

Transactions (Part I of III)

Rules Regarding Purchase and Sale

Issue 2059: * It is recommended for a business man to learn the rules of daily transactions. In fact, if due to ignorance, he may necessarily contradict the laws of Shariah, then it is obligatory upon him to learn. Imam Ja'far Sadiq (A.S.) is reported to have said: "A person who wishes to engage in business, should learn its rules and laws, and if he makes any transaction without learning them, he may suffer because of entering into a void or doubtful transactions".

Issue 2060: * If a person is not aware, because of ignorance about the relevant laws, whether the transaction made by him is valid or void, he cannot have any discretion over the property which he has acquired, unless he knows that the other party has no objection to it. In any case, the transaction remains void.

Issue 2061: If a person does not possess any wealth, and it is obligatory on him to maintain his dependents, like, his wife and children, he should start earning. Moreover, to earn is recommended for Mustahab acts like providing better means of livelihood to one's family, and helping the poor persons.

Mustahab Acts

* The following are Mustahab in connection with sale and purchase:

- (i) One should not discriminate between various buyers while charging for the commodities, except in the case of poor people.
- (ii) One should not be adamant about the prices, unless one feels that one is being duped or cheated.
- (iii) One should give a little more of the thing 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 accept it

back.

Makrooh Transactions

Issue 2062: * The following are Makrooh transactions:

- (i) To sell the land, except when one wishes to purchase another land with its proceeds.
- (ii) To be a butcher.
- (iii) To make shroud selling one's vocation.
- (iv) To enter into transaction with people of low character.
- (v) To transact a deal between the Fajr prayers and sunrise.
- (vi) To make it one's vocation to buy or sell wheat and barley, or other similar commodities.
- (vii) To interfere in a deal being carried out by a Muslim, and make one's own offer.

Haraam Transactions

Issue 2063: * There are many Haraam deals and businesses, some are mentioned below:

- (i) To sale and purchase intoxicating beverages, non-hunting dogs, pigs, an unslaughtered carcass (as a precaution). Besides, if a permissible use of Najisul Ayn is possible, like, excrement and faeces being converted to manure or fertilisers, its transaction is permitted, but as a precaution, such sale and purchase should be avoided.
- (ii) Sale and purchase of usurped property.
- (iii) As a precaution, it is haraam to sell and purchase those things which are not usually considered to be merchandise, like, the sale and purchase of wild beasts, if it does not involve any substantial gain.
- (iv) Any transaction which involves interest.
- (v) Sale and purchase of those things which are usually utilised for haraam acts only, like, gambling tools.
- (vi) A transaction which involves fraud or adulteration, like, when one commodity is mixed with another, and it is not possible to detect the adulteration, nor does the seller inform the buyer about it, like, to sell ghee mixed with fat. This act is called cheating (ghish) or adulteration. The holy Prophet of Islam (s.a.w.a) said: "If a person makes a deceitful transaction with the Muslims, or puts them to a loss, or cheats them, he is not one of my followers. And when a person cheats his fellow Muslim (i.e. sells him

an adulterated commodity), Allah deprives him of Blessings in his livelihood, closes the means of his earnings, and leaves him to himself.”

Issue 2064: * There is no harm in selling a Clean (tahir/pak) thing which has become najis, but can be made Clean (tahir/pak) by washing it. And if it cannot be made Clean (tahir/pak) with water, and its use does not require it to be Clean (tahir/pak), like some oils, its sale is permissible. In fact, even if its use requires it to be Clean (tahir/pak), if it has substantial halal benefit, its sale is permitted.

Issue 2065: * If a person wants to sell a najis thing, he should inform the buyer about it, because by not telling him, he might do something contrary to the rule of Shariah. For example, if he sells him najis water which the buyer may require for Wudhu or Ghusl, and to offer his obligatory prayers, or he sells him something which he uses as food or drink – in all such cases, the seller should inform the buyer. Of course, if the seller knows that it is no use informing the buyer who is careless, and does not care about Taharat or Najasat, then it is not necessary to inform.

Issue 2066: * Although the purchase and sale of najis medicines for internal or external use is permissible, the buyer should be informed about it in situations explained in the foregoing rule no. 2065.

Issue 2067: * There is no objection to selling or buying the oils which are imported from non-Islamic countries, if it is not known to be najis. And as for the fat which is obtained from a dead animal, if there is a probability that it belongs to an animal which has been slaughtered according to Islamic law, it will be deemed Clean (tahir/pak), and its sale and purchase will be permissible, even if it is acquired from a non-Muslim or is imported from non-Islamic countries. But it is haraam to eat it, and it is necessary for the seller to inform the buyer about the situation, so that he does not commit anything contrary to his religious responsibility.

Issue 2068: * If a fox, or any other such animal, is not slaughtered according to religious law, or dies a natural death, it is haraam to purchase or sell its hide, as a precaution.

Issue 2069: * The purchase and sale of hide and skin which is imported from a non-Islamic country, or is bought from a non-Muslim, is permissible provided that one feels strongly that the animal was most probably slaughtered according to Islamic law. And, namaaz with it will be in order.

Issue 2070: * The fat obtained from a dead animal, and the hide obtained from a Muslim, when one knows that the Muslim has obtained it from a non-Muslim, without investigating whether or not the animal has been slaughtered according to Islamic law, is Clean (tahir/pak), and its sale and purchase permissible. But it is not permissible to eat it.

Issue 2071: Transaction of intoxicating drinks is haraam and void.

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

Issue 2073: If a buyer is serious about a transaction, but his intention is not to pay the price of the commodity being purchased by him, this intention will not affect the validity of the transaction, though it is absolutely necessary that he should pay the money to the seller.

Issue 2074: If a person has purchased a commodity on credit, and wishes to pay its price later from his haraam earning or wealth, the transaction will be valid, but, he will have to pay the amount which he owes from halal property, in order to be absolved of his responsibility.

Issue 2075: * Purchase and sale of instruments of entertainment like, guitar, lute and harmonium etc., is haraam, and as a precaution, the same rule applies to the small musical instruments made as toys for the children. However, there is no harm in selling and purchasing instruments of common use, like, radio and tape-recorder, provided that it is not intended to use it for haraam purposes.

Issue 2076: If a thing which can be used for halal purposes is sold with the intention of putting it to haraam use – for example, if grapes are sold so that wine may be prepared with them, the transaction is haraam, and as a precaution the deal is void. However, if the seller does not sell it with that Niyyat, but only knows that the buyer will prepare wine with the grapes, the transaction will be in order.

Issue 2077: * Making a human sculpture or that of an animal, is haraam, but there is no harm in purchasing and selling it, though as a precaution, it should be avoided. However, painting human portraits or animals is permissible.

Issue 2078: * It is haraam 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 from a seller, he should return it to its original owner.

Issue 2079: * If a person sells ghee mixed with fat and specifies it, for example, he says: “I am selling 3 kilos of ghee” – the transaction will be void if the quantity of fat is more, to the extent that it cannot be called ghee. But if the quantity of fat is small, so that it can just be classified as ghee mixed with fat, the transaction will be valid. But the buyer has a right of refusal, based on the deficiency in the quality, and can therefore cancel the deal and ask for refund. And if ghee and fat are distinct from each other, the deal covering the fat will be void, and the seller will have to refund the price of that fat, and keep the fat for himself. But in this case also, the buyer has a right of cancelling the transaction of pure ghee which is in it. Where the seller does not say that he is selling a particular thing, and just sells, say, 3 kilos of ghee he possesses, and if it turns out to be ghee mixed with fat, the buyer can return it, and ask for pure ghee.

Issue 2080: If a seller sells a commodity which is sold by weight or measurement, at a higher rate against the same commodity, like, if he sells 3 kilos of wheat for 5 kilos of wheat, it is usury and, therefore, haraam. In fact, if one of the two kinds of same commodity is faultless, and the other is defective, or one is superior and the other is inferior, or if their prices differ, and the seller asks for more than the quantity he gives, even then it is usury and haraam. Hence, if a person gives unbroken copper

or brass and takes more of broken copper and brass, or gives a good quality of rice, and asks for more of inferior kind of rice instead, or gives manufactured gold and takes a larger quantity of raw gold, it is usury and haraam.

Issue 2081: If the thing, which he asks for in addition, is different from the commodity which he sells, like, if he sells 3 kilos of wheat against 3 kilos of wheat and one dirham cash, even then it is usury and haraam. In fact, if he does not take anything in excess, but imposes the condition that the buyer would render some service to him, it is also usury and haraam.

Issue 2082: * If the person who is giving less quantity of a commodity, supplements it with some other thing, for example, if he sells 3 kilos of wheat and one handkerchief for 5 kilos of wheat, there is no harm in it, provided that the intention is that the handkerchief is for the excess he is receiving, and also that the transaction is not on credit. And if both the parties supplement the commodity with something, like 3 kilos of wheat with a handkerchief is sold for 3 1/2 kilos and a handkerchief, there is no objection to it, provided that the intention is that half kilo of wheat with the handkerchief on one side, was given for a handkerchief on the other.

Issue 2083: * If a person sells something by measuring in meter or yard, like, cloth, or something which is sold by counting like, eggs and walnuts, and asks for more instead, there is no objection, except when the commodity exchanged are of the same kind and the transaction is on credit, then it is not permissible. For example, if he gives ten eggs on a condition that he should receive eleven eggs after a month, it is a void and haraam transaction. In matters of the currency notes, a person can sell one type of it for another, like toman against dinar or dollar, on credit, and on condition to receive more. But if he sells toman for toman, expecting more, then that transaction should not be on credit; otherwise it will be void and haraam. For example, if a person gives 100 toman cash, on a condition that after six months he should be given 110 toman, that is void and haraam.

Issue 2084: * If a commodity is sold in most of the cities by weight or measurement, and in some cities by counting, there is no objection if that commodity is sold against the same commodity at a higher rate, in the city where it is sold by counting. Similarly, if the cities are different, and if it cannot be said that the majority of the cities sell the commodity by weight or measurement or by counting, every city will be governed by the custom prevailing in it.

Issue 2085: * In commodities which are sold by weight or measurement, if a person sells a commodity in exchange of something which does not belong to the same category, and if the deal is not on credit, he can take more. But if it is on credit, it is not permissible. Hence, if he sells one kilo of rice for two kilos of wheat on a month's credit, that transaction is void.

Issue 2086: * If a ripe fruit is exchanged for the raw fruit of the same type, one cannot take more. And Fuqaha have commonly held that if a commodity taken in exchange is from the same origin, one should not take more. For example, if someone sells one kilo of ghee made from cow milk for one and half kilos

of cheese made from cow milk, it will be usury and therefore haraam. But this generalisation is a matter of Ishkal.

Issue 2087: From the point of usury, wheat and barley are commodities of one and the same category. Hence, if a person gives 3 kilos of wheat and takes in exchange thereof, 3 1/2 kilos of barley, it is usury and haraam. And if, a person purchases 30 kilos of barley, on the condition that he would give in exchange 30 kilos of wheat at the time of its harvest, it is haraam, because he has taken barley on the spot and will give wheat some time later, and this amounts to taking something in excess, and therefore haraam.

Issue 2088: * Father and son, husband and wife can take interest from each other. Similarly, a Muslim can take interest from a non-Muslim who is not under protection of Islam. But a transaction involving interest with a non-Muslim who is under protection of Islam, is haraam. But after the transaction is completed, and the deal is closed, if payment of interest is permissible in the religion of that non-Muslim, a Muslim can receive interest from him.

Conditions of a Seller and a Buyer

Issue 2089: There are six conditions for the sellers and buyers:

- (i) They should be baligh.
 - (ii) They should be sane.
 - (iii) They should not be impudent, that is, they should not be squandering their wealth.
 - (iv) They should have a serious and genuine intention to sell and purchase a commodity. Hence, if a person says jokingly, that he has sold his property, that transaction is void.
 - (v) They have not been forced to sell and buy.
 - (vi) They should be the rightful owners of the commodity which they wish to sell, or give in exchange.
- Rules relating to these will be explained in the following:

Issue 2090: * To conduct business with a child who is not baligh, and who makes a deal independently, is void, except in things of small value, in which transactions are normally conducted with the children who can discern. But if a discerning child is accompanied by his guardian, and he pronounces the confirmation of the deal, then the transaction is valid in every situation. In fact, if the commodity or money is the property of another person, and that child sells that commodity or purchases something with that money, as an agent of the owner, the transaction is in order, even if the discerning child may be possessing that property or money on his own. And similarly, if the child is a medium of payment 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, even if the child may not be discerning (i.e. one who can distinguish between good and bad) because in reality, two adult persons have entered into the contract.

Issue 2091: * If a person buys something from a child who is not baligh, or sells something to him, in a situation when the transaction is not valid, he should give the commodity or money back to his guardian, if it was the child's own property, or to its owner, if it was the property of someone else, or should obtain the owner's agreement. 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 as Radde Mazalim, and in so doing, he should, as an obligatory precaution, seek the Mujtahid's permission.

Issue 2092: If a person concludes a transaction with a discerning child (i.e. one who can distinguish between good and evil), in a situation when it is not valid to conclude a transaction with him, and the commodity or money which he gives to the child is lost, he can claim it from the child after he attains the age of Bulugh, or from his guardian. But if the child is not discerning, he will have no right to claim anything from him.

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

Issue 2094: If a person sells the property of another person without his consent, and if the owner of the property is not agreeable to the sale, and does not grant permission, the transaction is void.

Issue 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 Adil Mujtahid can also sell the property of an insane person, or an orphan, or one who has disappeared.

Issue 2096: If a person usurps some property, and sells it and after the sale, the owner of the property allows the transaction, the transaction is valid, and the thing which the usurper sold to the buyer and the profits accrued to it, from the time of transaction, belongs to the buyer. Similarly, 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.

Issue 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 will belong to the owner, and not to the usurper.

Conditions Regarding Commodity and What is Obtained in

Exchange

Issue 2098: * The commodity which is sold, and the thing which is received in exchange, should fulfil five conditions:

- (i) Its quantity should be known by means of weight or measure or counting etc.
- (ii) It should be transferable, otherwise the deal will be void, except when a transferable object is supplemented to it. But if the buyer can himself manage to find the thing he has bought, even if the seller is unable to hand it over, the deal will be valid. For example, if a person sells a horse which has run away, and the buyer can find it, the transaction will be valid, and there will be no need to supplement it with any transferable object.
- (iii) Those details of the commodity, and the thing accepted in exchange, which influence the minds of the people in deciding about the transaction, must be clearly described.
- (iv) The ownership should be unconditional, in a manner that, once it is out of his ownership, he foresakes all his rights over it.
- (v) The seller should sell the commodity itself and not its profit. Hence, if he sells one year's profit of a house, it will not be in order. But, if a buyer gives profit of his property in exchange, like, 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. Details of these will come later.

Issue 2099: If a commodity is sold in a city by weight or measurement, one should purchase that commodity in that city by weight or measure. But if the same commodity is sold in another city at sight, one can purchase it in that city at sight.

Issue 2100: A commodity which is normally sold by weighing, can also be sold by measure. For example, if a person wants to sell ten kilos of wheat, he should fill a measure which takes one kilo of wheat, and give ten such measures to the buyer.

Issue 2101: * If the transaction has become void because of the absence of any of the aforesaid conditions, except the fourth – but the buyer and the seller agree to have the right of discretion over their exchanged commodities, there is no objection if they do so.

Issue 2102: * The transaction of a Waqf property is void. However, if it is so much impaired, or is on the verge of being impaired, that it can not be possibly used for the purpose for which it was dedicated, like, if the mat of a mosque is so torn, that it is not possible to offer prayers on it, it can be sold by the trustee or someone in his position. And if possible, as a precaution, its sale proceeds should be spent in the same mosque, for a purpose akin to the aim of the person who originally waqfed it.

Issue 2103: * When serious differences arise between the persons for whom waqf is made, to the extent that it may be feared that if the waqfed property is not sold, property or life of some person is endangered, some Fuqaha have ruled that the property may be sold off, and the sale proceeds be spent for a purpose akin to the object of the person who originally made the waqf. But this rule is not devoid of Ishkal. But if the person who made waqf made a condition that it be sold when advisable, then there will be no objection to it being sold off.

Issue 2104: There is no harm in buying and selling a property which has been leased out to another person. However, the leaseholder will be entitled to utilise the property during the period of lease. And if the buyer does not know that the property has been leased out, or if he purchases it under the impression that the period of lease is short, he can cancel the transaction when he comes to know of the true situation.

Formula of Purchase and Sale

Issue 2105: It is not necessary that the formula of purchase and sale be pronounced in Arabic. For example, if the seller says in any language: “I have sold this property in exchange 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 have Niyyat of Insha' – which means that by uttering the above mentioned words, they are genuinely intent upon buying and selling.

Issue 2106: If the formula is not uttered at the time of transaction, but the seller hands over to the buyer that which he owns, in exchange of 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

Issue 2107: * It is in order to sell the fruits before plucking them, when the flowers have fallen, and when the seeds have been formed, provided that, it is also known that it is saved from harm or decay, and its quantity can be fairly estimated. In fact, when it is still not known whether the formed seeds have passed the stage of any harm or decay, if the fruit sold is two years old or more, or it is just the quantity which has presently grown, and it has a substantial value, the sale transaction will be valid. Similarly, if other produce grown from earth or anything else is sold together with the fruits, the transaction will be valid. But, as an obligatory precaution, this supplement must be such that if the seeds fail to develop into fully grown fruits, the capital invested by the buyer is not lost.

Issue 2108: * It is also permissible to sell the fruits growing on the tree, which have not yet developed the seed, and whose flowers have not yet fallen. But it must be sold along with something which grows from earth (like vegetables) so that, as explained in the foregoing rule, the buyer sustains no loss. Or the fruit must be more than one year old.

Issue 2109: * There is no harm in selling the dates which have become yellow or red while they are still on the tree, but the dates of the same tree or any other should not be exchanged for them. But, if a person owns a 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 owner of the house or the garden, and dates are exchanged in lieu of them, there is no harm in it.

Issue 2110: * There is no harm in selling cucumber, brinjals, vegetables etc. which are picked several times during a year, provided that, they have grown and are visible and provided that, it is agreed as to how many times during the year the buyer would pick them. But if they have not grown nor can they be seen, their sale is a matter of Ishkal.

Issue 2111: * If after the ears of wheat have developed seeds, they are sold for the wheat obtained from the same harvest, or from other ears, the transaction will not be valid.

Cash and Credit

Issue 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 possession of immovable things, like, house, land, etc. and the moveable things, like, carpets, dress etc. means that the original owner renounces all his right over them, and hands it over to the opposite party with full right of discretion over it. In practice, the mode of delivery may vary according to the situation.

Issue 2113: When something is sold on credit, the period should be fixed clearly. If, a commodity is sold with a 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.

Issue 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.

Issue 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 exists.

Issue 2116: If a person gives a quantity of some commodity on credit to a person who does not know its price, 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 to you on credit, as compared to what I charge against cash” – and the buyer accepts this condition, there is no harm in it.

Issue 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 Contract by Advance Payment

Issue 2118: * Purchase by advance payment 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”*.

Issue 2119: * If a person sells, on advance payment basis, coins which are of gold and silver, and takes gold or silver coins in exchange for them, the transaction is void. But, if he sells a commodity or money which is not of gold and silver, and takes another commodity, or gold or silver money in exchange, the transaction is in order if it conforms with the seventh condition of the rule which follows. And the recommended precaution is that one should take money and not other commodity in exchange for the commodity sold.

Issue 2120: * There are seven conditions of advance payment contract:

- (i) The characteristic, due to which the price of a commodity may vary, should be specified. However, it is not necessary to be very precise, it will be sufficient if it can be said that its particulars are known.
- (ii) Before the buyer and the seller separate from each other, the buyer should hand over full amount to the seller, or if the seller is indebted by way of cash to the buyer for an equivalent amount, the buyer can adjust it against the price of the commodity, if the seller agrees to it. And if the buyer pays certain percentage of the price of that commodity to the seller, the transaction will no doubt be valid equal to that percentage, but the seller can rescind the transaction.
- (iii) The time-limit should be stipulated exactly. If 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) A time should be fixed for the delivery of the commodity when the seller is able to deliver it, regardless of whether the commodity is scarce or not.
- (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 advance payment contract, a commodity which is usually bought and sold by sight. However, for such a deal, one must be careful that the difference in the quality of individual items of the commodity

must be negligibly small, like in the cases of walnuts and eggs.

(vii) If the commodity sold belongs to the category which is sold by way of weight and measure, then it must not be exchanged for the same commodity. In fact, as an obligatory precaution, it must not be exchanged for any other commodity which is sold by weight and measure. And if the commodity sold is the one which is sold by counting, then as a precaution, it is not permissible to exchange it for the same commodity in increased number.

Laws Regarding Advance Payment Contract

Issue 2121: * If a person purchases a commodity by way of advance payment, he is not entitled, till the expiry of the stipulated period of delivery, 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 if he may not have taken possession of it yet. However, it is not permissible to sell cereals like wheat and barley, and other commodities which are sold by weighing or measuring other than fruits, unless they are in possession, except that the buyer wishes to sell them at cost or lower price.

Issue 2122: * In advance payment purchase transaction, when the seller delivers at the stipulated time the commodity which he had sold, the buyer should accept it. Also, if the seller gives something better in quality than the one agreed upon, and if it is reckoned to belong to the same type, the buyer should accept it.

Issue 2123: If the commodity which the seller delivers is of inferior quality to that which was agreed upon, the buyer can reject it.

Issue 2124: If the seller delivers a commodity different from the one he had sold to the buyer, and the buyer agrees to accept it, there will be no objection to it.

Issue 2125: * If a commodity which was sold by advance payment becomes scarce at the time when it should be delivered, and the seller cannot supply it, the buyer may wait till the seller procures it, or even cancel the transaction, and take the refund, but as a precaution, he cannot sell it back to the seller at a profit.

Issue 2126: * If a person sells a commodity promising to deliver it after some time, and also agrees to take deferred payment for it, the transaction is void.

Sale of Gold and Silver Against Gold and Silver

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

Issue 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 be equal, but if it is sold on credit or stipulated time, the transaction will be void.

Issue 2129: If gold or silver is sold against gold or silver, it is necessary for the seller and the buyer that before they separated 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.

Issue 2130: If either the seller or the buyer delivers the stock in full as agreed, but the other person delivers only a part of his stock, and they separate from each other, the transaction with regard to the part exchanged will be valid, but the person who has not received the entire stock can cancel the transaction.

Issue 2131: * If silver dust from a mine is sold against pure silver, and gold dust from a mine is sold against pure gold, the transaction is void, unless one is sure that the quality of silver dust is equal to the quantity of pure silver. However, there is no harm in selling silver dust against gold, or gold dust against silver, as mentioned earlier.

Circumstances in Which One Has a Right to Cancel a Transaction

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

- (i) If the parties to the transaction have not parted from each other, though they may have left the place of agreement. This is called Khiyarul majlis.
- (ii) If the buyer or the seller has been cheated in a sale transaction, or in any other sort of deal, either of the parties has been deceived, they have a right to call off the deal. This is called Khiyar of Ghabn. This Khiyar stems from the fact that each side in any deal wishes to ensure that he does not receive less than what he has given, and if he has been cheated, he should have the right to back out. But if one has in mind that if he is given less than what he has delivered, or is paid less than what he deserves, he will ask for the difference, he should first demand the difference before cancelling the deal.
- (iii) If while entering into a transaction, it is agreed that up to a stipulated time, one or both the parties will be entitled to cancel the transaction. This is called Khiyarush Shart.
- (iv) If one of the parties presents his commodity as better than it actually is, and thereby attracts the buyer, or makes him more enthusiastic about it. This is called Khiyar tadlis.
- (v) If one of the parties to the transaction stipulates that the other would perform a certain job, and that

condition is not fulfilled. Or if it is stipulated that the commodity will be of particular quality, and the commodity supplied may be lacking in that quality. In these cases, the party which laid the condition can cancel the transaction. This is called Khiyar takhallufish shart.

(vi) If the commodity supplied is defective. This is called Khiyarul 'aib.

(vii) If it transpires that a quality of the commodity under transaction is the property of a third person. In that case, if the owner of that part is not willing to sell it, the buyer can cancel the transaction, or can claim back from the seller the replacement of that part, if he has already paid for it. This is called Khiyarush shirkat.

(viii) If the owner describes certain qualities of his commodity which the buyer has not seen, and then the buyer realises that the commodity is not as it was described, the buyer can rescind the deal. Similarly, if the buyer may have seen the commodity sometimes back, and purchases it thinking that the qualities it had then will be still existing, and if he finds that those qualities have disappeared, he has a right to cancel the deal.

(ix) If the buyer does not pay for the commodity he has bought for three days, and the seller has not yet handed over to him the commodity, the seller can cancel the transaction. But this is in the circumstance when the seller had agreed to allow him time for deferred payment, without fixing the period. And if the seller had not at all agreed on deferred payment, he can cancel the transaction at once, without any delay. And if he had allowed him more than three days' credit, then the seller cannot rescind the deal before the termination of three days. If the commodity is perishable, like fruits, which would perish or decay if left for one day, and the buyer without any prior condition, does not pay till nightfall, 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 if a person sold his commodity in exchange for an animal, he can also cancel the transaction within three days. This is called Khiyarul haywan.

(xi) If the seller is unable to deliver possession of the thing sold by him, like, if the horse sold by him runs away and disappears, he can cancel the transaction. This is called Khiyarut ta'azzurit taslim.

Issue 2133: * If a buyer does not know the price of the commodity, or was unconcerned about it at the time of purchase, and buys the thing for higher than usual price, he can cancel the transaction if the difference of price is substantial, and if the difference is established at the time of abrogation. Otherwise, the buyer cannot cancel the deal. Similarly, if the seller does not know the price of the commodity, or was headless about it at the time of selling, and sells the thing at a cheaper price, he can cancel the deal if the difference is substantial and if other conditions mentioned above obtain.

Issue 2134: In a transaction of "Conditional sale", for example, a house worth \$2000 is sold for \$1000, 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, provided that the buyer and the seller had genuine intention of purchase and sale.

Issue 2135: In a transaction of “Conditional sale”, if the seller is sure that even if he did 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.

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

Issue 2137: * If a buyer finds out that the thing purchased by him is defective, like, if he purchases an animal and finds that (after purchasing it) it is blind of an eye, and this defect existed before the transaction was made, but he was not aware of it, he can cancel the transaction and return the animal to the seller. And if it is not possible to return it, for example, if some change has taken place in it, or it has been used 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, he has purchased something for \$4 and finds out that it is defective. Now the price of the thing in perfect, faultless state is \$8 and that of deficient is \$6, the difference between these two prices will be assessed at 25%. The buyer will be paid 25% of what he actually paid, and that will be one dollar.

Issue 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, but he was not aware of it, he can cancel the transaction, and can return it to its owner. And if he cannot return it due to change or disposal having taken place, he can obtain the difference between the faultless and the defective thing, according to the above mentioned rule.

Issue 2139: * If a defect takes place in the property after concluding the transaction, but before delivering it, the buyer can cancel the transaction. Similarly, if some defect is found in what is taken in exchange for the property, after concluding the transaction but before delivering it, the seller can cancel the transaction. But if both sides wish to settle by taking the difference between the prices, it is permissible, if returning of the articles involved is not possible.

Issue 2140: * If a person comes to know about the defect after concluding the transaction, it is necessary for him to cancel the transaction at once; and if he delays for unusually long time, he cannot cancel the transaction. Of course, various circumstances must be taken into consideration for the delay.

Issue 2141: If a person comes to know about the defect in a commodity after purchasing it, he can cancel the transaction even if the seller is not present. And the same order applies to all transactions involving the options.

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

- (i) If at the time of purchasing the property, he is aware of the defect in it.
- (ii) If he does not object to 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 it may have*”. But, 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 he did not mention, the buyer can return the property due to that defect, and if he cannot return it, he can take the difference between the prices.

Issue 2143: If a 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 faultless property. But, if he purchases a defective animal, and before the expiry of the period of Khiyar (i.e. option to cancel a transaction) which is three days, another defect appears in the animal, the buyer can return it, even if he may have taken delivery of it. And if only the buyer was given the option to cancel the deal within a fixed period, and another defect appears in the animal during that period, the buyer can cancel the transaction, even if he may have taken delivery of the animal.

Issue 2144: If a person owns some property which he himself has not seen, but another person has described its particular to him, and he mentions the same particulars to the buyer and sells the property to him. Later on, he learns after selling that the property was better than what he knew about it, he can cancel the transaction.

Miscellaneous Rules

Issue 2145: If a seller informs the buyer about his cost price of a commodity, he should tell him about all factors which would affect the rise or fall in the price of the commodity, even if he may sell it at the same price (i.e. at the cost price) or at a price less than that; for example, he should tell the buyer whether he has purchased the property against cash payment or on credit. And if he does not give the particulars of the property, and the buyer knows about them later, he can cancel the transaction.

Issue 2146: If a person gives a commodity to another person, and fixes its price and says: “Sell this commodity at this price, and the more you sell, you will be paid your commission.” If he sells the commodity for higher price, the excess of money realised will be that of the owner, and he will be entitled only to the commission from the owner. But if the arrangement is by way of granting a reward, when the owner says: “If you sell this commodity at a price higher than that, the excess of proceeds will be your

property” there is no harm in it.

Issue 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 falsely specifies the meat saying: “I am selling this meat of a male animal” the buyer can cancel the transaction. And in case, he does not specify it, the butcher must supply the meat of a male animal, if the buyer is not willing to accept the meat which has been given to him.

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

Issue 2149: Swearing in the matter of transaction is Makrooh, if it is true, and haraam, if it is false.

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