2065. If a thing like ghee and oil, which cannot be purified by washing with water, becomes impure and if it is to be used for a purpose for which purity is a condition precedent (e.g. if ghee is required for eating) it is necessary for the seller to inform the buyer about its being impure. And if it is required for a purpose for which its purity is not a pre-requisite, for example if impure oil is to be used for burning, but it is possible that the food or body of the buyer may become impure with it, even then the same rule applies and it is necessary for the seller to inform the buyer about the impurity of the commodity because it is not permissible to become the cause of the impurity of food or of the impurity of body which becomes the cause of nullification of ablutions or bath becoming void.

2066. Although the purchase and sale of eatable impure medicines is permissible, the buyer should be informed about it. And the same rule applies when the medicine is not eatable but there is a possibility of its contaminating the food or body of the buyer.

2067. There is no harm in selling or buying the oils which are imported from non-Islamic countries, if nothing is known about their being impure. And as regards the fat which is obtained from an animal after its death, in case it is probable that it is of an animal, which has been slaughtered according to Islamic law and it is obtained from an unbeliever, or is imported from non-Islamic countries, though it is pure and its purchase and sale is permissible, it is unlawful to eat it, and it is necessary for the seller to inform the buyer about it.

2068. If a fox, or any other such animal is not slaughtered according to religious law, or dies. it is unlawful to purchase or sell its hide, and its transaction is void.

2069. The purchase and sale of a hide which is imported from a non-Islamic country or is received from an unbeliever is permissible if it is probable that it is of an animal which has been slaughtered according to Islamic law. However, it is not permissible to use it in offering prayers.

2070. It is permissible to purchase and sell the fat which is obtained from an animal after its death, and the hide, which is obtained from a Muslim and one knows that Muslim has obtained it from an unbeliever and has not verified whether or not it is of an animal, which has been slaughtered according to Islamic law. However, offering prayers with that hide, or eating that fat is not permissible.

2071. Transaction of intoxicating drinks is unlawful and void.

2072. Sale of usurped property is void and the seller should return to the buyer the money taken from him.

2073. If a buyer is serious to make a transaction but his intention is not to pay the price of the commodity being purchased by him, this intention of his does not affect the validity of the transaction, and it is necessary that he should pay the money to the seller.

2074. If a person has purchased a commodity on credit and wishes to pay its price later out of unlawful property even then the transaction is valid. However, he should pay the amount which he owes, out of lawful property so that his debt is liquidated.

2075. Purchase and sale of instruments of pleasure (like guitar, lute and harmonium) is unlawful and on the basis of precaution the same order applies to the small instruments which are the toys of the children. However, there is no harm in selling and purchasing common instruments like radio and tape-recorder provided that it is not intended for unlawful purposes.

2076. If a thing which can be used for lawful purposes is sold with the intention of putting it to unlawful use – for example, if grapes are sold so that wine may be prepared with them – the transaction is unlawful, rather void, on the basis of precaution. However, if the seller does not sell it with that intention but only knows that the buyer will prepare wine with the grapes, the apparent position is that the transaction is in order.

2077. Making the image of a living being, and even its painting, is unlawful, but there is no harm in purchasing and selling it, though it is better to abstain from it.

2078. It is unlawful to purchase a thing which has been acquired by means of gambling, theft, or a void transaction, and if a person buys such a thing, he should return it to its owner.

2079. If a person sells ghee with which fat is mixed and specifies it – for example, he says: "I am selling 3 kilos of ghee" – the transaction is void to the extent fat is present in the ghee and the price which the seller has received for the fat is the property of the buyer and the fat is the property of the seller and the buyer can also rescind (cancel) the transaction in respect of the pure ghee present in the mixture. However, if the seller does not specify it and sells 3 kilos of ghee on responsibility, and later gives ghee with which fat is mixed, the buyer is entitled to return that ghee, and ask for pure ghee.

2080. If a seller sells a commodity, which is sold by weight or measurement, at a higher rate against the same commodity, for example, if he sells 3 kilos of wheat for 5 kilos of wheat, it is usury and is unlawful. Rather, if one of the two kinds is faultless and the other is defective, or one is superior and the other is inferior, or their prices differ, and the seller gets more than the quantity he gives, even then it is usury and is unlawful. Hence if a person gives unbroken copper or brass and gets more of broken copper and

brass, or gives a good quality of rice and gets more of another kind of rice instead, or gives manufactured gold and takes a larger quantity of raw gold, it is usury and is unlawful.

2081. If the additional commodity being taken by a person is different from the commodity which is being sold by him for example if he sells 3 kilos of wheat against 3 kilos of wheat and some cash, even then it is usury and is unlawful. Rather, if he does not take anything in excess but imposes the condition that the buyer would perform some act for him, it is also usury and is unlawful.

2082. If the person who is giving less quantity of a commodity adds some other thing to it, for example if he sells 3 kilos of wheat and one book for 5 kilos of wheat there is no harm in it. And the same rule applies if each party adds something to the commodity e.g. when a person sells 3 kilos of wheat and one handkerchief for 5 kilos of wheat and one book.

2083. If a person sells something which is sold by measuring with meter or hand e.g. cloth or something which is sold by counting e.g. eggs and walnuts and takes more – for example if he gives ten eggs and takes eleven eggs in lieu thereof – there is no harm in it.

But if he sells ten eggs for eleven eggs on credit it is necessary that there should be difference between the eggs – for example he sells ten eggs of big size on credit for eleven eggs of medium size – because if there is no difference between the eggs it will not be treated to be purchase and sale, but it will in fact be a loan, though it may be given the name of purchase and sale, and it is for this reason that such a transaction is unlawful and void.

Concluding a contract for a larger amount after giving bank-notes in cash for a certain period also falls under this category, for example, a person gives \$100 to another person so as to take back \$110 after six months. However, there is no harm in concluding such a transaction if there is a difference between these bank-notes, for example if \$100 are sold for a currency of another kind like Rials, Rupees or Pounds. Rather there is no harm in such a case even if there is a difference in their prices.

2084. If a commodity is sold in most of the cities by weight or measurement, and in some cities by counting, the obligatory precaution is that if that commodity is sold against the same commodity it should not be sold at a higher rate than that. However, if the cities are different, and it cannot be said that in most of the cities that commodity is sold by weight or measurement or by counting, every city will be governed by the custom prevailing in it.

2085. If the commodity being sold and that being taken in lieu thereof are not of the same sort, there is no harm in taking the quantity of one in excess of the other. Hence, if 3 kilos of rice is sold against 6 kilos of wheat, the transaction is valid.

2086. If the thing which a person is selling and the thing which he is taking for it, are made of one and the same thing, he should not take it in excess. For example, if he sells 3 kilos of cow's ghee and takes 5 kilos of cow's cheese in lieu thereof. it is usury and is unlawful. And if he sells ripe fruit against unripe

fruit, even then he cannot take any quantity in excess.

2087. From the point of view of usury wheat and barley are treated to be of the same kind. Hence, for example, if a person gives 3 kilos of wheat and takes in lieu thereof 3 1/2 kilos of barley, it is usury and is unlawful. And if, for example, a person purchases 30 kilos of barley on the condition that he would give in lieu thereof 30 kilos of wheat when wheat is harvested, it is unlawful because he has taken barley on the spot and will give wheat some time later, and this amounts to taking something in excess.

2088. A transaction involving interest is unlawful. Whether it is contracted with a Muslim or with an unbeliever. However, it is permissible, and there is no harm, if a Muslim takes interest from an unbeliever who is not under the protection of Islam or from an unbeliever who is under the protection of Islam and taking interest is permissible in his religion. And on the basis of obligatory precaution father and son and wife and husband cannot also take interest from each other.

Conditions Of A Seller And A Buyer

2089. There are six conditions for the sellers and buyers;

(i) They should be adult.

(ii) They should be sane.

(iii) They should not be prodigal (Safih) i.e. they should not spend their property on absurd things.

(iv) They should have an intention to sell and purchase a commodity. Hence if a person says in jest that he has sold his property, the transaction is void.

(v) They have not been forced to sell and buy.

(vi) They should be the owners of the commodity which is proposed to be sold and purchased. Orders relating to these will be narrated in the following Articles.

2090. To conduct business with a minor child, who is making the transaction independently, is void. However, if the transaction is made with the guardian of the child and the minor child, who can distinguish between good and bad, only pronounces the formula of the transaction the transaction is valid. Rather, if the commodity or money is the property of another person, and the child sells that commodity or purchases something with that money as an agent of the owner, the apparent position is that the transaction is in order though the discerning child may be possessing that property or money independently.

And similarly if the child is a means of giving money to the seller and carrying the commodity to the buyer or giving the commodity to the buyer and carrying the money to the seller the transaction is valid though the child may not be discerning (i.e. one who can distinguish between good and bad) because in

fact two adult persons have entered into the contract. However, the seller and the buyer should be certain and satisfied that the child will deliver the commodity or money to its respective owners.

2091. If a person buys something from a minor child or sells something to him when making a contract with him is not valid he should give the commodity or money taken from him to his guardian if it is the child's own property, or to its owner if it is the property of someone else, or should obtain the agreement of its owner. But if he does not know its owner and has also no means to identify him he should give the thing taken from the child to a poor on behalf of its owner on account of 'mazalim' (i.e. to compensate for the injustices).

2092. If a person concludes a transaction with a discerning child (i.e. one who can distinguish between good and evil) with whom it is not valid to conclude a transaction, and the commodity or money, which he gives to the child, perishes, the apparent position is that he can, claim it from the child after he attains the age of puberty, or from his guardian and if the child is not discerning, the person concerned has no right to claim anything from him.

2093. If the buyer or the seller is forced to conclude a transaction, and he agrees after the transaction is concluded (e.g. if he says: I agree) the transaction is valid. However, the recommended precaution is that the formula for the transaction should be repeated again.

2094. If a person sells the property of another person without his permission, and the owner of the property is not agreeable to its sale and does not accord permission, the transaction is void.

2095. The father or paternal grandfather of a child and the executor of the father and the executor of the paternal grandfather of a child can sell the property of the child, and if the circumstances demand, an Aadil mujtahid can also sell the property of an insane person, or an orphan, or one, who has disappeared.

2096. If a person usurps some property and sells it and after the sale the owner of the property permits the transaction, the transaction is valid, and the thing which the usurper gave to the buyer and the profits accrued to it from the time of transaction belong to the buyer and the thing given by the buyer and the profits accrued to it from the time of the transaction belong to the person whose property was usurped.

2097. If a person usurps some property and sells it with the intention that the sale proceeds should belong to him, and if the owner of the property allows the transaction, the transaction is valid, but the sale proceeds belong to the owner and not to the usurper.

Conditions Regarding Commodity And Its Convertibility

2098. The commodity which is sold and the thing which is taken in exchange for it have five conditions attached to them.

(i) Its quantity should be known by means of weight, scale, measurement, counting etc.

(ii) It should be transferable. Hence sale of a horse which has run away is not valid. However, if a horse which has run away is sold along with a thing which can be transferred (e.g. a carpet) the transaction is valid, although the horse may not be found.

(iii) The features of the commodity and the thing taken in exchange, which influence the interest of the people in the transaction, should be specified.

(iv) The ownership should be unconditional. Hence, it is not permissible for a person to sell a trust property except in certain circumstances which will be mentioned later.

(v) The seller should sell the commodity itself and not its profit. Hence, if for example, one year's profit of a house is sold it is not in order. However, if a buyer gives profit of his property instead of money (for example if he buys a carpet from someone and in lieu thereof gives him the profit of his house for one year) there is no harm in it. Orders with regard to these matters will be narrated in the following Articles.

2099. If transaction with regard to a commodity is made in a city by means of weight or measurement one should purchase that commodity in that city by getting it weighed or measured. But if transaction of the same commodity is concluded in another city by observing it one should purchase it in that city by observation.

2100. The transaction with regard to a thing which is purchased and sold by weighing can also be made by measuring it, and it is in this way that if, for example, a person wants to sell ten kilos of wheat, he should fill a measure, which contains one kilo of wheat, and give ten such measures to the buyer.

2101. If anyone of the conditions mentioned above is not fulfilled the transaction is void. However, if the buyer and the seller agree to appropriate the property of one another, there is no harm in their doing so.

2102. The transaction of a trust property is void. However, if it is so much impaired or is going to be so impaired that it is not possible to use it for the purpose for which endowment was made, for example, if the mat of a masjid is so much torn that it is not possible to offer prayers on it, there is no harm in selling it. And if it is possible its sale proceeds should be spent in the same masjid for a purpose which is nearest to the object of the person who made the endowment.

2103. When so serious differences crop up between the persons for whom endowment is made that it may be feared that if the endowed property is not sold, the property or the life of some person would perish that property may be sold and the sale proceeds should be spent on a purpose which is nearest to the object of the person who made the endowment. And the same orders apply if the man making the endowment lays down the condition that the trust property may be sold if it is advisable to do so.

2104. There is no harm in buying and selling a property which has been leased out to another person. However, the lease holder is entitled to utilize the property during the period of lease. And if the buyer

does not know that the property has been leased out or he has purchased it under the impression that the period of lease is short he can rescind the transaction when he comes to know the correct position.

Formula Of Purchase And Sale

2105. It is not necessary that the formula of purchase and sale should be pronounced in Arabic. For example, if the seller says in English: "I have sold this property in lieu of this money", and the buyer says: "I accept it," the transaction is in order. However, it is necessary that the buyer and the seller should be serious about the matter i.e. by uttering the above mentioned words their intention should be to buy and sell.

2108. If the formula is not recited at the time of transaction, but the seller hands over to the buyer his own property as against the property which he takes from the buyer; the transaction is in order and both of them become the owners.

Purchase And Sale Of Fruits

2107. It is in order to sell the fruits on the tree, whose flowers have fallen, and which has produced seed and there is also no harm in selling unripe grapes growing on the tree.

2108. It is also permissible to sell the fruits growing on the tree which have not yet developed into the seed and whose flowers have not yet fallen. And it is better for the seller to sell them along with something which grows from earth (like vegetables) or settle with the buyer that he should pick the fruit before its seeds develop, or sell to him, the fruits of more than a year.

2109. There is no harm in selling the palm-dates, which have become yellow or red while they are still on the tree, but the dates of the same tree should not be treated to be the exchange for them. However, if a person has a palm-date tree in the house or garden of another person and if the quantity of the dates of that tree is estimated and the owner of the tree sells them to the master of the house or the garden, and the dates of that very tree are treated to be the exchange for them there is no harm in it.

2110. There is no harm in selling cucumber, brinjals, vegetables and other similar things which are picked a number of times during a year provided that they have become apparent and visible and it is settled as to how many times during the year the buyer would pick them.

2111. There is no harm if after the ears of wheat and barley have developed into the seeds they are sold for something other than wheat and barley which is obtained from these very things.

Cash And Credit

2112. If a commodity is sold for cash, the buyer and seller can, after concluding the transaction, demand

the commodity and money from each other and take possession of it. The manner in which delivery of house, land etc. is given is that they are placed at the disposal of the buyer and the manner of delivering carpet, dress etc. is that they should be placed at the disposal of the buyer in such a way that if he wants to take them to another place the seller may not prevent him from doing so.

2113. When something is sold on credit the period should be known clearly. In case therefore, a commodity is sold with the condition that the seller would receive the price at the time of harvest the transaction is void because the period of credit has not been specified clearly.

2114. If a commodity is sold on credit, the seller cannot demand what he has to receive from the buyer before the stipulated period is over. However, if the buyer dies, and has some property of his own, the seller can claim the amount due to him from the heirs of the buyer before the stipulated period is over.

2115. If a person sells a commodity on credit he can demand the debt from the buyer after the expiry of the stipulated period. However, if the buyer cannot pay it, he should give him extension of time or rescind the transaction, and take back the commodity if it is available.

2116. If a person gives a quantity of some commodity on credit to a person, who does not know the price of the commodity and the seller does not tell him its price, the transaction is void. However, if he gives it on credit to a person who knows its cash price, and charges a higher price – for example if he tells him: 'I shall charge ten cents per dollar more on the commodity, which I am giving you on credit, as compared with the price, which I charge on cash payment – and the buyer accepts this condition, there is no harm in it.

2117. If a person sells a commodity on credit, and stipulates a period for receiving its price, and for example, after the passage of half of the stipulated period, he reduces his claim and takes the balance in cash, there is no harm in it.

Conditions For Forward Contract (Time-Bargain)

2118. Forward purchase means that a buyer pays the price of a commodity and takes its possession later. Hence, the transaction will be in order, if, for example, the buyer says: "I am paying this amount so that I may take possession of such and such commodity after six months", and the seller says, "I agree", or the seller accepts the money and says: "I have sold such and such thing and will deliver it after six months".

2119. If a person sells, on forward contract basis, coins which are of the kind of gold or silver and takes gold or silver coins in exchange for them, the transaction is void. However, if he sells a commodity or money which is not of the kind of gold and silver and takes another commodity or gold or silver money in exchange the transaction is in order, and the recommended precaution is that one should get money and not any other commodity in exchange for the commodity sold by him.

2120. There are seven conditions of forward contract/time bargain:

(i) The characteristics on account of which the price of a commodity may be affected should be specified. However, much hair-splitting is also not necessary and it is sufficient that the people say that its particulars are known

(ii) Before the buyer and the seller separate from each other the buyer should give full price to the seller or if the seller is indebted to the buyer for an equivalent amount the buyer adjusts it against the price of the commodity and the seller agrees to it. And if the buyer gives some quantity of the price of that commodity to the seller the transaction will no doubt be valid in respect of that quantity but the seller can rescind the transaction.

(iii) The time limit should be specified exactly, in case, therefore, the seller says that he would deliver the commodity when the crop is harvested the transaction is void, because in this case the period has not been specified exactly.

(iv) Such a time should be fixed for the delivery of the commodity that at that time it may not be so scarce that it may not be possible for the seller to deliver it.

(v) The place of delivery should be specified. However, if that place becomes known from their conversation it is not necessary that its name should be mentioned.

(vi) The weight or measure of the commodity should be specified. And there is no harm in selling, through forward contract, a commodity which is usually bought and sold by seeing. However, it is necessary that, for example, the difference between some kinds of walnut and eggs should be so small that the people may not attach any importance to it.

(vii) If the commodity being sold by a person by way of time-bargain falls under the category of commodities which are sold by weight or scale it cannot be exchanged for the commodity of the same kind e.g. time-bargain of wheat against wheat is not permissible.

Orders Regarding Forward Contract

2121. If a person purchases something by way of forward contract, he is not entitled, till the expiry of the fixed period, to sell it to anyone except the seller, but there is no harm in selling it to any person after the expiry of the stipulated period, even though the buyer may not have taken possession of it till that time. However, it is not permissible to sell cereals like wheat and barley (which are sold by weighing or measuring), unless they are taken in possession, except that the buyer may sell them at the same price, at which he has bought them.

2122. In forward purchase transaction if the seller gives at the fixed time the commodity, regarding which bargain took place, the buyer should accept it. Furthermore, if the seller gives something better than that

agreed upon and it is reckoned to belong to the same sort, the buyer should accept it.

2123. If the commodity which the seller gives is inferior to that about which agreement was made the buyer can reject it.

2124. If the seller gives a commodity other than that about which agreement was made and the buyer agrees to accept it, there is no harm in it.

2125. If a commodity which has been sold by way of time, bargain becomes scarce at the time when it should be delivered, and the seller cannot procure it, the buyer may wait till the seller procures it, or cancel the transaction, and take back the thing, which he may have given.

2126. If a person sells a commodity and agrees to deliver it after some time, and also to take its price after some time. the transaction is void on the basis of obligatory precaution.

Sale Of Gold And Silver Against Gold And Silver

2127. If gold is sold against gold and silver is sold against silver whether it is in the form of coins or otherwise and if the weight of one of them is more than that of the other, the transaction is unlawful and void.

2128. If gold is sold against silver or silver is sold against gold the transaction is valid, and it is not necessary that their weight is equal.

2129. If gold or silver is sold against gold or silver it is necessary for the seller and the buyer that before they separate from each other, they should deliver the commodity and its exchange to each other. And if even a part of the thing. about which agreement has been made, is not delivered to the person concerned the transaction becomes void.

2130. If either the seller or the buyer delivers the entire thing agreed upon, but the other person delivers only a portion of that thing, and they separate from each other, the transaction with regard to that portion is valid, but the person, who has not received the entire property, can cancel the transaction.

2131. If silver dust of a mine is sold against pure silver, and gold dust of a mine is sold against pure gold, the transaction is void. However, there is no harm in selling silver dust against gold or gold dust against silver.

Circumstances In Which One May Cancel The Transaction

2132. The right to cancel a transaction is called Khiyar. The seller and buyer can cancel a transaction in the following eleven cases:

(i) The parties to the transaction may not have parted from the assembly in which the agreement was

made. This is called khiyarul majlis.

(ii) In the matter of sale the buyer and the seller and in other transactions one of the parties may have sold or bought the article at high price or who have been cheated. This is called khiyarul ghabn.

(iii) While entering into a transaction it may be settled that up to a stipulated time one or both the parties will be entitled to cancel the transaction. This is called khiyarush shart.

(iv) One of the parties may present his commodity in such a manner that it may acquire more value in the eyes of the people than its real worth. This is called Khiyarut tadelis.

(v) One of the parties to the transaction may stipulate with the other that he would perform a certain job and this condition may not be fulfilled. It may be stipulated that one party will supply a commodity of a particular quality to the other and the commodity supplied may be lacking in that quality. In these cases the person who made the condition can cancel the transaction. This is called khiyar takhallufish shart (i.e. option to cancel the transaction on account of breach of condition).

(vi) The commodity supplied may be defective. This is called khiyarul aib.

(vii) If it transpires that a share of the commodity which the parties have contracted to buy is the property of a third person. In that case, if the owner of that portion is not willing to sell it, the buyer can cancel the transaction or can take back the consideration of that share, in case he has already paid it. This is called Khiyarush shirkat.

(viii) If a commodity has not been seen by the other party and the owner of that commodity mentions its qualities, but it transpires later that the commodity lacks those qualities the other party can cancel the transaction. This is called Khiyarur ruyat.

(ix) If the buyer does not stipulate to pay the price of the commodity later and does not pay it till three days, the seller can cancel the transaction, if he has not already handed over the commodity to the buyer. In case, however, the commodity sold is like some fruits which decay after about a day and delayed payment of price has also not been agreed upon and the buyer does not make payment till night the seller can cancel the transaction. This is called khiyarut ta'khir.

(x) A person who buys an animal can cancel the transaction within three days. And in case the buyer of the commodity sold by him gives him an animal in consideration thereof, the seller of the animal can also cancel the transaction within three days. This is called khiyarul haywan.

(xi) If the seller cannot deliver possession of the thing sold by him (for example, if the horse sold by him flees) the buyer can cancel the transaction. This is called Khiyarut ta'azzurit taslim.

2133. If the buyer does not know the price of the commodity or is negligent at the time of making the transaction, and purchases the thing for higher than the usual price, and purchases it so costly that the

people attach importance to it, he can cancel the transaction. Furthermore, if the seller does not know the price of the commodity or is negligent at the time of making the transaction, and sells the thing at a price cheaper than the usual price, and sells it so cheap that the people attach importance to it, he can cancel the transaction.

2134. In a transaction of "Conditional sale", for example, a house worth \$ 2000 is sold for \$ 200 and it is agreed that if the seller returns the money within a stipulated period he can cancel the transaction, the transaction is in order, if the buyer and the seller have the intention of purchase and sale.

2135. In a transaction of "Conditional sale" if the seller is satisfied that even if he does not return the money within the stipulated time, the buyer will return the property to him, the transaction is in order. However, if he does not return the money within the stipulated time, he is not entitled to demand the return of the property from the buyer. And if the buyer dies he (the seller) cannot demand the return of the property from his heirs.

2136. If a person mixes inferior tea with superior tea and sells it as a superior tea, the buyer can cancel the transaction.

2137. If the buyer comes to know that the commodity purchased by him is defective e.g. he purchases an animal and comes to know (after purchasing it) that it is blind of an eye and this defect existed in it before the transaction was made, but he was not aware of it, he can cancel the transaction and return the property to the seller.

In case, however, it is not possible to return it, for example, if some change has taken place in it, or it has been appropriated in such a manner that it cannot be returned, the difference between the value of the sound property and the defective property should be assessed and the buyer should get refund in that proportion of the amount paid by him to the seller.

For example, if he has purchased something for \$ 4 and comes to know that it is defective and if its price without its being defective is \$ 8 and in case of its being defective the price is \$6 and as the difference between these two prices is 25% the buyer can take back 25% of the money given by him to the seller (i.e. \$ 1).

2138. If a seller comes to know that what he received in exchange for his property is defective, and that defect was present in it before the transaction, and he was not aware of it, he can cancel the transaction and can return to its owner the thing which he got in lieu of his property. And if he cannot return it due to change or appropriation having taken place, he can obtain the difference between the sound and the defective thing according to the rule mentioned in the foregoing Article.

2139. If a defect takes place in the property after concluding the transaction and before delivering it, the buyer can cancel the transaction. Moreover, if some defect appears in what is taken in exchange for the property after concluding the transaction and before delivering it, the seller can cancel the transaction,

but if the two sides want to take the difference between the prices, it is not permissible.

2140. If a person comes to know about the defect after concluding the transaction it is not necessary for him to cancel the transaction at once and he has the right to cancel it even afterwards. The same order applies to all the transactions as well.

2141. If a person comes to know about the defect in a commodity after purchasing it, he can cancel the transaction although the seller may not agree to it. And the same order applies to all transaction.

2142. In the following four cases the buyer cannot cancel the transaction on account of defect in the property purchased by him nor can he claim the difference between the prices:

(i) At the time of purchasing the property he is aware of the defect in it.

(ii) If he accepts the defect in the property.

(iii) If at the time of concluding the contract he says: "Even if the property has a defect I will neither return it nor claim the difference between the prices".

(iv) If at the time of concluding the contract the seller says: "I sell this property with whatever defect may be in it." However, if he specifies a defect and says: "I am selling this property with this defect" and it transpires later that it has some other defect as well, which the seller has not mentioned, the buyer can return the property owing to that defect and if he cannot return it, he can take the difference between the prices.

2143. If the buyer knows that there is a defect in the property and after taking possession of it, another defect appears in it he cannot cancel the transaction, but he can take the difference between the prices of the defective and the sound property. However, if he purchases a defective animal and before the expiry of the period of Khiyar (i.e. right to cancel a transaction) which is three days, another defect appears in the animal the buyer can return it even though he may have taken delivery of it. And if only the buyer has the right for a particular period to cancel the transaction and another defect appears in the animal during that period the buyer can cancel the transaction even though he may have taken delivery of the animal.

2144. If a person owns some property which he has not seen and another person has narrated its particulars to him and he mentions the same particulars before the buyer and sells the property to him and learns after selling it that it was better than that he can cancel the transaction.

Miscellaneous Problems

2145. If a seller informs the buyer about the cost price of a commodity, he should tell him about all the things on account of which the price of a commodity rises and falls though he may sell it at the same

price (i.e. at the cost price) or at a price less than that e.g. he should tell the buyer whether he has purchased the property on cash payment or on credit. And if he does not tell some particulars of the property and the buyer knows them later, he can cancel the transaction.

2146. If a person gives a commodity to another person and fixes its price and says: "Sell this commodity at this price and if you see it more than this price it will be your wages for selling". The higher price thus realized by him will be the property of the owner and the seller can only get the wages from the owner. However if the management is by way of contract and he says: "If you sell this commodity at a price higher than that the sale proceeds in excess of that will be your property" there is no harm in it.

2147. If a butcher sells the meat of a female animal saying that it is the meat of a male animal, he commits a sin. Hence, if he specifies the meat and says: "I am selling this meat of a male animal" the buyer can cancel the transaction. And in case he does not specify it, and the buyer is not willing to accept the meat which has been supplied to him, the butcher should supply him the meat of a male animal.

2148. If a buyer tells the draper that he wants a cloth of fast color, and the draper sells him a cloth whose color fades the buyer can cancel the transaction.

2149. Swearing in the matter of transaction is abominable if it is true and unlawful if it is false.

Orders Regarding Partnership

2150. If two persons decide to form a partnership and each of them mixes his property with that of the other in such a way that the two properties cannot be distinguished from each other, and the two persons concerned recites the prescribed formula of partnership in Arabic or in any other language, or perform an act which shows that they intend to form a partnership, their partnership would be in order.

2151. If some persons enter into a partnership in respect of the wages which they earn by means of their labor – for example if a few barbers or laborers agree mutually that they would divide between themselves whatever wages they earn their partnership is not in order.

2152. If two Persons enter into a partnership on the terms that each of them would purchase the commodity on his own responsibility and each would be responsible for the payment of its price, but would share the profit which they earn from that commodity their partnership is not in order. However, if each of them makes the other his agent so that he may purchase the commodity for him on credit and later each partner purchases the commodity for himself and for his partner so that both of them may be responsible for the payment of price, the partnership is in order.

2153. The persons who become partners under the rules of partnership and cooperate with one another must be adult and sane and should have intention and freedom in the matter of partnership. They should also be able to appropriate their property. Hence, if a prodigal person (i.e. one who spends his wealth

absurdly) enters into a partnership, it is not in order.

2154. If a condition is laid down in an agreement of partnership that the partner who works or does more work than the other partner will get larger share out of the profit, it is necessary that he should be given his share as agreed upon. However, if it is agreed that the person, who does not work or does not do more work, will get larger share of the profit, this condition is void, although what is apparent is that their partnership is in order and the profit will be divided between them in the ratio of their property.

2155. If it is agreed that the entire profit will be taken by one person or the entire loss or the larger part of it will be borne by one of them, the partnership is in order, but the profit and loss will be divided between them in proportion to their property.

2156. If it is not agreed that one of the partners will get more profit, and if the investment of each of them is equal, they must share profit and loss equally. In case, however, their investment is not equal they should divide the profit and loss in proportion to their capital. For example, if two persons become partners and the capital of one of them is double the capital of the other, his share in the profit and loss will also be twice as much as that of the other, although both of them may do equal work or one of them does less work or does not work at all.

2157. If it is laid down in the agreement of partnership that both the partners will buy and sell together or each of them will conclude transactions individually, or only one of them will conclude transactions, they should act as agreed upon.

2158. If it is not specified as to which of the partners will buy and sell with the capital, neither of them can conclude transactions with the capital without the permission of the other.

2159. The partner who exercises control over the capital should act according to the agreement of partnership. For example, if it is agreed upon that he will purchase on credit or will sell on cash payment, or will purchase the property from a particular place, he should act according to the agreement. However, if no such agreement is made with him, he should conclude transactions in the ordinary manner, and carry on in such a way that no loss is suffered in the partnership. Moreover, he should not carry the property of the partnership with him while he is traveling.

2160. If a partner who concludes transactions with the capital of the partnership sells and purchases things contrary to the agreement made with him, or if no agreement has been made with him, and he concludes transaction contrary to the usual manner, the transaction made by him in both the cases is unauthorized vis-à-vis the share of his partner. And if the other partner does not accord permission he can take his original property or something in exchange for it in case it has perished.

2161. If a partner who transacts with the capital of the partnership does not go beyond the bounds of his authority and is not negligent in looking after the capital and by chance the entire capital or a portion of it perishes, he is not responsible.

2162. If a partner who transacts with the capital of the partnership says that the capital has perished and swears to this effect before the religious Head, his statement should be accepted.

2163. If all the partners withdraw the permission given by them to one another for the appropriation of their respective proper ties, none of them can appropriate the property of the partnership. And if one of them withdraws the permission accorded by him the other partners do not have the right of appropriation, but one who has withdrawn his permission can appropriate the property of the partnership.

2164. If one of the partners demands that the capital of the partnership should be divided, others should accept his demand, even though the period fixed for the partnership may not have expired yet, except when the division of the capital entails considerable loss to the partners.

2165. If one of the partners dies, or becomes insane, or unconscious, other partners cannot appropriate the property of the partnership. And the same rule applies when one of them becomes prodigal i.e. spends his property on absurd things.

2166. If a partner purchases a thing on credit for himself the profit and loss belongs to him. However, if he purchases it for the partnership and the other partner accords permission for example, if he says: "I agree to the conclusion of that transaction" the profit and loss belongs to both of them.

2167. If the partners conclude a transaction with the capital of the partnership and it transpires later that the partnership was invalid and if the position is such that the permission for the transaction was not conditional upon the validity of the partnership in the sense that if the partners had known that the partnership was not valid, they would have agreed to appropriate the property of one another, the transaction is in order, and whatever is acquired from the transaction is the property of all of them. And if the position is not this and in case the persons who have not been agreeable to appropriation by others say "We agree to that transaction" the transaction is in order but otherwise it is void. And in either case if any one has worked for the partnership and it has not been his intention to work gratuitously, he can take the wages for his services from the other partners at the usual rate.

Orders Regarding Compromise

2168. Compromise means that a person may agree to give to another person his own property or a part of the profit gained from it, or may waive a debt or some right, and the other person may also give him some property or profit from it or may waive his debt or right in consideration of it; and even if a person gives to another person his property or profit from it, or waives his debt or right without claiming any consideration, the compromise will be in order.

2169. It is necessary that the person who gives his property to another person by way of compromise should be adult, and sane and should have the intention of making compromise, and none should have

compelled him to make the compromise, and he should not also be a prodigal.

2170. It is not necessary that the formula of compromise be recited in Arabic. On the other hand it is sufficient to make known by uttering any words that compromise has been made.

2171. If a person gives his sheep to a shepherd so that, for example, he may look after them for one year and utilize their milk and give him some quantity of ghee, and thus compromises with him the transaction is in order. Rather, if he gives the sheep to the shepherd for one year on lease, so that he may utilize their milk and give him a quantity of ghee in lieu of it, this transaction is also in order.

2172. If a person wants to make a compromise with another person in respect of the debt which that person owes him or in respect of his right, the compromise is valid when that person accepts it. However, if he wants to abandon his debt or right the acceptance by the other person is not necessary.

2173. If the debtor knows the amount of debt but the creditor makes compromise with the debtor for an amount less than that which he owes him e.g. if the creditor has to take \$ 60 and he makes a compromise For \$ 10, the remaining amount is not lawful for the debtor, except that he himself tells the creditor what he owes him, and make him agree to excuse his debt, or if the circumstances are such that even if the creditor had known the amount of debt, he would have made compromise for that very amount (i.e. \$10).

2174. If two persons make compromise in respect of things which are of the same sort and their weights are known, the obligatory precaution is that the weight of one of them should not be more than that of the other. And if their weights are not known and it is possible that the weight of one of them is more than that of the other and the two persons make compromise, the compromise is in order.

2175. If two persons are the creditors of one person or two persons are the creditors of two other persons and they wish to settle their claims with each other and their claim is similar and their weight is also identical e.g. each of them has to take 30 kilos of wheat their compromise is in order. And the position is the same if their claims is not identical e.g. one of them has to take 30 kilos of rice and the other has to take 35 kilos of wheat. However, if their claim is in respect of the same kind and it is a thing which is usually bought and sold by weight or measurement and their weight or measure is not equal, it is difficult that their compromise may be valid.

2176. If a person owes something to another and the creditor should get the amount after a specified time and in case he compromises for a less amount and his object is that he may forego a portion of his claim and get the balance in cash, there is no harm in it. This order applies when the debt consists of gold or silver or another commodity which is sold after weighing or measuring. As regards other things, however, it is permissible for the creditor to compromise with the debtor or with some one else for a lower amount or to sell that debt as will be explained in Article **2297**.

2177. If two persons make a compromise in respect of some thing, they can cancel the compromise with

mutual consent. Moreover, if while concluding the agreement one or both of them are given the right to cancel the compromise, the person who possesses that right can cancel the compromise.

2178. So long as the buyer and the seller do not leave the place where a transaction has been concluded they can cancel the transaction. Furthermore, if a buyer purchases an animal he has the right to cancel the transaction within three days. And similarly if the buyer does not pay for three days the price of the commodity purchased by him and does not take delivery of the commodity the seller can cancel the transaction. However, one, who makes a compromise in respect of some property, does not possess the right to cancel the compromise in these three cases. However, if the other party makes unusual delay in delivering the property or it has been stipulated that the property will be delivered in cash and the other party does not act according to this condition, the compromise can be canceled. And similarly compromise can also be canceled in other cases which have been mentioned in connection with the orders relating to purchase and sale.

2179. A compromise can be canceled if the thing received by means of compromise is defective. However, there is no harm if the person concerned desires to take the difference of the price between the defective thing and the one without defect.

2180. If a person makes a compromise with another person with his property and imposes the condition that after his death the other person will, for example, endow that property for pious purposes and that person also accepts this condition, he should carry it out.

Orders Regarding Lease Rent

2181. The person who gives something on lease as well as the person who takes it on lease should be adult and sane and should accomplish the lease contract with their free will. It is also necessary that they should have the right to appropriate their property. Hence, as a prodigal does not have the right to appropriate his property his leasing out anything or taking any thing on lease is not valid.

2182. A person can become the agent of another person and give his property on lease or take some property on lease for him.

2183. If the guardian of a child gives his property on lease or makes him the lessee of another person there is no harm in it. And at some time, after the child's attaining the age of puberty, is also made a part of the period of lease, the child can cancel the remaining part of the lease after his becoming adult. However, if the position is such that if a part of the time, after the child's attaining the age of puberty, had not been included in the period of lease it would not have been in the interest of the child, he cannot cancel the lease of his property. Of course, it is difficult that it would be valid that the child himself remains, the lessee after attaining the age of puberty.

2184. A minor child who has no guardian cannot be hired without the permission of a Mujtahid. And if a

person cannot approach a Mujtahid he can hire the child after obtaining permission from a few believers who are 'Adil.

2185. It is not necessary for the lessor and the lessee to recite the formula in Arabic. On the other hand if the owner says to a person: "I have leased out my property to you", and the other replies: "I accept it", the lease contract is in order. Furthermore, even if they do not utter any words and the owner hands over his property to the lessee with the object of leasing it out, and lessee also takes it with the intention of taking it on lease, the lease contract is in order.

2186. If a person wants to be hired for doing some work without reciting the formula, the hire contract is in order as soon as he starts doing that work.

2187. If a person who cannot speak makes it known with signs that he has taken or given a property on lease, the lease contract is in order.

2188. If a person takes a house, shop or room on lease and the owner of the property imposed the condition that only he (the lessee) can utilize it, the lessee cannot lease it out to any other person for his use except that the new lease should be such that its benefits also should be peculiarly meant for the lessee himself, for example, a woman takes a house, or a room on lease later marries and gives the room or house on lease for her own residence (to her husband because it is the responsibility of a husband to provide lodging to his wife).

And if the owner of the property does not impose any such condition, the lessee can lease it out to another person. However, if he wishes to lease it out for a higher amount as compared with that for which he has taken it on lease, it is necessary that he should have repaired or whitewashed it or made other similar improvements, or he may lease it out for something other than that for which he has taken it on lease himself for example, if he has taken it on lease paying rent in cash he should lease it out for wheat or anything else And on the basis of obligatory precaution the orders which apply to a house also apply to a boat.

2189. If a person who is hired on wages lays down a condition that he will work for the hirer only, he (the hirer) cannot lease out his services to another person except in the manner mentioned in the foregoing Article. In case, however, the hired person does not lay down any such condition and the hirer leases out his services for what has been settled to be his wages, he (the hirer) should not take more than that. In case, however, he leases out his services for some other kind of wages, he can take more than that. And the same order applies when a person becomes the employee of a person and hires another person on less wages to perform the task (i.e. he cannot hire him on less wages). In case, however, he (the hired man) has done a part of the task himself he can hire another person on less wages.

2190. If a person takes something other than house, shop, room and a hired person (e.g, land) on lease and its owner does not lay down the condition that only he himself can utilize it, there is no harm if the lessee leases it out to another person on a higher rent.

2191. If a person takes, for example, a house or a shop on lease for one year on a rent of one hundred rupees and uses half portion of it himself, he can lease out the remaining half for one hundred rupees. However, if he wishes to lease out the half portion on a rent higher than that on which he has taken the house, or shop on lease (e.g. if he wishes to lease it out for hundred and twenty rupees) it is necessary that he should have carried out repairs etc. in it.

Conditions Regarding The Property Given On Lease

2192. The property which is given on lease should fulfill certain conditions viz.

- (i) It should be specific. Hence, if a person says to another: "I have given you one of my houses on lease" it is not in order.
- (ii) The person taking the property on lease should see it or the leaser may narrate its particulars in such a manner that full information with regard to it becomes known.
- (iii) It should be possible to deliver to the other party the property which is being leased out. Hence, leasing out a horse which has run away is void.
- (vi) Utilization of the property should not lead to its destruction. Hence, it is not correct to give bread, fruits and other edibles on lease.
- (v) It should be possible to utilize the property for the purpose for which it is given on lease. Hence, it is not correct to give a piece of land on lease for farming when it does not get sufficient rain water and is also not irrigated by canal water.
- (vi) The thing which a person gives on lease should be his own property and if he gives the property of another person on lease it is correct only if its owner agrees to it.

2193. It is correct to give a tree on lease for utilizing its fruit although fruit may not have been produced yet. The position is the same if an animal is given on lease for its milk.

2194. A woman can be hired to utilize her milk and it is not necessary for her to obtain her husband's permission to perform the job. However, if her husband's right is affected owing to her giving milk (to the child of another person) she cannot take up the job without the permission of her husband.

Conditions For The Utilization Of The Property Given On Lease

2195. The utilization of the property given on lease carries four conditions:

- (i) That it should be lawful. Hence, leasing out a shop for the sale or storage of wine or giving an animal on hire for the transport of wine is void.

(ii) That the performance of the act gratuitously should not be obligatory in the eyes of religious law. Hence performance of daily duties or shrouding etc. of the dead bodies on payment of wages is not permissible. And it is authentic on the basis of precaution that paying money for this use should not be absurd in the eyes of the people.

(iii) If the thing which is being leased out can be put to many uses the use to which the lessee is permitted to put it, should be specified. For example if an animal, which can be used for riding or for carrying burden, is given on hire it should be specified at the time of concluding the lease contract, whether the lessee may use it for riding or for carrying burden, or may use it for all other purposes.

(iv) The period of utilization should be specified. And if the period is not known but the work is specified e.g. if an agreement is made¹ with a tailor that he will sew a specific dress in a particular manner fit is sufficient.

2196. If the time of commencement of a lease is not specified it commences after the recitation of the formula of lease.

2197. If, for example, a house is leased out for one year and it is stipulated that the period of lease will commence one month after the recitation of the formula the lease contract is in order, although when the formula is being recited the house might have been leased out to some other person.

2198. If the period of lease is not specified and the lessor says to the lessee: "So long as you stay in the house you will have to pay rent at the rate of \$10 per month" the lease contract is not in order.

2199. If the owner of a house says to the lessee: "I have leased out this house to you for \$ 10 per month" or says: "I hereby lease out this house to you for one month on a rent of \$ 10 and so long as you stay in it thereafter the rent will be \$ 10 per month" and in case the time of the commencement of the period of lease is specified or the time of its commencement is known the lease for the first month is valid.

2200. If travelers and pilgrims stay in a house and it is not known as to how long they will stay there and if they settle with the landlord that they will, for example, pay \$ 1 per night as rent and the landlord also agrees to it, there is no harm in utilizing that house. However, as the period of lease has not been specified the lease is not in order except for the first night, and after the first night the landlord can eject them as and when he so wishes.

Miscellaneous Problems Relating To Lease Rent

2201. The property which the lessee gives in connection with the lease should be known. Hence if it is one of the things whose transaction is made by weight (e.g. wheat) its weight should be known. And if it is one of those things whose transaction is made by counting (e.g. current coins) their number should be specified. And if it is like a horse or a sheep the lessor should see it or the lesser should inform him of its particulars.

2202. If land is given on lease for farming, and the produce of that very land or some other land, is not available at present, and is treated to be its rent, the lease contract is not in order, and if the rent is present at the time of making the contract, there is no harm in it.

2203. If a person has leased out something he cannot claim its rent until he has delivered it to the other party, and in case a person is hired to perform an act, he cannot claim wages until he has performed that act.

2204. If a lessor delivers the leased property, the lessee should pay the rent, although he may not take delivery of the property, or may take its delivery but may not utilize it till the end of the period of lease.

2205. If a person agrees to perform a task on a particular day on payment of wages and is ready on that day to perform the task, the person, who has hired him should pay him the wages although he may not entrust that task to him. For example, if a tailor is hired to sew a dress on a particular day and he is ready to do work on that day, the hirer should pay him the wages even though he may not give him cloth to sew. And it makes no difference whether the tailor remains without work on that day or does his own or somebody else's work.

2206. If it transpires after the expiry of the period of lease that the lease contract was void the lessee should give the usual rent of that thing to the owner of the property. For example, if a person takes a house on lease for one year on a rent of \$ 100 and learns later that the lease contract was void and if the rent of the house is usually \$ 60 he should pay \$ **50**. In case, however, its usual rent is \$ 200 and the person who leased it out is its owner or his agent, it is not necessary for the lessee to give him more than \$ 100, but if some other person gave it on lease the lessee should pay \$ **200**. And the same order applies if it is known after the passage of some time that the lease contract was void.

2207. If the thing taken by a person on lease perishes and if he has not been negligent in looking after it and has also not been extravagant in its use, he is not responsible for the loss. Further more, if, for example, a cloth given to a tailor is destroyed when the tailor has not been extravagant and has also not shown negligence in taking care of it, he need not pay its compensation.

2208. If an artisan loses the thing taken by him he is responsible for it.

2209. If a butcher cuts off the head of an animal and makes it unlawful he must pay its price to its owner and it makes no difference whether he took wages for slaughtering the animal or doing it gratuitously.

2210. If a person takes an animal on hire and specifies as to how much burden he will load on it, and if he loads a larger quantity on it, and the animal dies or becomes defective, he is responsible for it. Moreover, even if the quantity of burden is not specified and he burdens it in an unusual manner and the animal dies or becomes defective, the person concerned is responsible. And in both the cases he must pay more rent than usual.

2211. If a person gives an animal on hire so that breakable goods may be loaded on it, and the animal slips or runs away and breaks the things, the owner of the animal is not responsible for it. However, if the owner beats the animal or does something else as a consequence of which the animal falls down on the ground and breaks the goods he (the owner of the animal) is responsible.

2212. If a person circumcises a child and as a consequence of it the child dies the person, who circumcises is responsible whether or not he has cut the flesh to the usual extent. However, if the child sustains harm, the person who circumcises him is responsible if he has cut his flesh more than usual. And in case he has not cut it to more than usual extent, it is difficult that he should be held responsible, and it is better to make a compromise.

2213. If a doctor gives medicine to a patient with his own hand and makes a mistake in giving treatment, and the patient sustains harm or dies the doctor is responsible. However, if the negligence in taking care of it, he need not pay its compensation.

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2213. If a doctor gives medicine to a patient with his own hand and makes a mistake in giving treatment, and the patient sustains harm or dies the doctor is responsible. However, if the doctor says: "Such and such medicine is useful for such and such patient" and the patient sustains harm or dies on account of using that medicine the doctor is not responsible.

2214. In case a doctor tells a patient: "It you sustain harm I am not responsible" and if in spite of his taking due care, the patient sustains harm or dies, the doctor is not responsible even though he may have given him medicine with his own hand.

2216. The lessee and the lessor can cancel the lease contract with mutual consent. Moreover, if a condition is laid down in the lease contract the one or both of them should have the right to cancel the contract they can cancel the contract as agreed to by them.

2216. If the lessor or the lessee realizes that he has been cheated and if he did not notice at the time of making the lease contract that he was being cheated he can cancel the lease contract. However, if a condition is laid down in the formula of lease that even if the parties are cheated they will not be entitled to cancel the contract he cannot cancel it.

2217. If a person gives something on lease, and before he delivers it to the other party, it is usurped, the lessee can cancel the lease contract, and take back whatever he has given to the lessor, or he may not cancel the lease contract, and take from the usurper rent at the usual rate for the period the thing remains in his possession. Hence, if a person takes an animal on lease for one month for \$ 10 and some one usurps it for ten days and the usual rent for ten days is \$ 15 the lessee can take \$ 15 from the usurper.

2218. If the lessee takes delivery of the thing which has been leased out and some one usurps it later he (the lessee) cannot cancel the lease contract. He is entitled only to take rent of that thing from the usurper at the usual rate.

2219. If the lessor sells the property to the lessee before the expiry of the period of lease the lease contract is not canceled and the lessee should give the rent of the property to the lessor, and the same order applies if the lessor sells the leased property to someone else.

2220. If before the commencement of the period of lease the leased property is so much impaired that it cannot at all be utilized, or cannot be utilized in the manner agreed upon, the lease contract becomes void, and the lessee can take back the money paid by him to the owner of the property. And in case it is possible to utilize the property to a small extent the lessee can cancel the lease contract.

2221. If a person takes something on lease and after some time the leased property becomes so much impaired that it is not fit for use, or cannot be utilized for the purpose agreed upon, the lease contract becomes void for the remaining period, and the lessee can cancel the lease for the past period by paying usual rent for the thing for the days it has remained in his use.

2222. If a person gives on lease a house which has, for example, two rooms and one of those rooms is decayed but he gets it repaired at once and the benefit which can be derived from it is not at all affected, the lease contract does not become void, and the lessee, too, cannot cancel it. In case, however, its repairs take so much time that the benefit to be derived from it by the lessee is partially affected, the

lease contract becomes void to that extent and the lessee can cancel the contract for the entire period, and can pay the usual rent for the leased property for the days it has remained in his use.

2223. If the lessor or the lessee dies the lease contract does not become void. In case, however, the house is not the property of the lessor for example, if another person has made will that so long as he (the lessor) is alive the income derived from the house will be his property and if he gives the house on lease and dies before the expiry of the lease period the lease contract becomes void from the time of his death, and can become valid only if the present owner of the house endorses the contract, and the rent for the remaining period of lease, after the death of the lessor, will accrue to the present owner.

2224. If an employer makes a mason his agent so that he may procure laborers for him and if the mason gives the laborers less than what he has taken from the employer, the amount in excess is unlawful for him, and he should return it to the employer. In case, however, the mason is hired by the said employer and says that he would complete the building and obtains authority for himself that he would do construction work himself or entrust it to another person and does a part of the work himself, and entrusts the remaining work to another person on wages less than those on which he himself has been hired, it is lawful for him to take the excess amount.

2226. If a dyer agrees to dye, for example, a cloth with indigo he has no right to claim wages if he dyes it with something else.

Orders Regarding Ju'ala (Agreement)

2226. Ju'ala means that a person may promise that if a particular job is done for him he will give a specified amount in lieu of it, for example, he may say that if a person recovers his lost property he will give him \$ **10**. One who makes such a declaration is called Ja'il and the person who carries out the particular job is called Amil. The difference between agreement and ijara (hire) is that in the case of "hire" the employee should perform the job and the employer becomes indebted to the employee for his wages, whereas in the case of agreement it is possible that the employee (although he may be a particular person) may not engage himself in the particular job and unless he performs that job the employer does not become indebted to him.

2227. A person who makes the agreement should be adult and sane, and should be made with his free will and authority, and should be entitled legally to appropriate his property. Hence the agreement of a prodigal, who spends his property absurdly is not in order.

2228. The task, which one agrees to be performed for him, should not be unlawful, futile or one of those obligatory acts which should necessarily be performed free of cost according to religious law. Hence, if a person agrees that he will give \$ 10 to a person who drinks wine, or goes to a dark place at night, or offers his obligatory prayers, the agreement is not in order.

2229. If a person specifies the property which he agrees to give for example, if he says: "I shall give this wheat to the person who brings my horse" it is not necessary for him to tell which place that wheat belongs to and what its price is. However, if he does not specify the property for example, if he says: "I shall give 30 kilos of wheat to the person who brings my horse" he must specify fully the particulars of the wheat.

2230. If the person does not specify the wages which he agrees to give for his work for example, if he says: "I shall give money to the person who finds out my son" and does not specify the amount of money and if some one performs the task, he should give him wages according to the worth which the task performed by him has in the eyes of the people.

2231. If the laborer performs the task before the agreement is made or performs it after the agreement is made with the intention that he will not take any money, he is not entitled to demand wages.

2232. The person who makes an agreement can cancel it before the laborer starts the work.

2233. If the person wishes to cancel the agreement after the laborer has started work, it is difficult that his (the Ja'il's) action may be in order.

2234. A worker can leave the task incomplete. However, if his failing to complete the task becomes the cause of harm to the employer he should complete it. For example if a person says: "If someone operates upon my eye I shall give him so much money" and a surgeon commences the operation and in case the position is such that if he does not complete the operation the eye may become defective he should complete it. And in case he leaves the operation incomplete he has no right to demand his fees from the employer.

Orders Regarding Muzari'ah (Tenancy Of Agricultural Land)

2236. Muzari'ah means that the owner of an agricultural land by an agreement, hands over his land to a farmer so that he may cultivate it and give a share of the produce to the landowner.

2237. Muzari'ah has certain conditions:

(i) That the owner of land tells the farmer that he has given him the land for terming and the farmer also says that he has accepted it. Or without their uttering anything the owner of the land gives the land to the farmer with the intention that he may do farming in it, and the farmer accepts it.

(ii) Both the owner of the land and the farmer should be adult and sane and should conclude the agreement of muzari'ah with their intention and free will. They should also be not prodigals i.e. persons who spend their wealth on absurd things.

(iii) The owner and the farmer should have share in the entire produce of the land. Hence, if they, for

example, agree to the condition that whatever ripens in the beginning, or at the end, will belong to one of them the agreement of muzari'ah is void.

(iv) The share of each of them should be 1/2 or 1/3 etc. of the produce. In case, therefore, the owner of the land says: "Do terming in this land and give me whatever you like" it is not in order. And the position is the same if a fixed quantity of the produce (e.g. 30 kilos) is meant for the farmer or the land owner; it is not in order.

(vi) The period for which the land is to remain in possession of the farmer should be specified and it is necessary that the period should be sufficient to acquire produce from the land. And it is better if this period commences from a specified day and ends with the farm produce.

(vi) The land should be arable, and if it is barren but can be made fit for terming by some work being done on it, the contract of muzari'ah is in order.

(vii) If the object of both of them is that a particular crop should be sown, the crop, which the farmer should sow should be specified. However, if they do not have a particular crop in view or the crop which both of them have in view is known it is not necessary that they should specify it.

(viii) The owner should specify the land. In case, therefore, he has a few pieces at land which differ from one another and he tells the farmer to do farming in one of them and does not specify it, the contract of muzari'ah is void.

(ix) The expenses which each of them should incur should be specified. In case, however, the expenditure which each of them should incur is known it is not necessary to specify it.

2238. If the owner settles with the farmer that a certain quantity of the produce will belong to him (the owner) and the remaining quality will be divided between them, and if they know that something will remain after taking away that quantity, the contract of muzari'ah is in order.

2239. If the period of muzari'ah (tenancy) comes to an end and the produce has not yet become available, and the owner of the land agrees that the crop may remain on his land on payment of rent or without it, and the farmer is also agreeable to it, there is no harm in it. And in case the owner of the land does not agree to such an arrangement he can ask the farmer to remove the crop from there. And if the farmer sustains a loss owing to its being removed, it is not necessary for the owner to compensate the farmer for it. However, although the farmer may be willing to give something to the owner to allow the crop to stand on his land, he cannot compel him to let it remain on his land.

2240. If farming is not possible in the land on account of some occurrence for example, if water is cut off from the land the contract of muzari'ah is annulled. And if the farmer does not do farming in the land without an excuse and the land remains in his occupation and the owner has no control over it, he should pay the rent for that period to the owner at the usual rate.

2241. If the owner of land and the farmer have recited the Formula, they cannot cancel the contract of muzari'ah without the consent of each other, and it is not unlikely that if the land owner gives over land to someone with the object of farming, even then they cannot cancel the transaction without the consent of each other. However, if they lay down the condition in connection with the contract of muzari'ah that both or any one of them will have the right to cancel the contract they can cancel the contract as agreed to by them.

2242. If the landowner or the farmer dies after concluding the contract of muzari'ah the contract is not terminated and their heirs take their place. However, if the farmer dies and if they had stipulated that the farmer himself would do farming the contract of muzari'ah stands canceled, and in case the crop has become apparent his share should be given to his heirs, and his heirs also inherit other rights which he enjoyed. However, they cannot compel the landowner to allow the crop to stand on his land.

2243. If it is known after sowing that the contract of muzari'ah has been void and if the seeds have been the property of the landowner the produce also belongs to him, and he should pay the farmer his wages and the expenses incurred by him, and the rent for the bullocks and other animals belonging to the farmer, which may have worked on the farm. And if the seeds have been the property of the farmer the crop also belongs to him, and he should pay to the landowner the rent of the land and the expenses incurred by him and rent for the bullocks and other animals belonging to the landowner which have worked on the farm. And in both the cases if the amount to which the parties become usually entitled exceeds the amount agreed upon by them, it is not obligatory to pay the excess amount.

2244. If the seeds belong to the farmer and if it transpires after sowing that the contract of muzari'ah has been void and if the landowner and the farmer agree that the crop may remain on the land on payment or otherwise there is no harm in it. And if the landowner is not agreeable he can ask the farmer to remove the crop from the land even before it ripens. And even if the farmer is willing to pay something to the landowner he cannot compel him to allow the crop to remain on his land. And the landowner, too, cannot compel the farmer to pay rent and let the crop remain on his land.

2245. If roots of the crop remain in the land after collecting the produce, and after the expiry of the contract of muzari'ah and they give produce again in the next year and the landowner has not made an agreement with the farmer regarding his share in the roots, the produce of the second year belongs to the landowner.

Orders Regarding Musaqat And Mugharisa

2246. Musaqat means that a person may hand over to another person, for a specified time, those fruit bearing trees, the fruits of which are his own property, or over which he exercises control, so that the latter may look after them and the produce may be divided between them as agreed upon by them.

2247. A transaction of musaqat is not correct in respect of trees like willow and palm tree which do not

bear fruit and it is difficult that it should be correct in respect of a tree like henna, a kind of plant the leaves of which are utilized.

2248. While concluding a transaction of musaqat it is not necessary that the prescribed formula be read. On the other hand if the owner of the tree transfers it with the intention of musaqat and he who is to do the work begins doing the work with the same intention, the transaction is in order.

2249. The owner of the trees and the person who undertakes to look after them, should be adult and sane and should not have been coerced by anyone. Furthermore, the owner should not be a prodigal i.e. one who spends his wealth absurdly.

2260. The period of musaqat should be known and if its beginning is specified and its end is fixed to be the time when fruits for that year become available the contract is in order.

2251. It is necessary that the share of each one of them should be $\frac{1}{2}$ or $\frac{1}{8}$ etc. and if they stipulate that, for example, one ton of fruit will belong to the owner of the trees and the remaining quantity will go to the person who looks after the trees, the contract is void.

2252. The contract for musaqat should be concluded before the appearance of fruit. In case, therefore, the contract is made after the appearance of fruit and before its ripening, and work like watering the trees, which is necessary for their development, is no longer required to be done, the contract is not in order, although the trees may still need clipping and upkeep, rather if the work for the development of the trees still remains to be done, it is difficult that the contract may be in order.

2253. On the basis of precaution the contract of musaqat for the plants of melon and cucumber is not in order.

2254. If a tree benefits from rainwater or the moisture of earth and does not stand in need of irrigation but needs other work like turning up with a spade and manuring, a contract of musaqat with regard to it is in order.

2255. Two persons who have made a contract of musaqat can cancel it with mutual consent. Moreover, if they lay down in the contract of musaqat the condition that both or one of them will be entitled to cancel the contract, there is no harm in canceling the contract as agreed to by them. And if they lay down a condition in connection with the contract of musaqat and that condition is not carried out, the person, in whose favor the condition was laid down, can cancel the contract.

2256. If the owner dies, the contract of musaqat is not terminated, and his heirs take his place.

2257. If a person to whom the upkeep of the trees was entrusted dies, and if it was not laid down that he would bring them up himself, his heirs take his place. And if they do not do the job themselves and do not hire a person for it, the religious Head can hire a person from out of the property of the dead person, and divide the proceeds between the heirs of the dead person and the owner of the trees. And if they

had agreed that the man would bring up the trees himself the contract stands canceled with his death.

2258. If it is agreed that the entire produce will belong to the owner the contract of musaqat is void, and the fruit is the property of the owner and the person, who works, cannot claim wages. In case, however, the contract of musaqat is invalid owing to some other reason, the owner should give wages at the usual rate to the person who has brought up the trees for watering them and doing other jobs. But if the usual quantity of wages is more than the stipulated quantity it is not necessary for him to give more.

2258. If a person hands over a piece of land to another person to plant trees in it, and it is agreed that whatever is grown will be the property of both of them, the contract is void. Hence if the trees were the property of the owner of the land they remain his property even after being brought up, and he should give wages to the person who has brought them up. And if they are the property of the person, who has brought them up, they remain his property even after being brought up, and he can pull them out.

However, he should fill the pits which are created as a result of pulling out the trees, and should give rent to the owner of the land from the date he planted the trees. And the owner of the land, too, can compel him to pull out the trees, and if the trees develop some defect due to their being pulled out the owner of the land is not responsible. In case, however, the owner of the land himself pulls out the trees and they develop defect, he should pay the difference in the price of defective and sound trees to the owner of the trees and the owner of the trees cannot compel the owner of the land to allow the trees to remain on his land with or without the payment of rent. And similarly the owner of the land cannot compel the owner of the trees to let the trees remain on his land with or without the payment of rent.

Persons Who Are Not Permitted To appropriate Their Own Property

2260. A child who has not reached the age of puberty (Baligh) cannot appropriate his own property. Puberty is proved in one of the three following ways: (i) When a boy completes 15 lunar years of his age, and a girl completes 9 lunar years of her age (ii) When stiff hair grow below the navel above the private parts. (iii) Discharge of semen.

2261. Growing of stiff hair on the face, above the lips, on the chest, and in the armpits, and the voice becoming harsh etc. are not the signs of one's reaching the age of puberty except that one may become sure of having reached the age of puberty on account of these things.

Debt Or Loan

2262. An insane person, a bankrupt (i.e. a person who has been prohibited by the religious Head to appropriate his property on account of the demands of his creditors) and a prodigal person (Safih) who spends his property on absurd purposes, cannot also appropriate their property.

2263. If a person is sane at one time and insane at another, it is not correct for him to appropriate his property when he is insane.

2264. A dying man can spend on himself and on the members of his family and his guests and on other things as much as he likes, provided that it is not considered to be extravagance on his part. And what is more apparent is that if he gives a gift, or sells it at a cheap price. Hence utilizing his property in this manner is in order, although it may be more than 1/3 of his property and his heirs may not permit it.

Orders Regarding Agency (Wakalat)

Agency means that a person may entrust to somebody a task, which he can perform himself, so that the other person may perform it on his behalf. For example, one may appoint another person to act as one's agent for the sale of a house or for contracting one's marriage with a woman. Since a prodigal person is not entitled to appropriate his property, he cannot also appoint another person as his agent (Wakil) to sell it.

2265. In 'agency' it is not necessary to recite a formula and if a person makes another person understand that he has made him his agent and the other person also makes him understand that he has accepted that position e.g. if he places his property at his disposal so that he may sell it on his behalf and he takes that property for that purpose, the agency is in order.

2266. If a person appoints another person, who is in a different city, as his agent and gives him power or attorney and he accepts it, the agency is in order, although the power of attorney may reach the agent after some time.

Articles Of Islamic Acts

2267. The muwakkil (principal) i.e, the person who appoints another person as his Wakil (agent) as well as the person who becomes his agent should be sane and should act with intention and authority and the principal should be adult.

2268. If a person cannot perform an act or should not perform it legally, he cannot become an agent for another person to perform it. For example, as a person who is wearing ehram for Hajj cannot recite the formula of marriage (Nikah) he cannot become an agent for another person to recite it.

2269. If a person appoints another person as his agent to perform all his tasks, his action is in order. However, if he appoints him as his agent for performing one task and does not specify that task, the agency is not in order.

2270. If a person removes his agent from office he (the agent) cannot perform the task entrusted to him after the news regarding his removal has reached him. However, if he has already performed the task (i.e. before the news regarding his removal reaches him) it is in order.

2271. An agent can relinquish the agency even though the principal may be absent.

2272. An agent cannot appoint another person as agent for the performance of the task which has been entrusted to him. However, if the principal has permitted him to engage an agent, he should act according to his instructions. Hence, if he has said to him: "Engage an agent for me." he should engage an agent for the principal and not for himself.

2273. If an agent engages an agent for his principal with his permission, he cannot remove that agent. And if the first agent dies or the principal removes him, the second agency is not invalidated.

2274. If an agent engages an agent for himself with the permission of the principal, the principal and the first agent can remove that agent, and if the first agent dies or is removed from office, the second agency becomes invalid.

2275. If a few persons are engaged as agents for performing a task, and everyone of them is permitted to act individually, everyone of them can perform that task, and if one of them dies the agency of others is not invalidated. In case, however, they are not told to work jointly or severally or are told to perform the task jointly they cannot act individually and if one of them dies the agency of others is invalidated.

2276. If the agent or the principal dies the agency becomes invalid. Moreover, if the thing, for the appropriation of which one has become an agent, perishes (for example, the sheep, which the agent has been engaged to sell, dies) the agency becomes invalid. And if one of them (i.e. the principal or the agent) becomes insane or unconscious, the agency is not effective during the time of his insanity or unconsciousness. However, it is difficult that the agency may become invalid in such a manner that it may not be possible for the person concerned to act even after the insanity or unconsciousness comes to an end.

2277. If a person engages another person as agent to perform a task and promises to give him something for his services he should give him the thing after the performance of the task.

2278. If an agent is not negligent in looking after the property entrusted to him, and does not appropriate it in a manner other than that for which permission has been accorded to him, and by chance the property perishes, he need not make compensation for it.

2279. If an agent is negligent in looking after the property entrusted to him, or appropriates it in a manner other than that for which permission has been accorded to him, and consequently the property perishes, he is responsible for it. Hence, if he is given a dress to sell but he wears it and it perishes, he should pay compensation for it.

2280. If an agent appropriates a property in a manner other than that for which he has been accorded permission for example he wears a dress which he has been asked to sell and then appropriates it in the authorized manner, that appropriation is in order.

Orders Regarding Debt Or Loan

To give loan is one of those recommended acts on which great stress has been laid in the Holy Qur'an and in the Traditions (Ahadith). The Holy Prophet has been quoted to have said that if a person gives loan to his Muslim brother his wealth increases and the angels invoke Divine blessings for him and, if he is lenient with the debtor, he will pass over the Bridge (Sirat) swiftly and without any accountability in the Hereafter and, in case a Muslim requests one of his brethren in faith for loan but the latter does not give it to him, Paradise becomes forbidden for him.

2281. It is not necessary to recite a formula in the matter of debt. It is in order if a person gives something to another person with the intention of debt and he also takes it with the same intention.

2282. Whenever a debtor pays his debt the creditor should accept it.

2283. If a period is fixed for the repayment of debt in the formula of debt the obligatory precaution is that the creditor should not claim repayment of the debt before the expiry of that period. However, if no such period is fixed the creditor can demand the repayment of his debt at any time he likes.

2284. If the creditor demands his debt and the debtor is in a position to pay it, he should pay it immediately, and in case he delays its payment he commits a sin.

2285. If the debtor does not possess anything other than his residential house and the household effects and other things which he needs, the creditor cannot claim the repayment of his debt. On the other hand he should wait till the debtor is in a position to repay the debt.

2286. If a person, who is indebted and cannot repay his debt, can do some business, it is obligatory for him to engage himself in business and repay the debt.

2287. If a person cannot approach his creditor and does not hope to find him, he should pay the amount of the debt to a pauper on behalf of the creditor. And on the basis of precaution he should obtain permission in this behalf from the religious Head. And if his creditor is not a Sayyid the recommended precaution is that he should not give his debt to a pauper who is a Sayyid.

2288. If the property of a dead person does not exceed the obligatory expenses of his shrouding, burial and payment of debt, his property should be utilized for these purposes and his heir does not get anything.

2289. If a person takes loan consisting of a quantity of gold and silver money, and then its price falls it is sufficient if he gives the same quantity which he had taken and if its price rises he must give the same quantity which he had taken. However, in either case there is no harm if the debtor and the creditor mutually agree to some other arrangement.

2290. If the property taken on loan has not perished, and its owner demands it, the recommended precaution is that the debtor should return him the original property.

2291. If a person who advances a loan imposes a condition that he will take back more than what he gives For example, he gives 3 kilos of wheat and stipulates that he will take back 3 1/2 kilos of wheat or gives ten eggs and says that he will take back eleven eggs it is interest, which is unlawful. Rather, if he stipulates that the debtor should do some work for him or return the thing taken on loan along with a quantity of another commodity (for example, if he lays down the condition that the debtor will return \$ 2 taken by him on loan along with a match box) it is interest and is unlawful.

Furthermore, if he stipulates that the debtor will return the thing being taken by him on loan in a particular manner (e.g. if he gives him a quantity of un manufactured gold and imposes the condition that he will take back manufactured gold that too is interest and is unlawful. However, if no such condition is imposed by the creditor but the debtor himself repays him something more than the loan taken by him there is no harm in it, and as a matter of bet it is recommended.

2292. Giving interest is unlawful like taking interest. However, if a person takes a loan, on which interest is payable, what is apparent is that he becomes its owner, although it is better that he should not appropriate it. And if the position is such that even if the parties had not laid down a condition for payment of loan the person advancing the loan would have been agreeable to the debtor's appropriating that money the person taking the loan can appropriate it without any objection.

2293. If a person takes interest bearing loan in the shape of wheat or any other similar thing and does farming with it what is apparent is that he becomes the owner of the produce although it is better that he should not appropriate the produce so acquired.

2294. If a person purchases a dress and later makes payment to the owner of the dress with the money taken on interest bearing loan or with lawful money mixed with that money, there is no harm in wearing that dress and offering prayers with it. And the same rule applies if he says to the seller: "I am purchasing this dress with this money", although it is better that in these circumstances he should not wear that dress while offering prayers or at other times.

2295. If a person gives some money to a merchant so that he may get from him something less in another city, there is no harm in it. It is called 'Sarf-i-Barat'.

2206. If a person gives some money to another person with the condition that after a few days he will take a larger amount from him (for example, he gives \$ 990 to him and stipulates that after ten days he will take \$ 1000 from him in another city) and if these amounts of money (i.e. \$ 990 and \$ 1000) are, for example, made of gold and silver the transaction is interest which is unlawful.

However, if the person who is taking some amount in excess gives some commodity against the excess amount or performs some task there is no harm in this arrangement. Nevertheless, there is no harm if something more is taken in the case of common banknotes which are counted, except when a person

has given the same as loan and imposed the condition of excess payment.

2297. If a creditor has to take something from another person, the debtor, and that thing does not belong to the genus of gold and silver and of the things which are weighed or measured, he can sell that thing to the debtor or any other person at a lower price and realize it in cash. On this basis in the present times the creditor can sell the drafts and promissory notes received by him from the debtor to the bank or some other person at a price lower than the amount of debt payable to him (which is called Nuzul in common parlance) and can take the remaining amount in cash, because dealings with regard to common banknotes is not weighed or measured.

Orders Regarding Giving A Reference (Hawala)

2298. If a debtor gives his creditor a reference to the effect that he should realize his debt from the third person and the creditor accepts the arrangement the third person will, on completion of the reference, become the debtor and thereafter the creditor cannot demand his debt from the first debtor.

2299. The debtor and the creditor should be adult and sane and none should have coerced them and they should not be prodigals (i.e. persons who spend their wealth absurdly). And it is also necessary that the debtor and the creditor are not bankrupt. Of course, if the reference is in the name of a person who is not already a debtor of the person giving the reference there is no harm, even if the person giving the reference is bankrupt.

2300. Giving reference in the name of a person who is not a debtor is correct if he accepts it. Moreover, if a person wishes to give a reference in the name of a person for a commodity other than that for which he is indebted to him (for example, if he gives a reference in the name of a person for wheat when he is indebted to him for barley) the reference is not in order unless he accepts it.

2301. It is necessary that a person should be a debtor at the time he gives a reference. Hence, if he intends taking a loan from some one he cannot, on the basis of obligatory precaution, give a reference in the name of anyone, so that he may realize, from him that which he is going to lend later.

2302. The person giving the reference and the creditor must know the quantity of the reference and its kind. Hence, if, for example, a person owes another person 30 kilos of wheat and \$ 10 and tells him to take anyone of his debts from such and such person and does not specify the debt the reference is not in order.

2303. If the debt is really specified but the debtor and the creditor do not know its quantity and quality at the time of giving reference, the reference is in order. For example, if a person has recorded the debt of another person in a register and gives a reference before looking into the register and consults the register later and informs the creditor about the quantity of his debt the reference is in order.

2304. The creditor may decline to accept the reference, although the person in whose name the

reference has been given may not be indigent and may not also show negligence in making payment of the reference.

2305. If a person, who is not indebted to the person who has given a reference, accepts the reference, he cannot take the amount of the reference from the person giving the reference before making payment against it, and if the creditor makes compromise on an amount less than that which is due to him, the person who has accepted the reference can demand only that amount from the person giving the reference.

2306. When the conditions of the reference have been fulfilled the person giving the reference and the person in whose name the reference has been given cannot cancel the reference and in case the person in whose name the reference has been given was not indigent at the time of giving the reference (although he may have become indigent afterwards) the creditor, too, cannot cancel the reference. And the position is the same if he (i.e. the person in whose name reference was given) was indigent at the time of giving reference and the creditor knew that he was indigent. However, if he did not know that he was indigent and came to know about it later, although by that time he might have become rich, he can cancel the reference and realize his debt from the person giving the reference.

2307. If the debtor and the creditor and the person in whose name reference has been given (when his acceptance is necessary for the soundness of the reference) have stipulated or any one of them stipulates that he will have a right to cancel the reference, they can cancel the reference according to the agreement made by them.

2308. If the person giving the reference pays the debt of the creditor himself, and if this is done by him on the request of the person in whose name the reference has been given, and who has been indebted to the person giving the reference he can claim from him what he has paid. And if he has paid without his having requested for it or if he has not been indebted to the person giving the reference he (i.e. the person giving the reference) cannot demand from him what he has paid.

Orders Regarding Mortgage (Rahn)

2309. Mortgage means that a debtor deposits some property with the creditor so that, if the debtor does not repay the debt, the creditor may realize his debt out of that property (i.e. from its sale proceeds etc.)

2310. It is not necessary to recite the prescribed formula in connection with mortgage and if the debtor gives his property to the creditor with the intention of providing security for the debt and the creditor takes it with the same intention, the mortgage is in order.

2311. The mortgagor and the mortgagee should be adult and sane and should not have been coerced by anyone. Moreover the mortgagor should not be bankrupt and a prodigal. The meaning of 'bankrupt' and 'prodigal' have been given in Article **2262**.

2312. A person can mortgage that property which he can legally appropriate and it is in order if he mortgages the property of another person with his permission.

2313. It should be correct to purchase and sell the property which is mortgaged. Hence, if wine or something like it is mortgaged the transaction is not in order.

2314. The benefit which accrues from the mortgaged property, belongs to the person who has mortgaged it.

2316. The creditor cannot make over (e.g. present or sell) the mortgage property to another person without the permission of the debtor. However, if he presents it to another person or sells it and the debtor accords permission later there is no harm in it.

2316. If a creditor sells the mortgaged property with the permission of the debtor its sale proceeds also remain mortgaged like the property itself. And the position is the same if the creditor sells it without the permission of the debtor and the debtor endorses the transaction later, or if the debtor sells it with the permission of the creditor so that its sales proceed may be mortgaged. That is the sale proceeds of that property will get mortgaged like the property itself. And if he sells it without the permission of the creditor the property in question continues to be mortgaged.

2317. If the creditor demands the repayment of debt when it should be repaid and the debtor does not repay it the creditor can sell the mortgaged property and realize his dues if he is authorized to sell it. And if he is not authorized to sell it, it is necessary that he should obtain permission in this behalf from the debtor and if he cannot approach him he should obtain permission for the sale of the property from the religious Head, and in either case if the sale proceeds exceed the amount due to him he should give the amount in excess of his debt, to the debtor.

2318. If the debtor does not possess anything other than his residential house and the necessary household effects the creditor cannot demand the repayment of debt from him. In case, however, the thing mortgaged by him is his house and household effects the creditor can sell them and realize his dues.

Orders Regarding Standing Surety (Zamanat)

2319. If a person wishes to stand surety for another person to repay his debt his act in this behalf will be in order only when he makes the creditor understand by his words in any language, or deed, that he undertakes the responsibility for the repayment of the debt and the creditor also accepts the deal. It is not necessary that the debtor, too, is agreeable to another person standing surety for the repayment of the debt.

2320. It is necessary that the surety and the creditor are adult and sane, and have not been coerced by anyone. Furthermore, they should not be prodigals and bankrupt. However, these conditions are not

applicable to the debtor, for example, if a person stands surety to repay the debt of his child, an insane person or a prodigal, the arrangement is in order.

2321. When a person gives a guaranty and says: "If the debtor does not repay your debt I shall pay it" showing that he becomes responsible for the debt and discharges the responsibility in the event of the debtor not repaying the debt, it is not unlikely that the guarantee thus given may be in order and in the event of the debtor not making repayment the creditor can demand the debt from the surety.

2322. If a person wishes to take loan from another person and a third man says to the person advancing the loan: "I stand, surety for him to repay the loan" it is not unlikely that if the person taking the loan does not repay it, the creditor may demand it from the surety.

2323. A person can stand surety for someone when the creditor, the debtor and the thing given as loan are actually specified. In case, therefore, there are two creditors of a person and another person says: "I guarantee to pay the debt of one of you" his guarantee is valid, because he has not specified as to whose debt he would pay.

Furthermore, if a person is the creditor of two others and another person says: "I guarantee to pay you the debt of one of them" his guarantee is void as he has not specified as to which person's debt he would pay. Similarly if for example a person has to take (in the capacity of creditor) 30 kilos of wheat and \$ 10 from another person and a third person says; "I guarantee to pay one of your two debts and does not specify whether he guarantees payment of wheat or money the guarantee is not in order.

2324. If a creditor excuses the surety from payment of debt the surety cannot take anything from the debtor and if the creditor excuses him from paying a part of his debt the surety cannot demand that part from the debtor.

2325. If a person guarantees the payment of the debt of another person he cannot abandon his responsibility of the surety given by him.

2326. On the basis of precaution the surety and the creditor cannot stipulate that they may cancel the guarantee as and when they like.

2327. If a person is able to pay the debt of the creditor at the time of his standing surety for the debtor, the creditor cannot cancel his guarantee, and demand the payment of debt from the first debtor although he (the surety) may become indigent afterwards. And the same order will apply if the surety at the time of guaranteeing is unable to pay the debt, and the creditor knowing it agrees to his becoming the surety.

2328. If at the time of standing surety a person is not able to pay the debt of the creditor and the creditor, not knowing the position, wishes to cancel his guarantee it is difficult that such an action on his part may be in order, especially when the surety becomes able to pay the debt before the creditor takes notice of the matter.

2329. If a person guarantees the payment of the debt of a person without obtaining his permission he (the surety) cannot demand anything from the debtor.

2330. If a person stands surety for a debtor with his permission for the payment of his debt he can, after payment of the quantity for which he stood surety, demand the same from him. However, if instead of the commodity for which he (the debtor) was indebted, the surety pays some other commodity to the creditor, for example, if the debtor owes 30 kilos of wheat and the surety pays 30 kilos of rice, he cannot demand rice from the debtor. But if the debtor himself agrees to give rice, there is no harm in it.

Orders Regarding Personal Surety Or Trusteeship (Kafalat)

2331. Personal surety or trusteeship means that a person may take responsibility to produce a debtor as and when the creditor asks for him. A person who accepts such responsibility is called kafil (guarantor).

2332. A personal surety is in order only when the guarantor makes the creditor understand by his words (in any language), or deed, that he undertakes to produce the debtor in person, as and when demanded by the creditor, and the creditor also accepts the arrangement.

2333. It is necessary for a guarantor (Kafil) that he should be adult and sane and should not be a prodigal and bankrupt and should not have been coerced to become guarantor and should be able to produce the person whose guarantor he becomes.

2334. Anyone of the following five things terminates the personal surety (or trusteeship):

- (i) The guarantor hands over the debtor to the creditor.
- (ii) The debt of the creditor has been paid off.
- (iii) The creditor himself abandons the debt.
- (iv) The debtor dies.
- (v) The creditor releases the guarantor from his personal surety.

2335. If a person gets a debtor released from the hands of his creditor by force and if he (the creditor) cannot approach the debtor the person who has got the debtor released should hand him over to the creditor.

Orders Regarding Deposit Or Custody Or Trust (Amanat)

2336. In case a person gives his property to another person and tells him that it is in his custody and the latter also accepts it or, if the owner of the property makes the other person understand, without even uttering a word, that he is giving him that property for safe custody, and the other person also takes it to

keel, it in safe custody, he (i.e. the person who accepts responsibility for the property) should act in accordance with the relevant orders pertaining to custody.

2337. Both trustee and the person who deposits some property by way of trust should be sane. Hence, if a person deposits some property with an insane person or if an insane person deposits some property with someone, their action will not be in order. However, it is permissible that a discerning child may deposit something with another person with the permission of his guardian and similarly it is permissible that he (the child) may deposit with someone the property of another person with the permission of the owner. And there is no harm in depositing something with a discerning child, although his guardian may not have accorded permission in this behalf.

2338. If a person accepts something from a child as trust without the permission of the owner of that thing, he should return it to its owner. And if that thing belongs to the child himself and his guardian has not permitted him to deposit it, it is necessary that the person concerned should deliver it to the child's guardian and in case he is negligent in delivering the thing to them (i.e. to its owner or the guardian of the child) and it perishes he should pay compensation for it. And the position is the same if the person making the deposit is insane.

2339. If a person cannot look after the deposit and the person making the deposit has not taken notice of his condition he (the person with whom it is proposed to deposit something) should, on the basis of obligatory precaution, decline to accept the deposit.

2340. If a person tells the owner of some property that he is not prepared to look after that property and if the owner of the property leaves it there and goes away and the property perishes the person who has declined to accept the trust is not responsible for it. However, the recommended precaution is that if possible, he should look after that property.

2341. A person who gives something to another person as trust can take it back as and when he likes, and one who accepts a trust can return it to its owner as and when he likes.

2342. If a person dispenses with the custody of the property deposited with him and cancels his undertaking he should deliver the property to its owner or to the agent or guardian of its owner as early as possible or inform them that he is not prepared to look after it and if he does not deliver the property to them without proper excuse and does not also inform them and if the property perishes he should give its substitute.

2343. If a person who accepts some property by way of trust does not possess proper place for keeping it, he should procure such a place and should take care of the property in question in such a manner that the people may not say that he has been negligent in looking after it, and, in case he places that property at a place which is not suitable for it, and consequently it is lost, he should compensate for it.

2344. If a person who accepts a deposit is not negligent in looking after it and is not also extravagant

and by chance the property perishes, he is not responsible for it. If, however, he keeps it at a place where it is not safe from the clutches of a criminal minded person who may become aware of it and take it away, and if the property is thus lost, he should give compensation to its owner.

2345. If the owner of a property specifies a place for its custody and tells the person who has accepted the deposit: "You should preserve the property here and even if you consider it probable that it may perish here, you must not take it elsewhere", he cannot take it to another place and if he takes it elsewhere and it is lost he is responsible.

2346. If the owner of a property specified a place for the custody of his property and the person who has accepted the trust knows that that place does not enjoy any importance in the eyes of the owner of the property and his only object in specifying that place was the safety of the property, he can transfer it to a place which is safer than the first place or as safe as that place, and if it perishes there, he is not responsible.

2347. If the owner of the property becomes insane the person who has accepted his property as trust should return it immediately to his guardian or inform his guardian. And if he does not deliver the property to his guardian without a legal excuse and is also negligent in informing him and the property perishes he should give him its substitute.

2348. If the owner of the property dies the person with whom the property is deposited should deliver it to his heir or inform him about it. And in case he does not deliver the property to his heir and is also negligent in informing him and the property perishes he is responsible. However, if he does not deliver the property and is also negligent in giving information because he wants to ascertain whether or not the person who claims to be the heir of the dead person is telling the truth or whether or not there are also some other heirs of the deceased and in the meantime the property perishes he is not responsible.

2349. If the owner of the property dies and he has many heirs, the person who has accepted the deposit should give the property to all the heirs or to the person who has been authorized by all of them to receive the property. Hence, if he gives the entire property to one heir without the consent of others he is responsible for their share in the property.

2350. If the person who has accepted the deposit dies or becomes insane his heir or guardian should inform the owner of the property or give the property to him as early as possible.

2351. If a person with whom a property has been deposited observes the signs of death in himself he should, if possible, deliver the property entrusted to him to its owner or his agent. And if it is not possible to do so he should give the property to the Religious Head. And if he cannot approach the Religious Head and in case his heir is honest and is aware of the deposit, it is not necessary that he should make a will, but otherwise he should make a will and should call a person to witness on it, and should inform the executor and the witness about the name of the owner of the property, and the kind of property, and its particulars, and the location where it is kept.

2352. If a person with whom a property has been deposited observes the signs of death in himself and does not act according to his obligation as mentioned in the foregoing Article and the property perishes, he should give its substitute, although he may not have been negligent in looking after the property, and may also after recovery from his ailment regret after some time and make a will.

Orders Regarding Loan Or Lending ('Ariyat)

2353. Lending means that a person may give his property to another person for temporary use and may not ask any compensation for it.

2354. It is not necessary in the case of loan that a formula be recited and it, for example, a person gives a dress to some other person with the intention of loan and he also takes it with the intention of borrowing, it is in order.

2355. Lending a thing which has been usurped and a thing which belongs to the lender but its benefit has been transferred to some other person (e.g. it has been given on lease is correct only when the owner of the usurped thing, or the person, who has taken the thing on lease, is agreeable to its being given on loan.

2356. The thing the benefit from which belongs to a person (for example, if he has taken it on lease) can be given by him on loan. However, if it has been stipulated in the lease contract that only the lessee himself will utilize it, he cannot give it to another person on loan.

2357. If an insane person or a child or one who is bankrupt or a prodigal gives his property on loan it is not correct. If, however, the guardian of a person considers it expedient to give his property on loan there is no harm in it. And the position is the same if a child gives his property on loan with the permission of his guardian.

2358. If a person who has borrowed something is not negligent in its maintenance, and does not also extravagantly use it, he is not responsible if it is lost by chance. However, if the two parties stipulate that, if the thing in question is lost, the borrower would be responsible for it, or if the thing borrowed is gold or silver and it is lost, the borrower should compensate for it.

2359. If a person takes gold or silver on loan and stipulates that if it perishes, he will, not be responsible, he is not responsible if it is lost.

2360. If the person who has given something on loan dies, the person taking the thing on loan should give it to the formers' heirs.

2361. If the position of the person giving something on loan becomes such that he cannot legally appropriate his own property (for example, if he becomes insane) the person taking the thing on loan should give it to his guardian.

2362. A person who has given something on loan can take it back as and when he likes, and the person who has taken it on loan can also return it at any time.

2363. Giving on loan something which cannot be used for lawful purposes (e.g. instruments of amusement and gambling and utensils of gold and silver for being used) is void. However giving them on loan for the purpose of decoration is permissible, although precaution is that they should not be given on loan even for this purpose.

2964. Giving on loan a sheep for the use of its milk and wool, and lending a male animal for mating is in order.

2365. If a person who has taken something on loan gives it / to the owner or to his agent or guardian and thereafter that thing perishes the person who took it on loan is not responsible. However, if he takes it to a place without the permission of its owner or his agent or guardian, although it may be a place where its owner usually took it for example if he takes the horse obtained on loan to the stable which has been prepared for it by its owner and ties it there and it perishes later or some one makes it perish the person taking it on loan is responsible for it.

2366. If a person gives on loan an impure thing for being used for a purpose for which purity is a condition precedent for example if he gives impure utensils on loan for being used to take meals he should inform the person who is taking them on loan about their being impure. However, if an impure dress is given on loan for offering prayers it is not necessary to inform the other person about its being impure.

2367. If a person has taken a thing on loan he cannot give it to another person on hire or on loan without the permission of its owner.

2368. If a thing is taken on loan and is then given on loan to another person with the permission of its owner and the person who took it on loan first dies or becomes insane, the second loan does not become invalid.

2369. If a person who has taken something on loan knows that it has been usurped he should deliver it to its owner, and he cannot give to the person who gave it on loan.

2370. If a person takes a thing on loan stout which he knows that it has been usurped and utilizes it and it perishes while it is with him the owner of that thing can demand compensation for that thing and the benefit derived from it from him, or from the person who usurped it, and if he takes that compensation from the person who took it on loan he (the person who took it on loan) cannot demand from the person, who gave the thing on loan, what he has given to the owner.

2371. If the borrower does not know that the property which he has taken on loan is a usurped one and it perishes while it is with him and if its owner takes compensation from him, he, too, can demand from

the person from whom he has taken the property on loan what he has given to the owner. However, if the thing taken by him on loan is gold or silver or if the person who gives him the property on loan stipulates with him that if it perishes he will give him compensation for it he cannot demand from the person who gave the property on loan the compensation which he gives to the owner of the property.

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