

TAHRIR AL-WASILAH

IMAM ROUHULLAH KHOMEINI (RA)

Translated by

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INTRODUCTION

Imam Ruhollah Khomeini, may his soul rest in Peace, as a consequence of strict adherence to the principles and teachings of the holy Prophets and Imams, was blessed with a personality of variegated and multifarious splendour. On the one hand, he was among the most outstanding teachers and highly reputed Mujtahids of the Islamic Seminary, known for their erudition in the field of Islamic Jurisprudence and Principles of Jurisprudence, who have to their credit the honour of injecting fresh blood in the veins of Islamic belief and guiding the caravan of the traditional jurisprudence to newer goals. On the other hand, he was an exquisite moral teacher who focused all his attention to fostering spiritual and intellectual training to the people.

In the field of philosophy, he is universally recognized as a great thinker, having his individual and unique ideas and views. Not only did he relieve the Islamic philosophy of its inertia, but also resuscitated the indolent and languid Islamic seminaries by infusing in them fresh activity and valour. In this mission, he had to endure untold trials and tribulations, whose pain pricked him incessantly in life, and which to some extent reflected in his famous epistle: 'The Spiritual Manifesto'. At the same time, he enjoys a leading position in the field of theoretical and practical Gnosticism, and is known as 'The Father of Gnostics' of his time. His great works are a living evidence of his mastery over the various branches of Islamic learning.

As regards his relentless struggle in the field of practical politics and his crusade against the Taghoots of the time through his clarion call for rising in defense of Truth, and his stupendous perseverance, dauntless courage and manliness and unflinching chivalry, they form a part of the revolution-evoking chapter which has already been acknowledged through out the four corners of the world.

Imam Khomeini's perfect grasp of the Islamic and human problems of today, his serious efforts, his dauntless policy and sincere leadership for their solution are self-evident truths and need no further proof. He conquered the hearts of all the people through exposing the satanic designs of their enemies and making prophetic campaign for materialization of the divine plans to frustrate them.

Unfortunately the depth and vastness of his knowledge and erudition has still not been fully introduced to the world. The stormy waves of his revolutionary struggle have touched even the farthest shores. His admirers have peeped into the mysteries of his personality but alas! only a limited horizon has come in sight, and they have failed to have a profound comprehension of its hidden spheres. It has, therefore, been found necessary to introduce to all the segments of human society the thoughts and works of this conqueror of the hearts of the people, as he is the one who has inherited his pure personality by following in the footsteps of the prophets and the saints, whose powerful and pure ideas are considered a humanizing element for the society. This is one of the many steps taken for the fulfillment of the duties and functions of the Institute for Editing and Publication of Imam Khomeini's works through scholarly and cultural endeavors.

The present English translation of Imam Khomeini's well-known book: "Tahrir al- Vasila" consisting of his juristic verdicts, occupies an important place in the program for translating his works into English. At the time of embarking on this herculean, arduous, but at the same time a valuable venture, we have had the following objectives before us:

Make accessible to the present and future English knowing scholars the Imam's valuable verdicts in the field Islamic jurisprudence.

A large number of the English knowing people still follow the Imam in their daily pursuits of life. This book will fulfill their need of having detailed verdicts of the Imam on various problems of daily life.

It is an important fact that some of the individual exquisite judgments (Ijtihāds) of the Imam have left an indelible and far-reaching mark on the world of Ijtihad. The way he has given a new life to Jurists' Rule theoretically and practically is quite obvious for all the intellectuals. Nevertheless, the Imam has always desired that this caravan of thoughts and views must march forward in conformity with the requirements of Time and Place, and this process should go on. The conditions he has enumerated for a jurist and a Mujtatiid, though difficult to fulfill, are yet indispensable. His attitude towards the safeguard and exploitation of the great treasure of the predecessors, in view of its being balanced, shall always receive laurels by the pioneers of this field and those having a true understanding of Islam. In this regard, the following summary of his views incorporates some very important points:

"I believe in the traditional jurisprudence and the Jawāhiri Ijtihad, and do not consider its violation to be permissible. This is the only correct way of Ijtihād. But it does not mean that there is no room for further development in the Islamic Jurisprudence. In Ijtihad, Time and Place occupy a decisive (fundamental) position. A Mujtahid should have all the problems of his time before him. An intelligent, wise and sagacious Mujtahid should have competence to guide a great Islamic society, rather even a non-Muslim society. Sincerity, piety and abstinence which are the signs (or basic qualifications) of a Mujtahid should also be accompanied by the qualities of an administrator and an efficient manager.

'A true Mujtahid should have before him the whole corpus of Jurisprudence for judgement which comprehends all the sides of the practical philosophy.

'We should stand up to present the practical jurisprudence of Islam without being influenced by the deceitful West, transgressor East and the prevailing world diplomacy; otherwise, as long as it is concealed in the books and the hearts of the Ulema, it shall not pose any danger to the robbers.

"Ijtihād, as used in today's technology, is not sufficient for administration of the society. The (Islamic Research) Centres and 'Ulema should always feel the pulse of the society thinking and its future requirements, and should be ready to react, taking a few steps forward before the occurrence of the events.

“It is not far from likelihood that the prevailing systems for the administration of the society may change, and the human societies may need the modern system of Islam for the solution of their problems. The great ‘Ulema of Islam should be on the look-out for it right a larger from now.”

The English translation of Tahrir al-Vasilah, Vol.1 of which is now being published, has been accomplished by Dr. Sayyid Ali Reza Naqavi, former Professor of Shiah Jurisprudence, International Islamic University, Islamabad. Dr. Naqavi, who holds a Doctorate in Persian Language and Literature from Tehran University has studied in the said discipline for about ten years, and has attended the classes of a number of prominent Professors of the University such as Professors Foroūzanfar, Jalil Homā’i, Pour-e Da’oud, Modarres Rezavi, Dr. Moqaddam, Dr. Khānlari’, Dr. Mo’in, Dr. Yār Shāter, and Dr. Kiyā. During his stay in Iran, he has also worked as a Sub-Editor in some of the leading English newspapers and magazines of Tehran. After his return to Pakistan, he has translated into English and published a number of important legal and juristic texts like Family Laws of Iran, Constitution of the Islamic Republic of Iran, Islamic Penal Laws of Iran, Interest- Free Banking Laws of Iran, etc. He has compiled, single-handedly, the voluminous Farhang-e Jame’ of Persian into English and Urdu. He has also translated iqtisaduna, (Vol.II); a monumental work on Islamic economic system by the late Allāmah Baqir Sadr for Pakistan Institute of Development Economics, Quaid-i-Azam University Islamabad, In view of these facts, there is no need to emphasize the competence, sincerity and commitment of Dr. Naqavi. Besides, his full command over English, Arabic, Persian and Urdu, his vast experience in research and teaching in the field of Shi’ah Jurisprudence, together with his special love and devotion for the late Imam Khomeini, R.A., have served as the main stimuli for embarking on the colossal task of translating the works of the Imam into English. We pray to the Almighty Allah for success in his important mission of introducing the valuable works of the Founder of the Islamic Republic of Iran to the universities and research centres of the English knowing world.

In the end, we request the honourable readers to let us benefit from their valuable views and suggestions for the collection, preservation, editing and translating the works of the Imam, particularly with regard to the present English translation of his Tahrir al-Vasilah, as it is quite likely that even a single remark or opinion may serve as a source of guidance to a large number of people for time immemorial.

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In the name of Allah, the Compassionate, the Merciful

SECTION ONE - RULES REGARDING TAQLID

Know that it is obligatory (Wajib) on a (Muslim) who is a *Mukallaf* (a sane and adult person bound to fulfill religious duties) and one who has not attained the status of a Mujtahid (a religious scholar who is competent to exercise his individual judgement on theological issues) to be a Muqallid (a Follower of a Mujtahid) or be a Muhtät (one exercising caution), provided that he has the knowledge about the cases in which caution is to be exercised, in matters other than essentials (Daruriyyat) belonging to *ibàdāt* (matters of purely religious nature as prayers, fasting, Zakât, Khums and Haj) and Muāmalat (matters relating to public dealings), even if they belong to the category of *Mustahabbät* (Desirable acts) or *Mubāhāt* (Permissible acts), although there are a few who have knowledge of the cases of caution. So the acts of a person belonging to laity who has no knowledge of the cases where caution is to be exercised, except by way of following a Mujtahid, shall be void, according to the details given below.

Problem #1: According to the stronger opinion, it is permissible to act cautiously, even if it requires the repetition of the act.

Problem #2: Taqlid means acting on the authority of the verdict of a particular jurist (Faqih). It is used in this sense in the next two Problems. Indeed what bestows validity to an act is that it must be done on the basis of an authority, such as the verdict (Fatwa) of a jurist, even if the title of Taqlid may not apply to it. It will presently follow that the mere correspondence of an act with the verdict of a jurist is sufficient to bestow validity to an act.

Problem #3: The authority for Taqlid must be a person who is learned (Alim), Mujtahid, just (Adil) and pious (Vara') in matters regarding the divine faith, rather as a precaution, he must not be one, bowing himself before the world, nor avaricious of getting hold of mundane power and pelt. The (relevant) tradition says: "If a person from among the jurists is one protecting oneself (from evil), safeguarding the faith, resisting his temptations and submitting himself before the commandments of his Lord, then let the laity follow him."

Problem #4: It is permissible to renounce the Tailed of one living (jurist) after adopting the Tailed of another living (jurist) of an equal status. To be more cautious, the renunciations are obligatory in case the latter is more learned (than the former).

Problem #5: To be more cautious, as far as possible, it is obligatory to follow the most learned jurist (Alma), and it is also obligatory to make a search for him. If two Mujtahids are equal in knowledge, and it is not known as to which one of them is more learned, one is free to select either of them. If one particular Mujtahid of the two is more pious or more just, then it would be more appropriate and more cautious to select him. In case a person has hesitation in making a choice

between two persons, while there is likelihood of one of them being more learned than the other, then it would be more cautious to specify him for his Tailed.

Problem #6: If two persons are exclusively more learned, and one is not able to determine (as to which one of them is more learned than the other), he should make a choice by way of caution, or it would be more cautious to act upon the more cautious opinion of the two (jurists) in case he is able to do so. In case of his inability to do so, he is at liberty to make a choice between both of them.

Problem #7: It is incumbent on a common man to follow the most learned jurist in so far as the obligation to follow the most learned jurist is concerned. So if the most learned jurist gives a verdict for the obligation of his Taqlid, it would not be permissible for the common man to follow other jurists in matters of secondary importance. In case, however, the most learned jurist gives verdict in favour of permissibility of following a jurist other than the most learned, then the common man would be at liberty to make a choice between his Taqlid and that of the other. It would, however, not be permissible for a common man to follow a jurist other than the most learned in case the jurist other than the most learned gives a verdict in favour of non-obligation of the Taqlid of the most learned jurist. Of course, if a jurist other than the most learned gives a verdict in favour of the obligation of Taqlid of the most learned, it would be permissible to act upon his opinion, but not as its being a (final) authority, but rather his opinion being in conformity with caution.

Problem #8: In case there are two Mujtahids of equal learning, the common man would be at liberty to refer to either of them (for guidance), as also it would be permissible for him to follow one of them in some cases and follow another in other cases.

Problem #9: It is obligatory for a common man to act with due caution during his search for the Mujtahid or an A'lam (the most learned jurist). In the second case (i.e. the search for an A'lam), it is sufficient to exercise caution while acting on the verdict of those in whose case there is likelihood of their being A'lam, and that he should accept their most cautious statements.

Problem #10: It is permissible to act upon the verdict of a non-A'lam Madful, (one who is excelled by another), in matters where his verdict agrees with that of the A'lam, but also in matters where he is not aware of any difference between the verdicts of the two.

Problem #11: If, in a matter, there is no verdict of an A'lam, it would be permissible to refer that matter to a Mujtahid other than the A'lam, however, observing the order of succession from the more learned to less learned.

Problem #12: If a person follows someone who is not competent to issue a verdict, and later comes to realize the fact, it would be obligatory on him to revert to someone who is competent. Similarly, if a person follows a non-A'lam, as a precaution, it would be obligatory on him to revert to the A'lam. As a precaution, the same would be the rule, if a person follows an A'lam and (later) someone else turns out to be more learned than that A'lam, as regards matters in which the person has knowledge in detail of their disagreement in both cases.

Problem #13: It is not permissible to follow initially a deceased (A'lam). Of course, it is permissible to continue his Taqlid in some matters absolutely on which he has acted upon (during his lifetime), and apparently even in matters on which he has not acted upon (during his lifetime). As a precaution, however, it is permissible to revert to a living A'lam, and this reversion is in conformity with the most cautious opinion. As a precaution, it is not permissible subsequently to revert to the verdict of the deceased (A'lam). Similarly, it is not permissible to revert to another living jurist, except when the latter is more learned than the former, because, according to the more cautious opinion, it is obligatory to shift over to the more learned (Mujtahid). It is (more) reliable for a person to continue to follow a living (A'lam), (rather than to follow a deceased A'lam). If a person continues to follow a deceased Mujtahid, without shifting over to a living one, according to whose verdict it is permissible to continue to follow a deceased Mujtahid, it would be as if the person is acting without Taqlid.

Problem #14: If a person adopts the Taqlid of a Mujtahid, and the Mujtahid dies, and then the person adopts the Taqlid of another Mujtahid, and he also dies, then as regards the problem of continuing to follow the deceased Mujtahid who favours the obligation or permissibility of continuing to follow the deceased Mujtahid, then would he continue to be under the Taqlid of the first or the second Mujtahid? Apparently, he would continue to be under the Taqlid of the first Mujtahid if the third Mujtahid is in favour of the obligation of the continuance (of the Taqlid of the first Mujtahid), or he may opt either to continue to follow the second Mujtahid or shift over to the living one, in case the (third) Mujtahid is in favour of its permissibility.

Problem #15: If a person enjoys the permission or authority issued by a Mujtahid regarding the appropriation of property, relating to (charitable) endowments or bequests or legally interdicted persons, he shall cease to enjoy the permission or authority following the death of the Mujtahid. If a person has been appointed a custodian of property belonging to a (charitable) endowment or an interdicted person, then it is not far from likelihood that he shall not be removed (from the custodianship), but it is a caution which should not be given up that a fresh permission must be obtained or a new appointment (of a custodian) made by a living Mujtahid.

Problem #16: If a person acts according to the verdict of the Mujtahid whom he follows, in case of worship ('Ibādāt), contract or unilateral obligation, and then the Mujtahid (whom he followed) dies, and he adopts the Taqlid of another Mujtahid, according to whose verdict those acts are void, his former acts shall be valid on the basis of the validity of those acts, and he shall not be required to perform those acts again, though he shall be required to perform his future acts according to the verdicts of the second Mujtahid.

Problem #17: If a person adopts the Taqlid of a Mujtahid without due investigation, and subsequently has doubts about the Mujtahid's possessing all the necessary qualifications, it will be obligatory on him to carry out the necessary investigations. Similarly if a person believes in full competence of a Mujtahid, and later starts doubting it, it shall be obligatory on him to make necessary investigations. Likewise, if a person believes in full competence of a Mujtahid and then,

as a precaution, starts doubting the comprehensiveness of his competence, or when he believes him to be fully competent, and later starts suspecting him to have lost some of the qualities, like honourable record (Adālat) and Ijtihad (competence to issue verdict in religious matters), it shall not be obligatory on him to make necessary investigation, and it shall be permissible for him to continue according to his previous position.

Problem #18: If the Mujtahid suffers something which leads to the loss of qualification for issuing verdict, such as moral depravity (Fisq), insanity, or amnesia (Nisyān), it is obligatory on his followers to shift over to a Mujtahid who possesses those qualities, and it is not permissible for them to continue his Taqlid, because it would be as if a person had been following someone devoid of full competence and continued to do so for some time, so that he would be like one who has not adopted Taqlid of any Mujtahid at all, and his position would be like one who is negligent deliberately or inadvertently.

Problem #19: Ijtihād (Competence to issue verdicts in religious matters) is established by personal investigation, favorable reputation about the person's erudition and by the testimony of two well informed persons or experts. The same rule applies to (establishment of) an Aàlam. It is not permissible to adopt the Taqlid of a person about whom there is no knowledge of his having attained the status of a Mujtahid, even if he is one of the learned persons, in the same way as it is obligatory on a person other than a Mujtahid to follow a Mujtahid or act upon caution, even though he be one of the learned persons or close to Ijtihād (or competence to issue verdicts in religious matters).

Problem #20: The acts of a deliberately negligent person without following (Mujtahid), who is conscious of his negligence, are void, except with the hope that he would attain the factual position, or his acts happen to be in accordance with the factual position or the verdict of a person whom it is permissible to follow. The same rule applies to the acts of a negligent person acting deliberately or inadvertently with the intention of reaching close to the correct position, in case they are in accordance with the factual position or the verdict of a Mujtahid whom it is permissible to follow.

Problem #21: There are three ways of adopting the opinion of a Mujtahid on different issues:

1. Listening to the opinion from the Mujtahid himself.
2. Narration by one or two morally sound (Adl) persons about the Mujtahid ('s opinion) or about (his opinion given in) his Risālah (the booklet containing the Mujtahid's verdicts on different issues), provided that it is free from (typing) errors; rather, the narration by a single person would be sufficient, if he happens to be one whose statement is relied upon.
3. Consulting the Mujtahid's Risālah, provided that it is free from (typing) errors.

Problem #22: If two narrators disagree while narrating the verdict of a Mujtahid, then, according to the stronger opinion, the statements of both of them should be dropped absolutely, irrespective of

the fact whether both of them were equal in trustworthiness or not. If it is not possible to refer to the Mujtahid himself or his Risālah, the person should act according to what is in conformity with caution in both the verdicts, or should himself act cautiously.

Problem #23: It is obligatory to have knowledge about the problems of doubts, omissions, and the like, which occur generally, except when one is sure of not facing such problems, in the same way as it is obligatory to have the knowledge of the different constituents, conditions, obstacles and preliminaries of ‘Ibādāt (religious observances). Of course, it would be all right if a person knows in short that his act contains all the necessary elements, fulfils all the conditions and is free from all the obstacles, even if he has not a detailed knowledge.

Problem #24: If a person knows that for some time he had performed his ‘Ibādāt (acts of worship) without following a Mujtahid, but does not know the exact period of time, if he knows the nature of the ‘Ibādāt (acts of worship) and their agreement with the verdict of the Mujtahid to whom he has referred, or to whom he intends to refer, then it would be all right; otherwise, he shall be required to make up for his previous acts as far as he knows about their performance, though it would be more cautious if he makes up to the extent that he is convinced of his full atonement.

Problem #25: If his previous acts were performed by way of Taqlid, but he does not know whether it was a valid or invalid Taqlid, they would be considered to have been performed by way of a valid Taqlid.

Problem #26: If a period of time has passed since a person has attained legal maturity (Bulugh), and he has doubts whether his acts had been performed by way of a valid Taqlid or not, his previous acts shall be considered valid, though he shall be required to perform his future acts in the valid way.

Problem #27: Adālat (Moral soundness) is a condition for a Mufti (one giving a Fatwā or a formal legal opinion) and a Qādi (Magistrate, or Judge). It is established by the testimony of two morally sound persons, association producing knowledge and confidence, or favorable reputation about his knowledge; rather, a man may be known by his good appearance of the acts required by the Islamic canon law (Shari‘at), obedience to divine commands (Ta‘at) attendance in social gatherings, and the like. Apparently a good appearance is an unquestionable sign of moral uprightness, though it does not produce (good) opinion or (absolute) knowledge.

Problem #28: Adalat consists of a permanent trait of character which produces constant adherence to piety through avoidance of what is forbidden and performance of what is obligatory.

Problem #29: The quality of Adalat is virtually lost by commission of the major sins and persistence in the commission of the venial sins ; rather, according to the more cautious opinion, even venial sins. However it is restored by resorting to penitence if the said trait of character subsists.

Problem #30: If a person erroneously narrates the verdict of a Mujtahid, it is obligatory on him to inform all those to whom he had narrated the verdict (about his error).

Problem #31: If a problem crops up during the performance of prayers, the actual rule about which is not known to the person, and it is not possible for him to enquire about it at that time, he shall act according to one of the two alternatives (discontinue the prayers or complete it) with the intention of enquiring about the actual rule after the prayers. Now, if it turns out that he has not acted according to the actual rule, he shall be required to perform the prayer again, but if it transpires that he had acted upon the actual rule, his prayers shall be considered valid.

Problem #32: It is obligatory on an agent acting on behalf of another in acts like a contract, unilateral obligation, payment of Khums, Zakāt, or expiation, or the like to act in the way required according to the Taqlid (of the Mujtahid) of his client and not according to the Taqlid (of his own Mujtahid), in case they are following different Mujtahids. As regards a person hired by an executor or administrator for offering prayers or the like on behalf of the deceased, according to the stronger opinion, it is necessary for him to observe what is required by the Taqlid (of his own Mujtahid) and not that of the deceased, nor according to the Taqlid (of the Mujtahid) of the executor administrator. In like manner, if the executor does something voluntarily or on hire, it is obligatory on him to comply with the conditions of the Taqlid (of his own Mujtahid) and not that of the deceased. The same rule shall apply in case of an administrator (who does something on behalf of the deceased).

Problem #33: If a transaction takes place between two persons, one of the parties to which is a follower of a Mujtahid in whose opinion such transaction is valid, while the other party follows a Mujtahid in whose opinion it is void, it is obligatory on both of them to follow the opinion of their respective Mujtahids. If a dispute takes place between the two parties, the issue shall be referred to one of their two Mujtahids or a third one, who will decide the matter according to his own verdict, and his judgement shall be accepted by both the parties. The same rule shall apply in case of a unilateral obligation belonging to two parties, such as a dissolution of marriage or manumission (of a slave), or the like.

Problem #34: An absolute caution is not permissible to be dropped in case of a verdict before a verdict in favour or against it has not been issued. Rather, it is obligatory to act by way of caution, or refer the matter to another Mujtahid in order of succession according to his superiority in knowledge. If, however, in the Rasa'il-e Amaliyyah (Instruction Books of Mujtahids for their respective Followers) the word "Caution" has been used after a verdict which is contrary to the verdict, for example, if, after the verdict on a matter, it is said: "Though it is more cautious to do so and so:", or subsequent to a verdict it is said, contrary to the verdict: "The more cautious opinion is such and such, although the rule in this case is such and such", "or though the stronger opinion in this and such", or close to the verdict there are words carrying approbation (Istihbab), as for example it is said: "The better or more cautious opinion is such and such", in all these three cases, it is permissible to drop caution.

SECTION TWO - DEALING WITH CLEANLINESS (TAHARAT)

Chapter on Water

Water is either Pure (Unmixed) or Mixed.

Mixed water is the water which is extracted from something else, such as a water melon or a pomegranate, or water mixed with something else in a way that it ceases to be called water, like water mixed with sugar or salt.

Pure water has the following kinds: running water, water gushing forth (a spring) but not flowing, well water, rain water and standing water called stagnant water.

Problem #1: A mixed water itself is clean, but does not clean (spoiled by) feces or refuse, and if some unclean thing is mixed with it, it becomes totally unclean, even if it was itself in a quantity of a thousand Kurs.

Of course, if a mixed water falls down with force from upward even if the place is in the form of a slope (or ditch) and something unclean unites with it in the lower part, the uncleanness shall be limited exclusively to (the water in) that place of union without affecting the upper part.

Problem #2: A pure water does not cease to be pure by evaporation. Indeed, if something else like rose water or the like is mixed with it, and then it evaporates, sometimes it becomes mixed, in the same way as mixed water continues to be mixed water even after evaporation. The criterion in such cases is the condition the mixed water takes once it sets in again after the evaporation, so that sometimes the evaporating water consists of constituents of water, and so after setting in again, it becomes pure water, while at times it becomes mixed water.

Problem #3: If there is some doubt about a liquid as to its being pure or mixed, then if its previous condition is known, it will continue to be so, except in some cases, as the doubt about its sense or the doubt about the continuity of the condition. If its previous condition is not known, it shall clean neither (things spoiled by) feces nor by refuse. If it is mixed with something unclean, then, if it is in a small quantity, it will become totally unclean, but if the (original) liquid is in a large quantity, then apparently it shall fall under the category of clean.

Problem #4: A pure water of any kind shall become unclean if any of its properties like color, taste or odor is changed as a result of being mixed with something unclean. But if the change takes place due to the proximity of something unclean, as due to the proximity of a dead body it starts stinking, it shall not become unclean. Of course, if the dead body falls outside the water, and a part of it falls into the water, and consequently the entire interior and exterior of the water is changed, it will become unclean.

Problem #5: The criterion is the influence of the characteristics of pollution on the water, and not the polluting thing, so that if the water turns red due to the polluting brazil wood, it does not become unclean if it is in the quantity of a Kur, or it is running water, or the like.

Problem #6: The condition is the change of one of the three characteristics due to pollution, even if it is not one of the originally unclean objects, so that if the water becomes yellow due to falling of blood into it, it would become unclean.

Problem #7: If something polluted which possesses the characteristic of being unclean due to falling into it falls into clean water so that it changes the water by the characteristic of being unclean, it does not become unclean according to the stronger opinion, as, (for example), if some dead body falls into the water changing its odor, and then the dead body is taken out of water, then the water is thrown into a Kur changing its odor. If, however, the polluted thing carries pieces of the unclean thing and consequently the clean water is changed thereby, it would become unclean.

Problem #8: A running water which is springing, flowing water, does not become unclean by encountering something unclean whether it is in a small or large quantity.

The same rule applies to the springing, standing water, such as some spring. The same rule shall also apply to a well, according to a stronger opinion.

In all the above cases, the water does not become unclean except when it is changed (due to uncleanness).

Problem #9: A stagnant water, connected with running water, shall be governed by the rule applicable to running water, so that a pool connected with a river by a waterway or pipe or the like is like the river.

The same rule shall apply to the banks of the river, even if their water is standing.

Problem #10: A running water or what falls under its category becomes clean even if it becomes unclean by change, when its change is removed, whether by itself or by mixing with clean water.

Problem #11: A stagnant water without a source becomes unclean by encountering something unclean if it is in a quantity less than a Kur, whether water enters the unclean thing or the unclean thing enters it. But it shall become clean by mixing with clean water like running water, water in the quantity of a Kur or rain water.

According to the stronger opinion, mere union without mixture is not sufficient.

Problem #12: If there is a little water (i.e. in a lesser quantity than a Kur), and there is doubt whether it had source or not, so if it had previously a source, and now there is doubt about its disconnection, it shall be governed by its previous position, otherwise not.

If however, the little water receives something unclean, according to the stronger opinion, it shall be treated as clean.

Problem #13: A stagnant water which reaches the quantity of a Kur shall not become unclean thing by encountering something unclean, except when it is changed. If, however, it is partly changed,

then if what remains unchanged is in a quantity of a Kur, it shall remain clean, and the changed part shall also become clean by mixing with the remaining unchanged part that is in a quantity of a Kur.

If what is left is upto the quantity of a Kur, the whole shall be rendered unclean.

Problem #14: A kur is measured in the following two ways:

Firstly, by weighing, so that it is one thousand and two hundred Iraqi Ratls or eighty five Huqqahs of Karbala and Najjaf (a Huqqah of Karbala and Najjaf=933 $\frac{1}{3}$ Mithqals), $\frac{3}{4}$ Baqqals, or 2 $\frac{1}{2}$ Sayraffi Mithqals, or 292 $\frac{1}{2}$ Huqqahs of Istambul (a Huqqah of Istambul = 280 Mithqāls), 64 Shahi Mounds – 20 Mithqals (A Shahi Mound = 1280 Mithqāls), or 128 Tabrizi Maunds - 20 Mithqals, or 29 $\frac{1}{4}$ Mounds of Bombay (a Bombay Maund = 40 Seers, a Seer = 70 Mithqāls), or 348 kilograms of today – 20 Mithqals or 383906.25 grams approximately.

Secondly, measuring by volume, so that a kur = $\frac{437}{8}$ spans of the hand, according to the more cautious opinion; rather the opinion is not without force.

Problem #15: If there is doubt about an amount of water being upto the quantity of a Kur, then if there is knowledge about its previous position, it shall continue to enjoy the same position.

In case its previous position is not known, according to the stronger opinion, it shall be rendered unclean by uniting with something unclean, even if all the rules of kur water are not known applicable to it.

Problem #16: If the water is little (less than the quantity of a Kur), and then attains the quantity of a kur, and it is known that it has touched something unclean, but it is not known whether it touched the unclean thing before or after attaining the quantity of a Kur, it shall be declared clean, except when its date of pollution is known without the date of its attaining the quantity of a Kur

(Conversely), if a water was upto the quantity of a Kur, and later it falls short of that quality and it is known that it has touched something unclean, but it is not known whether it was prior or subsequent to its falling short of the quantity of a Kur, it shall be declared clean, even in case the date of its falling short of the quantity of a Kur is known.

Problem #17: Rain water while raining from above is like running water, and so it does not become unclean, unless it changes (color, smell or taste), but it is more cautious that it should be in a quantity that it may flow on a hard ground, although the rule shall not lose its force in case it is sufficient to be called rain water.

Problem #18: Rain water means water which is not rendered unclean, except by the change (in color, smell and taste) of the drops which come down, and the water which assembles at the time when it is raining.

Similar is the case with the water which assembles, and is connected with the water on which the rain falls. So the water running from a rain pipe down the roof at the time when the rain has not yet stopped is like the water which gathers over the rooftop, and on which rain continues falling.

Problem #19: Rains cleans every unclean thing on which it falls, and which can be cleaned, like water, carpets and utensils. According to the stronger opinion, it is necessary that they should be fully drenched with the rain water.

In case of the carpets and the like, it is not necessary to wring them or wash them several times. Rather, in case of utensils too it is not necessary to wash them several times.

Of course, when a utensil is rendered unclean due to licking by a dog, then, according to the stronger opinion, it would be necessary to first rub the utensil with dust, and then place it under the rain, so that when the rain falls on it, it would be rendered clean, without there being any need of washing it several times.

Problem #20: If the rain water drenches the whole unclean bed (or mattress), and penetrates into it thoroughly, it is rendered clean internally and externally. But if the rain water drenches it only partly, it would clean only that part of it which is drenched. (Similarly,) if the rain water reaches only its outer part, and does not penetrate into it, it would clean only the outer part of it.

Problem #21: If the roof is unclean, and rain water penetrates into it, and while it is raining, the rain drops start oozing from the roof, the drops would be clean, although the unclean object may still be lying on the roof, and the rain water may be passing from over it.

Similar shall be the case if some drops fall from the roof after the rain has stopped, when there is possibility of the drops being the unclean water inside the roof, or their not having through the unclean object itself, or through what has become unclean after the discontinuation of the rain.

If, however, it is known that these are the drops of the water that has passed through of the two (unclean) objects after the discontinuation of the rain, the drops shall be (declared) unclean.

Problem #22: An unclean stagnant water is rendered clean by the rain water falling on it, and mixing with it, or by its connection with pure water, like water in a quantity of a Kur, or running water when it mixes with it. There is no condition of a special nature in the connection; rather its basic factor is general, even if the connection takes place by means of a small canal or a hole, as it is not a condition for the pure water to be above or equal with the unclean water.

Of course, if the unclean water is running from above the pure water, then apparently it would not be sufficient to render the upper part clean, while the unclean water is running above the pure water.

Problem #23: There is no objection in water used for ablution (*Wudü*) in being itself clean and a source for cleaning (polluted by) feces and refuse, in the same way as the water used for removing the major ritual pollution (the bath taken after the *Janābat*, or pollution due to the ejaculation of

sperm) shall itself be clean, and shall also clean (things polluted by) refuse rather according to the stronger opinion, it also cleans (objects polluted by) feces.

Problem #24: the water used for cleaning (polluted by) refuse which is called Ghassālah is absolutely unclean.

Problem #25: The water used for Istinjā' (after urination or evacuation of bowels) is clean, whether it is used for cleaning after urination or evacuation of bowels, when any of its three characteristics (namely color, smell and taste) is not changed, and it does not contain any of the particles of feces, and the uncleanness should not have polluted (the parts urinating or excreting) in a way that the act of cleaning may not be called Istinjā'.

Nor anything unclean should have reached it, such as when some other unclean object out with urine or feces, like blood, to the extent that, according to the more cautious opinion it should be considered a part of the urine or feces.

Problem #26: It is not a condition in cleanness of Istinjā water that the water should first fall on the hand, although it is more cautious.

Problem #27: If it becomes doubtful in case of several confined objects as to which one of them is unclean, as in case ten utensils (it is suspected that one of them is unclean, but it is not known which one is unclean), then it is obligatory to avoid using all of them.

So also if an object touches any of the utensils, which in its previous position was polluted, according to the more cautious, if not stronger, opinion, the object shall be declared unclean.

If the object in its previous position was not clean, then there is detailed verdict in its case.

Problem #28: If water should spill out entirely from one of the two utensils suspected to be unclean it would be obligatory to avoid the use of the other.

RULES OF EASING NATURE (Urination and Defecation)

Problem #1: It is obligatory at the time of easing nature, as well as on other occasions, to cover one's private parts from every person for whom it is not permissible to see those parts, whether he is a man or woman, even if he is insane or a discreet child, in the same way as it is forbidden to look at the private parts of others, whether they are insane or discreet children.

Of course, it is not obligatory to cover the private parts from indiscreet children in the same way as it is permissible to look at the private parts of an indiscreet child.

The same rule applies to a husband and wife and a master and his slave-girl, in case of looking at each other.

As regards a lady owner and a (slave, it is not permissible for either of them to look at the private parts of the other, rather even at other parts of each other's body, according to the traditional authority.

Here the private parts of a woman include both the front as well as the hind part.

In case of a man, the private parts include the front and hind parts as well as both the testicles. But his private parts do not include both the thighs, buttocks; rather not even the pubic region or the perineum. However, as regards the pubic hair, it would be more cautious to avoid looking at them, or allowing others to look at them. It is approved to cover the navel region and knees and the region lying between them.

Problem #2: it is sufficient to cover the private parts by anything that may cover them, including ones own hand or the hand of one's wife.

Problem #3: it is not permissible to look at the private parts of others even from behind a mirror, or even in a mirror or clear water.

Problem #4: If, in case of an emergency, it is necessary to look at the private part of another person, as for the purpose of treatment, then it would be more cautious to look at it in a mirror placed in front of it, if it fulfils the necessity otherwise, there will be no objection (in looking at the private part of a stranger).

Problem #5: At the time of easing nature, it is forbidden to place the front (hind) parts of the body towards or against the Qiblah. They include the chest and stomach, even if the private part is twisted away from the Qiblah. The criterion in posing towards or against the Qiblah is what is customary in both cases. The direction of the knees is not concerned in both cases. It is more cautious to avoid simply one's private parts posing (or against the Qiblah, even if the front parts of one's body do not pose towards the Qiblah. According to the more cautious opinion, it is forbidden to pose towards or against the Qiblah while performing istibra, rather the opinion would be stronger

in case some drops of urine also come out while performing Istibrâ'. Likewise, while performing Istinja', caution should not be given up, although according to the stronger opinion, it is not forbidden to pose towards or against the Qiblah in its case. In case of an emergency, if a person is compelled to pose towards or against the Qiblah, he is free to choose either (pose towards or against the Qiblah), although it would be more cautious to pose against the Qiblah. If a person is compelled either to pose towards or against the Qiblah, or cover his private parts from a person for whom it is forbidden to look at his private parts, he should opt for covering his private parts. If there is doubt about the direction of the Qiblah, and it not possible for him to make necessary enquiry about the direction of the Qiblah, while he is not able to wait till he comes to know about the correct direction of the Qiblah, he would be free to adopt either of the alternatives, although it is not far from likelihood that he should act according to his own assumption, if he has any.

Rules of Istinjā'

Problem #1: According to the more cautious opinion, it is obligatory to wash the exit for urine twice with water, although, according to the stronger opinion, it is sufficient for a man to wash it once, if urine has come out of the natural exit. However, it is preferable to wash it thrice. It is not permissible to use anything other than water, {while cleaning after urination). While cleaning the anus (the exit of feces), one has the option to wash it with water, or rub it with some thing that removes the uncleanness, like a stone, a clod of earth, or a shred of cloth, or the like. However, washing it (with water) is the best way, while adopting both methods is more comprehensive. While washing the anus, it is not a condition to repeat the act; rather it is sufficient to wash it to the extent that it is clean. Apparently, the same rule applies to the case of rubbing the anus (with something); although it is more caution to repeat the act thrice, even though it becomes clean by rubbing for lesser times. If it is not cleaned even by rubbing thrice, then it should be rubbed till it is cleaned. It is a condition for the rubbing object that it should be clean, so that it is not permissible to be unclean, nor should it be polluted before it is used for cleaning. It is also a condition that it should not contain permeating moisture, so that it is not permissible to clean with mud or wet cloth. However, there is no harm in cleaning with a damp thing which does not permeate.

Problem #2: At the time of washing with water, it is obligatory to remove the pollution and its adjuncts, i.e., the small invisible particles, while in case of rubbing the anus (with something), it is sufficient to remove the pollution itself, and there is no harm if the adjuncts still remain there.

Problem #3: It is sufficient to clean the anus by rubbing, when it is not polluted to the extent that it should not fall under the category of Istinjā'. It is also a condition that nothing from outside should have mingled with pollution of the anus, so that if some other polluted object, like blood, comes out with feces, it shall be indispensable to clean it only with water.

Problem #4: It is prohibited to use sacred things for istinjā'. According to the more cautious opinion, the same rule applies to the use of bones and dung (Istinjā), so that if they are used (for Istinja), there shall be difficulty in accepting that cleanliness has been obtained thereby. The rule particularly applies to the use of bones and dung. Rather, there is difficulty generally in accepting that cleanliness has been obtained by (rubbing) even with a stone. However, it is excusable to use anything other than the things mentioned above (namely, sacred objects, bones and dung).

Problem #5: It is not obligatory to rub the passage of urine with the hand. If, however, there is likelihood of the discharge of Madhy with urine, then it is more cautious to rub it with the hand.

Rules Concerning Istibrā'

According to the more cautious opinion, the method of Istibra is that one should rub thrice with force between anus and the root of penis, and then, for example, he should place his index finger under the penis and his thumb over it, and draw them with force (the root of the penis) to its tip thrice, and then squeeze its tip thrice. After it, if he suspects that there is some moisture, which he does not know to be urine or something else, it shall be declared to be clean, and not nullifying the ablution, if he happens to have performed the ablution before the oozing out of the moisture.

Conversely, however, if he has not performed the Istibrā' (and he suspects that there is some moisture), it shall be declared to be unclean and nullifying the ablution. This is the advantage of Istibrā'.

According to the stronger opinion, with it is added the advantage that, after the passage of long time and plenty of movement, in a way that it becomes certain that there is nothing left in the urinal passage, and some moisture is suspected to come out, even then it shall be declared to be clean, and shall not nullify ablution.

Problem #1: It is not a condition to perform Istibrā' personally, so that it would be sufficient if it is performed by some one else, like one's wife or slave-girl.

Problem #2: If a person doubts whether he has performed istibrā' or not, It shall be considered not to have performed it, even if some one has passed, and it was his habit to perform istibrā'.

Of course, if he has performed istibra and later doubts whether it was performed in the correct manner or not, it may be considered to have been performed in the correct manner.

Problem #3: If a person, who has not yet performed istibrā', doubts whether some moisture has come out or not, it shall be considered not to have come out, in the same way as when he finds some moisture on his garments, and does not know whether the moisture has come out from the garments, or it has come from outside, it shall be considered to be clean and would not nullify ablution.

Problem #4: If a person knows that what has come out is Madhy, but doubts whether some urine has also accompanied it or not, it shall not be declared to be unclean and a source of nullifying ablution, except when it is a suspected moisture, so that he doubts whether it is entirely Madhy or Madhy mixed with urine.

Problem #5: If a man urinates and then performs ablution, and subsequently some moisture comes out about which he doubts whether it is urine or sperm, then if he has performed istibrā' after urination, it is obligatory on him to exercise caution by performing both ablution and ritual bathing.

If he has not performed Istibrā', then it would be sufficient to perform ablution.

If the suspected moisture has come out before he performs ablution, it would be sufficient to perform ablution, and it would not be obligatory on him to perform the ritual bathing, regardless whether he has performed Istibra after urination or not.

Rules Concerning Ablution (Wudu)

Following are the essentials, conditions, causes, objectives and rules of ablution (Wudu).

A. Essentials of Ablution

Problem #1: It is obligatory in an Ablution (Wudu) to wash the face and both hands, and to rub the head and both feet (with wet hands). Face here means the part of the face which lies lengthwise between the hairline and where the chin ends, and widthwise the part of the face which may fall between the thumb and the middle finger in case of a person having proportionate body, while in case of a person whose body is not proportionate, he should follow a person having a proportionate body.

It is not obligatory to wash whatever lies beyond these limits, Of course, in order to obtain surety that whatever is within the prescribed limits has been washed entirely, it is obligatory to wash something more than the mentioned limits.

Problem #2: According to the more cautious opinion, it is obligatory that the face and hands should be washed from above to below, and, according to the more cautious opinion, they should not be washed from below to above.

Of course, if a person throws water from below to above, but when it returns from above (downwards), he expresses his intention of washing, it would be permissible.

Problem #3: Washing the part of beard which is beyond the limits of face is not obligatory, but washing its part which is included in the limits of face is obligatory.

It is obligatory to wash the apparent part of the beard, regardless whether the beard is thick or thin, when the hair have covered the skin of the face, though in case the beard is thin, it is more cautious to carry the water to the skin.

As regards the two hands, it is obligatory to wash them from the elbow to the tips of the fingers, as in case of washing the face, to be certain, it is obligatory to wash some part of the upper arm. It is not permissible to leave any part of the face or both hands unwashed even to the extent of a hair.

Problem #4: It is not obligatory to wash the internal part of the eyes and nose or the part of both lips which is not visible after closing them, in the same way as it is not obligatory to wash the inside of the hole in the nose meant for wearing a ring (by females), regardless whether the ring is in the hole or not.

Problem #5: It is not obligatory to remove the dirt inside the nails, except what is apparent, in the same way as when a person cuts the nails and the dirt inside the nails becomes apparent, it is obligatory to wash the nails after removing the dirt.

Problem #6: If some flesh has been cut from the two hands or the face, (and left attached with the hands or face), it is obligatory to wash what is apparent after the cut, and it is obligatory to wash the (attached) flesh, even if it is joined (with the hands or face) through a thin skin.

Problem #7: If some crack is caused in the back of the hand and it is so wide that its hollow part is visible, it is obligatory to put water into it; otherwise, if it is not visible, it is not obligatory.

Problem #8: If some boil appears on the skin as a result of burning, as long as it is there, it is sufficient to wash its apparent (upper) part, even if it has burst open, but it is not obligatory to let the water reach under the skin.

If part of the skin has cracked, leaving the other intact, it is sufficient to wash its apparent part, and it is not obligatory to cut it entirely.

If the whole part under the skin has become apparent, but the attached skin sometimes sticks and sometimes does not, it is obligatory to wash the part under the skin, and if it is stuck, it is obligatory to remove it or cut it.

Problem #9: It is right to perform ablution by dipping into the water, provided that the condition of trickling of the water from above to below is observed. But it is necessary to intend ablution while taking the left hand out of the water, so that it does not rub with fresh water.

Rather the same rule is applicable to the right hand too, except that so much of the left hand is to be left which may be washed with the right hand, so that the amount of water left in the right hand may be considered to be ablution water.

Problem #10: It is obligatory to remove the object which hinders the performance of ablution or move it in a way that water may reach the area under it.

If a man suspects some hindrance which has no rational existence, he should not pay heed to it.

If a man suspects some hindrance, it is obligatory on him to remove it or let water reach the area under it.

Problem #11: It is not obligatory to remove the crust which covers the wound at the time of its healing, and takes the form of skin, and it is permissible to wash its apparent area, although it is easy to remove the crust.

Of course, in case of a medicine which congeals on a wound, as long as it is not possible to remove it, it is to be treated as a splint, and it is sufficient to wash its apparent area.

If, however, it may be removed easily, it would be obligatory to remove it.

Problem #12: It is not obligatory to wash the dirt if it is not in a visibly solid form, as long as it is tantamount to washing the skin, even if it gathers as a result of rubbing the Turkish towel, and is in a large amount.

The same rule shall apply to the whiteness which appears on the hand as a result of touching gypsum or the like as long as it is tantamount to washing the skin.

If, however, a person suspects that the whiteness is a hindrance (in the way of ablution), it would be obligatory to remove it.

As regards the rubbing of the head with the fingers (Mash), it is obligatory to perform the rubbing of part of the front of the head, but it is more cautious to rub in the width of not less than one finger, while it is more cautious than that to rub in the width of three closed fingers; rather, it is better to rub with three fingers.

The rules applicable to a male are also applicable to a female.

Problem #13: It is not necessary to rub the skin (of the head). So it is sufficient to rub the front hair. If the front hair are so long that, (if combed,) they exceed the limits of the head, it is not permissible to rub the excessive hair, regardless whether they are hanging, or have gathered in front part of the head.

Problem #14: To be more cautious, it is obligatory to rub (the head) with the palm of the right hand, though, according to the stronger opinion, it is also permissible to do so with its back.

According to the stronger opinion, it is not confined to perform the rubbing with the right hand only, (but it can also be done with the left hand). The permission for rubbing from elbows to the tips of the fingers is also not devoid of force. It is; however, better to rub with the fingers of the right hand.

It is obligatory to rub with the water remaining in one's hand out of the ablution, as it is not permissible to wet hands with fresh water.

Problem #15: It is obligatory that the place of rubbing must be dry in a way that its water does not reach the rubbing part (i.e. the palm of the rubbing hand).

As regards the rubbing of both feet, it is obligatory, according to the more cautious opinion, to rub lengthwise their apparent parts from the tips of the fingers to the joint, though, according to the stronger opinion, it is sufficient to rub upto the ankle-bone, which is the dome-like formation on the back of the feet. There is no specified limit of rubbing widthwise. It is permissible to the extent that it may be treated as rubbing. It is, however, preferable, rather more cautious, to rub with the whole palm.

What has already been mentioned under the rubbing of the head, regarding the necessity of the place of rubbing to be dry, and the rubbing to be done with the water remaining out of ablution, is also applicable to rubbing the feet.

Problem #16: It is more cautious to rub with the palm of the hand, but, if it is not practicable, it may be done with the back of the hand, and, if that is also not practicable, it may be done with the elbow, though, according to the stronger opinion, it is permissible to rub with the back of the hand or the elbow according to one's own choice.

Problem #17: If there remains no wetness on the palms; one must acquire wetness from the other limbs involved in ablution like the brows or beard, or the like, and perform the rubbing.

If it is not possible to acquire wetness from other limbs involved in ablution, one must perform ablution again.

If, however, even the repetition of ablution is of no avail due to the warmth of the weather or body, so that the more one performs ablution, the more its water dries, one may rub with fresh water.

It is more cautious first to rub with the dry hands, then with fresh water, and then perform Tayammum.

Problem #18: While rubbing, it is indispensable to draw the rubbing limb on the limb rubbed. If is reversed, it would not be valid. However, there will be no harm if the limb rubbed is moved a little.

Problem #19: While rubbing both feet, it is not obligatory to put the fingers of the hands on the fingers of the feet, and draw them to the specified limit. Rather, it is permissible to put the whole palm on the whole back of the feet, and draw it a little in a way that it may be considered rubbing.

Problem #20: If necessary, it is permissible to rub the masks or head veils, shoes or socks or stockings etc. due to fear of damage, cold, beasts, or enemies or the like, due to which one is afraid of removing the hindrance (from the head or feet).

All the conditions applicable in case of rubbing on the skin shall also apply to the rubbing on the obstacle, like rubbing with the palm, or the wetness remaining out of the water of ablution, etc.

B. Conditions of Wudu (Ablution)

There are some conditions for Ablution (*Wudū*).

First Condition

Problem #1: Cleanliness, purity and lawfulness of water, cleanness of the limbs to be washed and rubbed, and removal of any obstacles in the way of washing or rubbing, and, according to the more cautious opinion, it is also a condition that the place of ablution must also be permissible, i.e. the place where washing and rubbing are being performed. Likewise, lawfulness of the place where the

water of ablution is to fall (is also a condition), when ablution may be considered customarily possessing a usurped place, or it may be considered finally to be a perfect or partial cause for usurped possession. Otherwise, (case it is not considered so), then, according to the stronger opinion, the ablution shall not be void, rather even if it is considered so. But, in case the place is a usurped one, the invalidity of ablution is not devoid of force.

It is also a condition that the container of the water for ablution must be lawful (Mubāh), if the water is confined to a single container, rather even in case there are several containers, or the ablution is performed by dipping (in a tank or pool) not (drawn) by handfuls from it.

Likewise, it is a condition that there must be no restriction in the use of the water for ablution, such as the fear of sickness or the thirst of oneself or some other honored person, or the like, for which it is obligatory to perform Tayammum. If a person performs ablution in any of such conditions, the ablution shall be void.

Problem #2: In case of a confined suspicion, the suspected water is like unclean water with which ablution cannot be performed. If the water is confined to two containers, one should perform Tayammum, even if he may perform ablution with the water in one of the containers and offer prayers, and then he performs the ablution with the water in the other container, and offers prayers again.

Problem #3: If a person has only some water about which there is doubt whether it is pure or mixed, then, if it was formerly pure, he may perform ablution with it. But, if it was formerly mixed, he must perform Tayammum. If, however, he is ignorant of its former condition, he must perform ablution with it, and also perform Tayammum.

Problem #4: If there is doubt about the purity of the water in a specific container (or containers), and a person has no other water with him, it is obligatory on him to observe caution by performing the ablution with it in a way that he may obtain certainty of having performed it with pure water.

The rule in such case is that he should perform the ablution one more time than the number of the doubtful containers, (so that if the container of the mixed water is one, he must perform ablution twice, and if the containers are two, he must perform ablution thrice).

Problem #5: The water which is suspected to be usurped is like usurped water with which it is not permissible to perform ablution. If the water is confined to the suspected water, he must perform Tayammum.

Problem #6: The cleanliness and purity of water is an actual condition, so that it is equally applicable to an ignorant person as well as a person having knowledge.

However, the lawfulness of the water is not an actual condition, so that if a person is ignorant of the fact that the water is usurped, or has forgotten it, and then he performs ablution with it, his ablution will be valid, even if during the performance of ablution he comes to realize that the water is

usurped, the amount of ablution already completed shall be valid, while he must complete the remaining ablution with lawful water.

After washing the left hand during the performance of ablution, if a person comes to realize that the water is usurped, whether it would be permissible for him to rub his head and feet with the wetness of the water, and whether his ablution would be valid, are questions which have two methods or two opinions, and it is not far from being likely for us to differentiate in detail when what has remained on the hand is a part of the water which is normally considered water, or its being just wetness which is usually considered one of the properties of water, then it would be valid in the latter case, while it would be void in the former.

The same rule shall also apply if a person has on the limbs involved in ablution some wetness, left with the usurped water, and he intends to perform ablution with lawful water before the wetness is dry.

Problem #7: It is permissible to perform ablution, drink or make any other slight use according to the normal practice of the water of big rivers or canals etc. even without the knowledge of permission of their owners, or even when there are some minors or lunatics among the owners.

Of course, in case of absence of permission by them or some of them, there is difficulty in the validity of the use of the water (in the said acts).

If a person usurps the river or canal, etc., their water shall be lawful for all other than the usurper.

Problem #8: If a usurped container has lawful water; it is not lawful to perform ablution with its water by dipping into it absolutely. Even the performance of ablution shall not be valid by taking the water bit by bit, when it is confined to that water alone, and it shall be indispensable to perform Tayammum. However, if the water is thrown into a lawful container, it would be valid. If a person has access to lawful water, it would be lawful for him to take water from it with the usurped utensil, though he shall be considered to have committed an unlawful act as regards the use of usurped utensil.

Problem #9: It is valid to perform ablution in a usurped tent or house when its land is lawful.

Problem #10: It is not permissible to perform ablution in the tanks of mosques, schools or the like when the person is ignorant of the nature of the endowment, so that there is likelihood that the person endowing it has stipulated that no person other than those offering prayers or studying in the school shall use the water of the tanks, even if he is not stopped by those (offering prayers in the mosques or studying in the schools). If, however, it is a normal practice of the other people without any restriction from those offering prayers or the students, it would be lawful.

Problem #11: According to the more cautious opinion, use of utensils made of gold or silver in ablution is like the use of usurped utensils. All the details mentioned before under the usurped utensils shall also apply to them. If, however, a person uses them without the knowledge that they

are made of gold or silver or has forgotten it, or even if he has doubt about it, it would be valid, whether by dipping in the water or taking out the water by handfuls, in case the water is confined to that container (gold or silver).

Problem #12: If, before or during the performance of ablution, a person suspects the existence of some obstacle, it would not be obligatory on him to investigate about it, except when there is some reasonable cause for such suspicion. In such case, it would be obligatory to investigate until he is sure about its non-existence. Likewise, if the hurdle existed before the performance of ablution, even then the investigation shall be obligatory. After the performance of ablution, if a person doubts whether an obstacle existed or not, he would take it as if it did not exist, and treat ablution to be valid. Likewise, if an obstacle existed, and the person comes to realize about it during the performance of ablution, or there was likelihood of realizing it, and then after the performance of ablution, he doubts whether he had removed the hurdle or not, or whether he had let the water reach under it or not, he shall take the ablution to be valid. So also the same rule shall apply when he comes to realize the existence of an obstacle, but doubts whether it existed during the performance of ablution or appeared subsequently. Of course, if he knows at the time of performing ablution there existed something under which water could not have reached, while it was something under which water sometime reaches sometime not, like a ring, and he knows that he did not realize its existence while performing ablution, or he knew that he did not move it, but at the same time doubted whether water reached under it by chance or not, there is difficulty in declaring the ablution valid. Rather it is obligatory to repeat the ablution.

Problem #13: If some of the limbs involved in ablution were unclean, and a person performs ablution, and later doubts whether he had cleaned them before ablution or not, the judgement would be in favour of its validity, but that particular limb shall be considered unclean, and so it would be obligatory on him to clean it for performing future ablution. Of course, if he knows that he had not realized it while performing ablution, it is obligatory to repeat the ablution.

Second Condition

It is also a condition for ablution that a person must perform it personally, if he has the ability to do so, and, in case of his inability, it is permissible, rather obligatory to have an agent for its performance. In such case, the agent shall help him in the performance of ablution, and he shall express the intention (Niyat) though it is more cautious that the agent should also express the intention. As regards the performance of rubbing (the head and the feet), it is indispensable for him to do it personally, and it must be repeated by the agent. If it is not possible, he should take the wetness from the agent's hand and rub (head and the feet) with it. It is more cautious to add Tayammum with it, if possible.

Third Condition

It is also a condition that order of washing or rubbing the limbs involved in ablution and rubbing should also be maintained. So washing the face is to precede washing the right hand, and washing

the right hand is to precede washing the left hand, and washing the left hand is to precede rubbing the head, and that must precede rubbing the feet. It is more cautious that washing the right hand must precede washing the left hand, rather it is obligatory, and its preference is not devoid of force.

Fourth Condition

Performance of washing and rubbing continuously in their order is also one of the conditions of ablution, i.e., one must not delay washing any limb involved in ablution to the extent that it may cause all the other limbs, washed earlier to dry.

Problem #14: The drying of the previously washed limbs is harmful for ablution, in case is caused due to the delay and length of time. So if the person performs the parts of ablution one after another in the usual way, and the limbs become dry due to warm weather etc., the ablution shall not be rendered void.

Problem #15: If a person fails to perform (the various stages of) ablution one after another, but despite it, the wetness remains on the hands due to cold and damp weather in a way that had the weather been moderate, the water would have dried up, the ablution shall be valid. The criteria for the validity of ablution are two things, namely, either there should be wetness to the extent that it can be felt, or there should be the usual sequence (the performance of the various stages of ablution one after another).

Problem #16: If a person fails to observe the sequence of the order in ablution due to forgetfulness, the ablution shall be void. The same rule shall apply if a person believes that the wetness has not dried up, but later it transpires otherwise.

Problem #17: If wetness has remained only in the long beard, there is difficulty in considering it sufficient (performing the rubbing of the head and the feet). The same rule shall apply if the wetness has remained in the parts of the body which are outside the limits of ablution, like the hair on the forehead; rather in such case it is more difficult (accept their wetness to be sufficient for performing the rubbing of the head and the feet).

Fifth Condition

One of the conditions for ablution is the intention (Niyat), which means the intention to do an act. It is indispensable that it should be in fulfillment of Allah's Commands and for seeking closeness to Allah. The criterion of intention is sincerity, so that if something negative accompanies it, particularly hypocrisy, it shall be void; because if it accompanies an act in whatever manner, it invalidates the act. But if some other things accompany the intention, their accompaniment does not harm the intention, provided that they are more preferable (Rājih), except when they assume the principal position, and the fulfillment of Allah's command becomes subservient to them, or the objective of ablution comprises two things in a way that each of them becomes independent part of the objective or motive of ablution, (in which case the ablution shall be void). According to more

cautious opinion, the same rule shall apply if there are two independent motives for ablution. Even if the motive is lawful, such as getting cool, the ablution shall be void, except when it is secondary, and the principal motive is fulfillment of Allah's Command (which case there shall be no harm in accompanying the intention).

Problem #18: It is not a necessary condition for intention to pronounce it in words or recall it in the heart in detail; rather, it is sufficient to have a brief intention concentrated in the heart in a way that if the person is asked what he was doing, he may say that he was performing ablution. This is called the motive.

If, however, he starts performing ablution, and then forgets it completely in a way that if he is asked what he was doing, he would be perplexed, and would not know what he was doing, he shall be like one doing something without any intention.

Problem #19: As it is obligatory to have intention in the beginning of an act so also it is obligatory to persist upto the end. If he hesitates, or loses the intention, and completes ablution in such condition, it would be void

If, however, before the discontinuation of the succession, he reverts to the first intention, and connects the remaining acts with his intention, the ablution shall be valid.

Problem #20: It is sufficient for intention that it should be for seeking closeness to Allah, and it is not obligatory to have the intention of obligation or preference in description or in purpose, so that it is not necessary that he should express the intention that he was performing ablution which is obligatory on him, rather, if he intends obligation in place of preference, or otherwise, erroneously, after he had intended to perform ablution for seeking closeness to Allah or in fulfillment of Allah's Commands in whatever way, it would be sufficient.

Problem #21: It is not a condition for the validity of ablution to intend the removal of uncleanness, nor to intend the lawfulness of prayers or other aims, but, if after renewing ablution, he comes to know that he was unclean, the ablution shall be valid, and it would be valid to offer prayers or other things with that ablution.

It is sufficient to have a single ablution for different purposes, even if a person did not have such intention.

If he intends the removal of a specific uncleanness, even then his ablution shall be valid, and it would remove all the causes of uncleanness. If, however, he intends to confine it to the non-removal of other unclean objects, then there would be difficulty in the validity of the ablution.

C. Things that Nullify Ablution & Their Causes

Problem #1: There are several Unclean Things which nullify Ablution and cause the necessity for its repetition.

First & Second: Effusion of urine or what falls under its category, such as the suspected wetness coming out before *istibrā'* or excretion of feces from the natural or unnatural passage, regardless whether the natural passage is blocked or not, and whether its amount is large or small, and whether it is accompanied, for example, by worms or lumps.

Third: Passing out of wind from anus, if it comes out of the stomach or bowels, whether it is accompanied with sound and bad odor or not. But the wind that comes out of the front organ (vulva) of a woman, and not from the stomach or bowels is like the wind that enters from outside and then comes out. (It will not nullify ablution).

Fourth: A sleep which overwhelms the senses of sight and hearing (as a result of which the eyes do not see, and the ears do not hear).

Fifth: Everything which stuns human reason such as insanity, swooning, drunkenness or the like.

Sixth: The minor or medium *Istihādah* (undue menstruation), rather to be more cautious, the abundant one too, though we have declared ritual bath to be obligatory in such cases.

Problem #2: If the water of enema comes out without being accompanied by something like it would not nullify ablution.

Likewise, if there is suspicion of the water of enema being accompanied by something, Or when some worm or lump comes out without being sullied by feces, (the ablution shall not be nullified)

Problem #3: If persons suffering from incontinence of urine or defecation have sufficient time for illness and offering prayers, though confining themselves to the performance of minimum of what is obligatory (cleanliness), they must wait for such time and offer their prayers at that time.

In case they have no such time, then either the polluting matter comes out, for example, once twice or thrice during offering prayers in a way that it is not painful for them to perform ablution and restart prayers again, or it takes place repeatedly in a way that it is quite painful for them to perform ablution after every time of pollution, and offer prayers again, then in the former a person suffering from incontinence of defecation shall perform ablution, and offer prayers, place water close to himself, so that whenever something defecates, he should perform ablution immediately, and restart prayers, and to be more cautious, he should offer the next prayers with a single ablution.

It is more cautious for a person suffering from incontinence of urine to follow the example of a person suffering from the incontinence of defecation, though the permissibility of sufficiency of a single ablution for each prayer without renewing it every time is not devoid of force.

In the latter case, it is more cautious for both to perform ablution for each prayer, and it is not permissible for them to offer two prayers with a single ablution, regardless of their being compulsory or optional or mixed, even though it is not far from being likely that it is not necessary for a person suffering from incontinence of urine to renew ablution if the discharge of urine does take

place between two prayers, so he may offer several prayers with a single ablution as long as the discharge of urine does not take place between them, but he should not give up caution

However, according to the stronger opinion a person suffering from incontinence of gas should be affiliated to a person suffering from incontinence of defecation, rather it is not far being that such person is treated at par with a person suffering from incontinence of defecation in of their common subject.

Problem #4: It is obligatory for a person suffering from incontinence of urine to prevent his urine permeation through a pouch full of cotton or the like. Apparently, it is not necessary for him to change the pouch or clean it for every prayer.

Of course, it is more cautious for him to clean the glans penis, provided that it is not painful for him.

Likewise, as far as possible and without being painful, it is also obligatory for a person suffering from incontinence of defecation to prevent its permeation, as it is also more cautious for him to clean his anus if it is possible for him without being painful.

Problem #5: It is not obligatory for persons suffering from incontinence of urine or defecation to make up for the previously omitted prayers after being cured (of the ailment).

Of course, apparently it is obligatory on him to offer prayers again if he recovers from his ailment at the time of prayers, and there is ample time for offering prayers with cleanliness.

D. Purposes of Ablution (Wudu)

By purposes of Ablution are meant the things for which ablution is obligatory in a way that either it is by canonical law (Shari'at) a condition for their validity like condition for its permissibility or absence of prohibition like touching the words of the Quran, or a condition for its accomplishment such as reciting the Quran, or a cause for removal of its abomination, such as eating in a state of pollution due to discharge of semen which and its disapproval is removed by means of ablution.

The purposes of ablution are as follows:

First: (A thing for the validity of which performance of ablution is a condition). So it is a condition neither compulsory nor optional, on time or due, for oneself or on behalf of some one else, or for its omitted portion, and, to be more cautious for the two prostrations for omissions (in prayers), although, according to the stronger opinion, it is not a condition for the performance of the prostrations for omissions. (In prayers)

Likewise, it is a condition for the performance of the circumambulation (tawaf) (of the Kabbah) which is part of compulsory Hajj or 'Umrah. According to the more cautious opinion, it is also a condition for the performance of voluntary Hajj or 'Umrah.

Second: (It is also a condition for the observation of regard or reverence of some things). So it is a condition for touching the words of the Quran, as it is forbidden for an unclean person to touch it. There is no difference between the verses or the words of the Quran, rather even its letters, (various symbols) I symbol of madd (for lengthening the sound of a letter) or tashdid (for repeating the sound of a letter) or I'rāb (symbols of pronunciation or inflexion of letters), and to this are added the specific Names and Attributes of Allah. However, there is hesitation and difficulty in including of the prophets and Imams, Peace be upon them, and those of the angels under this category, though it is more cautious to avoid (touching the names of) specially the first two (i.e., the names of the prophets and Imams, without having first performed ablution).

Problem #1: As regards the prohibition of touching (venerable objects); it makes no difference whether the limbs are open or hidden. Of course, the permissibility of touching with hair is not far from being likely, as also it makes no difference in case of various types of scripts, including even now in disuse, such as the Kufic script.

Similarly, it shall make no difference in case of various modes of writing, whether the words have been written by hand or have been printed, etc.

Third: There are several kinds of things which it is not proper to mention in this small book. In declaring ablution itself to be recommendable (or having a reward, without there being any purpose of it), there is hesitation.

Problem #2: For a person who has already performed ablution, it is desirable to perform ablution again. Apparently, it is permissible to repeat ablution for a third or fourth or even more times.

If a person repeats ablution coincident with uncleanness, the same ablution shall be sufficient to remove the uncleanness and there is no need of a fresh repeat of it.

Rules Regarding Damage to Ablution

Problem #1: If a person is sure to be unclean, and then doubts whether he has attained cleanliness, or suspects he has attained cleanliness, then if the doubt has occurred during the performance of the act (like prayers), so that he has started offering prayers and, in the meantime, he doubts about his being clean, he must discontinue it, and obtain cleanliness. It is more cautious to complete the prayers, and then repeat it in fresh (state of) cleanness. If the doubt has occurred after the completion of the act (like prayers), he must treat it to have been valid, and should clean himself for future acts. If he is sure to have been clean, and then doubts about being clean, he must not pay any heed to his doubt. If he is sure of cleanliness and pollution both, but is ignorant as to which of them is subsequent, then, according to the stronger opinion, he must clean himself, even if he knows the exact time of cleanliness. This is the rule when he is ignorant of his condition prior to his being sure of clean and unclean; otherwise, according to the stronger opinion, he must decide contrary to his previous condition. If, however, he is sure of having been unclean before the occurrence of the doubt about his being clean or unclean, he shall decide in favour of his being clean. If, in the above case, he is sure of having been clean (prior to the occurrence of doubt), he shall decide in favour of being unclean. These are the rules where he is ignorant of exact times of his becoming clean or unclean. The same rule shall apply even if he knows the time of his condition contrary to the prior one. If, however, he knows the time of his condition contrary to the previous one, but when he knows the time of similar condition, then he shall decide in favour of uncleanness, and shall clean himself. Anyhow, in all the above mentioned cases, he should not give up caution. If he knows that he has not washed any limb (in ablution), or has not performed its rubbing (Mash) he should do it and do what follows, if no harm is done by the omission of the succession of the acts, or the like; otherwise, he should repeat the act. If he doubts the omission of some of the stages of ablution before having completed it, he shall perform the omitted act at the same time observing the necessary succession and continuance of the various stages of ablution. Here suspicion is like doubt, while no heed is paid to the doubt of a person who is in the habit of doubting too often, in the same way as there is no importance of a doubt after the completion of an act, whether the doubt relates to some of the stages of ablution or about any of its conditions.

Problem #2: If a person who has already performed ablution performs it again with the intention of renewing it, and then offers prayers, then becomes sure of invalidity of one of the two ablutions, this brief knowledge shall have no adverse effect whether on the prayers he has offered or those he is going to offer next. If, however, he has offered prayers after each of the two ablutions, and then becomes sure of invalidity of one of the two ablutions, then the second prayer shall be certainly valid, as also the next prayer shall also be valid as long as his ablution is not nullified. It is also not far from being likely that the former prayer was also valid, though it would be more cautious to repeat it.

Problem #3: If a person performs two ablutions, and then offers one or several prayers, and then becomes sure of uncleanness after one of them, it would be obligatory on him to perform ablution for next prayers, while the prayers he has already performed shall be declared valid.

If, however, he has offered prayers after each ablution, then he comes to know of uncleanness after one of the two ablutions or more before offering prayers, it would be obligatory on him to repeat the prayers.

Of course, if both the prayers had the same number (Rak'ats) like those of Zuhr and Asr, then according to the more prevalent opinion it would be sufficient if he offers one of them as what was due, though it would be more cautious to repeat both of them.

Rules of Wudu-i Jabirah (Ablution despite one's having a Splint)

Problem #1: If a person has a splint on some of his limbs (involved in ablution), then, if it is possible to remove it, he must remove it, and perform washing and rubbing of what is under it. Of course, it is not indispensable to remove it if it is placed on the part required to be washed (in ablution), but what is obligatory is to make the water reach the part under the splint in a way that it may be treated as washing it with the requisite conditions, even with the splint on it.

Of course, it is obligatory to remove the splint from the part involved in rubbing for performing the rubbing, even if it is not possible to remove the splint. If the splint happens to be placed on the part involved in rubbing, he must perform the rubbing on it.

If the splint is placed on the part involved in washing (for performing ablution), and it is possible to make the water reach the part under it in a way that it may be called washing with all the requisite conditions, it shall be obligatory to do so otherwise, he shall perform the rubbing on it.

Problem #2: It is obligatory to perform the whole rubbing on the limbs required to be washed (as part of ablution).

Of course, it is not necessary to perform rubbing on the parts on which it is not possible to perform the rubbing or which cannot be rubbed for being between the threads.

In case of the limbs involved in rubbing, the rubbing shall be performed on the splint as the rubbing on the limbs involved in rubbing as regards its amount and nature. So it is indispensable to perform the rubbing with the hand and with its wetness, contrary to what was the case in the parts involved in washing (for ablution).

Problem #3: According to the prevalent opinion, the rules of splint shall apply in case it covers a single limb, especially on the part involved in rubbing. If, however, the splint has covered most of the limbs involved in rubbing, caution must not be given up by performing the act as required in case of splint as well as Tayammum, if it is possible without any impediment, though it is not far from being sufficient to perform Tayammum.

If, however, the impediment has also covered the limbs involved in Tayammum, and it is not possible to perform Tayammum on the skin, the ablution shall be performed as required despite the splint on them.

Problem #4: If the splint happens to be around some of the unaffected parts as is usually required for strengthening the splints, they shall be governed by the same rules (applied to the affected limbs under the splint), and so rubbing shall be performed on them.

If, however, the space exceeds the usual amount, then, if it is possible to remove the splint (from the unaffected area), the splint shall be removed from it and the unaffected area shall be washed, and then the splint shall be replaced, and rubbing shall be performed on it.

If it is not possible, rubbing shall be performed on it, but caution shall not be given up by adding Tayammum too.

Problem #5: If it is not possible to perform rubbing on the splint due to its uncleanness, a piece of cloth shall be placed on it in a way that it may be considered to be a part of it, and rubbing shall be performed on it.

Problem #6: According to the stronger opinion, in case of an open wound which cannot be washed (for ablution), it shall be sufficient to wash the area around it, though it is more cautious to place a piece of cloth on it, and perform rubbing on it.

Problem #7: if water is harmful for a limb without its having a wound, abscess or cut, Tayammum shall be resorted to.

Of course, if water is harmful for a part of the limb, and it is possible to wash the area around it, it is not far from being sufficient to wash that area without reverting to Tayammum, though it is more cautious to add Tayammum to it, and this caution must not be given up, but it is more cautious to place a piece of cloth on it, and then perform Tayammum.

Likewise, Tayammum shall be resorted to if the cut or wound is on a part not involved in ablution, but the use of water on it shall be harmful for the cut or wound.

Problem #8: In case of eye-sore for which ablution is harmful, Tayammum shall be resorted to, and if possible, it is not far from being sufficient to wash the area around it without any harm, though there is some difficulty (in accepting it). So caution must not be given up by adding Tayammum to it.

If, however, caution is observed by placing a piece of cloth on it, and then rubbing is performed on it, and then Tayammum is performed, it would be proper (hasan).

Problem #9: If there is some impediment on the skin such as tar, and it is not possible to remove it, it shall be sufficient to perform rubbing on it. It is more cautious to perform the rubbing in a way that it may be at least called washing, though it is more cautious to add Tayammum to it.

Problem #10: If a person has a splint on some of his limbs, and something takes place necessitating obligatory bath, he shall perform the rubbing on the splint and the unaffected parts observing the conditions mentioned under the ablution in case of having a splint, and it is more cautious to perform the obligatory bath by taking water bits by bits instead of dipping himself in the water.

Problem #11: The ablution performed despite a splint and performing bath in case of having a splint, do not only render it permissible to perform the necessary religious duties, but also remove uncleanness. The same is the case with Tayammum when one is bound to perform Tayammum.

Problem #12: If a person is bound to perform Tayammum, and he has a splint on his limbs which cannot be removed, he shall perform the rubbing on it.

The same rule shall apply in case there is some other obstacle which cannot be removed.

Problem #13: When the cause of excuse of a person having a splint is removed, it would not be obligatory for him to repeat the prayers he has already offered; rather apparently it would be permissible for him to offer next prayers with the same ablution or the like.

Problem #14: It is permissible for a person having a splint to offer prayers at the beginning of their prescribed time in case he has lost hope of removal of the cause of excuse till the end of their prescribed time.

In case, however, he has not lost hope, it is more cautious to delay offering the prayers.

Chapter on the Kinds of (Obligatory) Baths

Six of the baths are obligatory, namely, the baths for discharge of semen, menstrual blood, undue menstruation, puerperal blood, touching a dead body and bathing the dead body. According to the stronger opinion, except for the last one the other baths are not obligatory.

Chapter on Bath for Janābat (Pollution by Ejaculation of Semen)

Discussion about the Causes and Rules Concerning *Janābat* and Obligations of its Bath

A. Causes of Janābat

Problem #1: There are two causes for Janābat.

The First Cause: is the discharge of semen and what comes under its rules, such as doubtful moisture coming out before the performance of Istibrā', the details of which, God willing, shall follow.

The actual discharge of semen is a condition here. If it moves from its place, but does not actually come out, then there shall be no obligation for (bath due to) Janābat, as it is also a condition that it should come out of (organ of) the man, so that if the semen of a man comes out of (organ of) a woman, she shall not be obliged (to perform bath) for *Janābat*, except when she is aware that her own semen has mixed with that of the man.

If a man is aware of semen, then there is no difficulty (in determining it as the cause for performing bath due to *Janābat*); otherwise, (if the man is ignorant of it), then the criterion in case of a healthy person is its effusion with the existence of carnal appetite and sluggishness of the body.

In case of a patient or woman, the existence of carnal appetite is sufficient (the cause of *Janābat*). Caution should, however, not be given up, specially in case of a woman by adding ablution to the obligatory bath if she has not already been clean; rather, in case all the three conditions are not there, even then it is more cautious for her to perform the obligatory bath as well as ablution if she has had the smaller uncleanness.

If, however, she has already cleaned herself, the performance of obligatory bath shall be sufficient.

The Second Cause: is sexual intercourse, even without the actual discharge of semen. It takes place with the disappearance of the glans penis in the front or back organ.

In case of a person whose penis has been chopped off due to some reason the occurrence of what is called penetration in anyway (whatsoever) is not free from force.

In both cases Janābat shall take place, without any difference whether the person is minor or insane, or the like. They shall fall under the obligation to perform bath after the completion of the conditions for obligation. The obligatory bath performed by a discreet child is valid, so that if he performs the obligatory bath, the pollution of *Janābat* is removed from him.

Problem #2: If a person finds semen on his garments, and is aware of its being his semen, but does not perform the obligatory bath, it is obligatory on him to make good for all the subsequent prayers

offered by him. However, it is not obligatory to make good for the prayers which are likely to have been offered prior to the occurrence (of Janâbat).

If a person knows that it is his semen, but does not know whether it is prior to the *Janâbat* for which he has already performed the obligatory bath or the other *Janâbat* for which he did not perform the bath, then apparently it shall not be obligatory on him to perform the bath for it though it is more cautious to perform the bath.

Problem #3: If the semen moves from its place while awake or asleep as nocturnal pollution, (ihtilam) bath shall not be obligatory unless the semen is discharged.

If it occurs when the prescribed time for prayers has reached, and water for performing it is not available, it is far from being obligatory to stop the discharge of semen, though, when the stopping the discharge of semen is not harmful, it is not free from hesitation (not to declare it obligatory) So if it is discharged, he shall perform Tayammum for prayers.

In case however he has not the things required for the performance of Tayammum, it shall be not far from being obligatory on him to stop discharge of semen, except when it is harmful for him to do so.

The same rule shall apply to a person who pollutes himself voluntarily after the prescribed time for offering prayers has reached by having intercourse with his wife for the sake of pleasure, so that it would be permissible for him (to enjoy his wife sexually), even if he has no water for performing the obligatory bath, excluding what is required for the performance of Tayammum, contrary to what would be the rule if he has also not the things required for the performance of Tayammum as already mentioned before.

There is hesitation in permissibility of his sexual intercourse with his wife without what has been mentioned above (i.e. not for the sake of pleasure), though it is not far from being permissible.

B. Rules for *Janâbat* (Pollution by Discharge of Semen)

There are certain things which depend on the performance of obligatory bath, which means that their validity depends on its performance. Firstly, prayers with all its kinds, for the dead, and same are the case with its omitted or forgotten pieces. According to the stronger opinion, it is not a condition required for the validity of the two prostrations for omission (Sajda-i Sahv), though it is more cautious (to include it in their case too). Secondly, obligatory circumambulation (of Ka'bah); rather it is not far from being a condition for the validity of the optional circumambulation as well. Thirdly, Fasting during the month of Ramadân or for its omission, which means that it shall be rendered invalid by his becoming polluted (by discharge of semen) deliberately or ignorantly. As regards the case of other kinds of fasting, they are not rendered invalid by his becoming polluted (by discharge of semen) in case of fasting which is not obligatory. In case of the obligatory fasting, he should not give up caution by avoiding deliberate pollution (by discharge of semen). Of course,

the deliberate pollution (by charge of semen) during the day invalidates all kinds of fasting, including even the optional. As regards the unintentional pollution (by discharge of semen), such as by Ihtilâm (nocturnal pollution), it does not harm to fasting, including even fasting during Ramadan

C. Things Forbidden for a Person Polluted by Discharge of Semen

There are certain things which are forbidden for a person polluted (by discharge of semen) Firstly, Touching the words of the Qur'ân according to the detail already mentioned under the discussion on Ablution; touching the Name of Allah, the Exalted and his other Names and His exclusive Attributes; likewise, to be more cautious, touching the names of the Prophets and the Imams, Peace be upon them. Secondly, entering the Masjid-i Harâm (the Holy Mosque in Mecca) and the Masjid al-Nabi, Allah's Blessing be on him and his Posterity, (the Holy Mosque in Medinah), even with the intention of just passing through. Thirdly, Staying in Mosques besides the two Holy Mosques; rather entering them absolutely, except when a person passes through them, so that he enters from one door and exits from the other, or when he enters for fetching something from the mosque, in which case there is no objection. According to the more cautious opinion, to this are added the Holy shrines (of the Imâms), and more cautious than that is affiliating them with the two Holy Mosques, in the same way as the veranda (of the Holy shrines) is treated at par with the Holy Mausoleum. Fourthly, placing something in the mosques, whether done from outside or while passing through. Fifthly, reciting any of the four Chapters (Surahs) of the Quran (which make the performance of prostration obligatory), namely, Iqra', Al-Najam, Alif Lam Mim Tanzil and Ha Mim al-Sajdah, including even a part of these Chapters or even the Bismillâh with the intention of reciting any of them.

Problem #1: If a person becomes polluted (due to discharge of semen) in any of the two Holy Mosques (in Mecca and Madinah), or enters them in a state of pollution deliberately, by mistake or ignorantly, it shall be obligatory for him to perform Tayammum for exit, except when the time required for exit is shorter than, or equal to, the one required for the performance of Tayammum, or in that case, according to the stronger opinion, he may exit without performing Tayammum.

Problem #2: If a person is in a state of pollution (to discharge of semen), and the water required for performing bath (due to pollution) lies within the mosque, then it is obligatory on him first to perform Tayammum and then enter the mosque to fetch the water. The Tayammum shall not be rendered invalid by getting water except after exit from the mosque and performing the obligatory bath. Whether it is lawful by this Tayammum to do some thing other than entering the mosque and staying there as much as required, is a question in which there is hesitation and difficulty (in answering it in the affirmative).

D. Disapproved Things for a Person Polluted by Discharge of Semen

There are certain things which are disapproved for a person polluted due to discharge of semen, such as eating and drinking, but their disapproval is removed by means of performing complete

ablution, and their disapproval is diminished by washing the hands, face and rinsing, and then washing both the hands only. It is also disapproved (for such a person) to recite more than seven verses from the Chapters (the Holy Quran) other than the four Chapters (whose recitation entails the obligation of performing prostration). The disapproval becomes stronger by reciting more than seventy verses. Likewise, it is also disapproved to touch the binding cover, paper, margin and space between the lines of the Quran, besides its words. It is also disapproved (for such a person) to sleep, while its disapproval is removed by performing ablution. In case water is not available the person must perform Tayammum in place of obligatory bath or ablution. It would be preferable if the Tayammum performed is in place of obligatory bath. It is also disapproved (for such a person) to apply dye to his hair, (in a state of pollution). The same rule applies to a person polluted (by discharge of semen) to again pollute himself (by discharge of semen) before removing the dye. Likewise, it is disapproved (for such a person) to have sexual intercourse, though he might have become polluted by ihtilam (or nocturnal pollution). It is also disapproved (for such a person to carry the Quran or hang it (on his neck or shoulders, etc.).

Chapter on Things Obligatory for Performing Obligatory Bath

Certain things are obligatory for performing an obligatory bath.

Problem #1: Firstly, Intention, and it is a condition that there must be sincerity in it. It is also indispensable that the intention must continue till the end, even though by concentration.

Problem #2: If a person enters the public bath with the intention of performing the obligatory bath, then if he continues to have the same intention, and dips in the water, or washes himself in a way that if he is asked while dipping in the water as to what he was doing, he would say that he was performing bath, then his bath shall be valid, and his bath shall be considered to have taken place with intention. If, however, he becomes completely forgetful in a way that if he is asked as to what he was doing, he may be confused, his bath shall be void as if he has not performed the bath at all.

Problem #3: If a person enters the public bath with the intention of performing obligatory bath, and after performing the bath he doubts whether he has performed it or not, he should consider as if he has not performed the bath. But if he is certain that he has performed the obligatory bath, but he doubts whether it was valid or not, he should consider it to have been valid.

Secondly, it is obligatory to wash the apparent part of the skin, so that it is not sufficient to wash, any other part (instead of the actual one). So it is obligatory to remove the obstacle and run the finger through the part where water does not reach except by running the finger through it. It is not obligatory to wash inside the eyes, nose, ears, etc., including even the hole made in the ear nose for wearing earring or ring (in the nose,) except when the hole is so large that it is considered a part of what is apparent. According to the more cautious opinion, one must wash about which he doubts whether it is an apparent part or a hidden one.

Problem #4: It is obligatory to wash the skin lying under the hair. Likewise, it is also obligatory to wash the small hair treated as part of the body. According to the more cautious opinion, it is obligatory to wash the hair absolutely (whether they are small or large).

Thirdly, it is also obligatory to observe the order which is required in a sequential obligatory bath performed bits by bits (Tartibi) which is considered superior to the one performed by dipping in the water (Irtimâsi).

An Irtimâsi bath is performed by submerging the whole body in the water with the continuance of intention. The continuance of intention is sufficient, even though by concentration.

In a sequential obligatory bath, the order required is to wash the entire head and the neck with a part of the body, and then the entire half of the right side of the body including some part of the left side and the neck. It is preferably cautious to include the entire half side of the neck in the right half side of the body, and include a part of the head as well, and then to wash the entire half side of the body

including a part of the right side and the neck. It is preferably cautious to include the entire left side of the neck as well as a part of the head on the left side.

The privy parts and umbilicus are to be included while washing half of the body mentioned here, so that half of them are washed while washing the half right side and the other half included while washing the left half side of the body, though it is preferable to wash them entirely simultaneously with each side of the body.

What is necessary is the inclusion of the entire three limbs in washing, whether it is by means of throwing water once or more, and whether by rubbing with the hand or passing the hand to them or the like.

Problem #5: There is no condition of sequence in washing a limb. It is permissible to wash it from below upward, though it is preferable to start washing from uppermost part to the lower parts.

Likewise, there is no special procedure for performing the obligatory bath (by dipping) here, but what is treated as bath is sufficient, so that it is sufficient to dip the head in the water, and the right side and then the left side. It is also permissible to dip some of the limbs, and throw water on the other.

If a person dips in the water thrice, each time with the intention of dipping one of the limbs, it shall be valid. Rather the obligatory bath shall take place merely by moving the limb in the water in a way that it may be called bathing the limb. There is no need for taking the limb out, and then dipping it in the water.

Problem #6: Apparently the performance of an obligatory bath by dipping in the water is fulfilled by dipping gradually in the water. To be more cautious, it is necessary that the whole body should be in the water all at once. If some parts of one's body are out of the water before the other parts are dipped in the water, the bathing by dipping shall not take place.

Of course, it is not harmful if one's foot penetrates slightly into the earth at the time of dipping in the water for the purpose of performing the obligatory bath, though it is more cautious to adopt the sequential bathing. It is also more cautious that the dipping must be done all at once in the usual way.

Problem #7: After performing the bath, if a person is sure that a part of his body has not been washed, it would be obligatory on him to repeat it, in case the bath is done by dipping in water.

In case the bath was sequential, and the part left unwashed happens to be on the left side, it is sufficient to wash that part alone, even if so much time has passed that the other parts of the body have become dry. So there is no need to repeat the bath, or to wash the other parts of the left side again. If, however, the part is on the right side of the body, that specific part shall be washed, and then the left side of the body shall also be washed. If it is the head (which has been left unwashed),

then the head shall be specifically washed, and both the sides of the body shall also be washed again.

Problem #8: In case of a sequential bath, it is not necessary to perform it without break, so that if a person washes his head in the first part of the day, the right part in the midday and the left in the last part of the day, it shall be valid.

Problem #9: It is permissible to perform the sequential bath in the rain and under a rain pipe, but not so a bath that is performed by dipping in water.

Fourthly, it is also obligatory (the performance of an obligatory bath) that the water must be pure, clean and lawful; rather to be more cautious, the place of performance of the bath, the place where the water is falling and the container of the water must also be lawful, though the absence of such a condition is not far from being the case. It is also a condition that, if possible, the obligatory bath must be performed personally. It is also a condition that there must not be any restriction on the use of water due to sickness, as has been mentioned under the section on Ablution. Likewise, it is also a condition that the parts of the body from which water is to pass must be clean, so that if they happen to be unclean, he must first clean them, and then let the water for performing the obligatory bath pass from them.

Problem #10: If a person intends not to pay the charges to the owner of the public bath, or pay it from the money earned unlawfully, or does it on credit without first obtaining the consent of the owner of the bath; his bath shall be void, even though he may obtain the consent of the owner subsequently.

Problem #11: There is difficulty in performing ablution or an obligatory bath with the water of the public watering place on the roadsides (Sabil), except when he knows that its owner has permitted it.

Problem #12: Apparently, it is the responsibility of the husband to provide water for the obligatory bath of the wife for pollution due to discharge of semen, menstruation and puerperal blood, and, likewise, the expenditure on heating it, if required.

Problem #13: It is indispensable for a man who becomes polluted (by discharge of semen) during the day in the month of Ramadân to perform the obligatory bath in the sequential manner, so that if he performs it by dipping in the water, according to the more cautious opinion, his bath and fast both would be rendered void.

Problem #14: After performing the obligatory bath, if a person doubts about some of the stages of the bath, it shall be declared valid. According to the stronger opinion, the same rule shall apply if he doubts about the first stage after having entered the second stage of performing the obligatory bath, although in case of such eventuality, it shall be more cautious to remove the doubt (by washing the doubtful part or parts of body).

Problem #15: A person who has been polluted due to the discharge of semen must perform Istibra of urination before performing the obligatory bath, though it is not a condition for the validity of the obligatory bath, but its advantage is that if he performs the Istibra, and then performs the obligatory bath, and then some doubtful wetness comes out, it shall not be obligatory on him to repeat the obligatory bath. On the contrary, if he performs the obligatory bath without having Istibrā' after urination, then the doubtful wetness (which comes out after the bath) shall be treated as semen, regardless whether the Istibrā has been performed by pulling with hand due to being enable to urinate or not. Of course, if a person tries to perform Istibrā in a way that becomes certain of the place being clean and there being no semen left in the passage, and he suspects that it could be fresh semen, according to the stronger opinion, it would not be obligatory to repeat (the obligatory bath). The same rule shall apply if passage of time has been the cause of his certainty (that there has been no semen left in the passage). It is, however, more cautious to repeat (obligatory bath) in both the cases.

Problem #16: If a person who has become polluted due to discharge of semen performs obligatory bath, and subsequently some moisture comes out which is doubted of being either semen or urine, then if he has not previously performed Istibrā after urination, it would be treated as semen, and so it shall be obligatory on him to perform the obligatory bath specifically. If a person urinates, but does not perform Istibrā' by pulling with the hand subsequently, the doubtful moisture shall be treated as urine, and it shall be obligatory on him to perform ablution specifically. In both the cases, there shall be no difference if there is likelihood of the moisture being something other urine or semen, like Madhi etc. or otherwise, (so that it shall not be obligatory on him to perform the obligatory bath and ablution both). If, however, he has performed Istibra for urination and subsequently (Istibrā') by pulling with the hand, then if there is likelihood of the moisture being something other than urine or semen, he shall be required neither to perform the obligatory bath nor ablution. If there is no likelihood of the moisture being other than either semen or urine, if both the things (namely one Istibrā' for urination and another by pulling with hand,) have happened before the performance of the obligatory bath, and the doubtful moisture has come out subsequently, it shall be obligatory on the person to observe caution by performing the obligatory bath and ablution both. If, however, both the things (namely one Istibra for urination and another by pulling with the hand) have happened subsequently, and then the moisture mentioned above has come out, only ablution performed specifically shall be sufficient.

Problem #17: If, after the discharge of semen and performance of the obligatory bath, some moisture comes out which is suspected to be either semen or anything else, and he doubts whether he has performed Istibrā or not, it shall be decided in favour of its absence (not to have been performed), and so it would be obligatory on him to perform the obligatory bath. In case however, it is likely to be urine, then it shall be more cautious to add ablution too.

Problem #18: It is permissible to perform the obligatory bath for all those things for which the performance of ablution is a condition.

Problem #19: If the smaller pollution (i.e. urination, etc.) takes place during the performance of the obligatory bath, according to the stronger opinion, it is not rendered void, but ablution is obligatory to be performed subsequently in all cases in which it is a condition. It is more cautious to perform obligatory bath again with the intention that it was as a whole obligatory on him, or its completion was obligatory on him, and the person should also perform ablution subsequently.

Problem #20: If a person dips in the water with the intention of performing obligatory bath, and then doubts whether at the time of diving in the water he had the intention of performing the obligatory bath by dipping in the water until he completed it, or of performing a sequential bath, while his dipping was done with the intention of washing the head and neck while both sides were still to be washed, then it shall be cautious for him to wash both the sides, and it would not be obligatory on him to repeat (what he had already done) rather, according to the more cautious opinion, it shall not be sufficient to perform the bath by dipping.

Problem #21: If a person, who had been polluted by discharge of semen, offers prayers, and then doubts whether he had performed the obligatory bath for pollution or not, he shall decide in favour of the validity of his prayers, but it would be obligatory on him to perform the obligatory bath for the future acts (of worship). If, however, the doubt occurs during the performance of the prayers, the prayers would be void, though, it would be more cautious to complete the prayers, and then repeat it after performing the obligatory bath.

Problem #22: If a person has to perform several baths, obligatory or commendable, or some obligatory and others commendable, then if, while performing a bath, he intends to perform the bath for fulfilling all the due baths through a single bath, it shall be valid, and it shall be sufficient for the due baths altogether. If the due baths include an obligatory bath for pollution due to discharge of semen, there shall be no need for performing ablution which is a condition (in the performance of the obligatory bath for pollution due to discharge of semen). If the baths do not include an obligatory bath for pollution due to discharge of semen, it would be obligatory to perform ablution before or after the bath. If, (while performing the bath), he had no intention to perform it for all the due baths, there shall be difficulty in accepting it to be sufficient for all the due baths. So caution should not be given up (by performing the bath again for the unintended due baths). Of course, the intention of performing an obligatory bath for pollution due to discharge of semen is not far from being sufficient for all the other baths, but one should not give up the caution of intending the performance of all the baths.

Chapter on Menstrual Discharge (Hayd)

The menstrual blood is of red color inclining to a black shade or of fresh (or mild) red color having a push, burning and warmth. The undue menstrual blood is just its opposite in characteristics. These major characteristics are considered while distinguishing between them and whenever there is some doubt about them. Sometimes one type of blood possesses characteristics of the other. Every blood coming out of a girl before completing the age of nine years is not menstrual blood, even though it may possess its characteristics. Whether it is undue menstrual blood is a question in which there is hesitation despite its being likely, though it is not far from accepting it to be such. Likewise, the blood coming out of a woman after the menopause is not menstrual blood. Whether it is an undue menstrual blood is a question in which there is hesitation despite its being likely, though it is not far from accepting it to be such. A Qureshi woman has menopause on completing her sixty years of age, and a woman other than Qureshi has it on the completion of her fifty years of age. If, in case of a woman there is doubt about her being a Qureshi, whether she would be affiliated with the other category (of non-Qureshi women) is a question where there is difficulty (in answering it in the affirmative). A woman, in whose case it is doubtful whether she has attained puberty or not, is to be treated as one who not yet attained puberty. The same rule shall apply to a woman about whom there is doubt whether she has attained the age of menopause or not, (so that she shall be treated as one not having attained the age of menopause).

Problem #1: If blood having characteristics of menstrual blood is discharged from a girl whose puberty is doubtful, and there is certainty of its being menstrual blood, then it is not far from declaring it to be menstrual blood and herself to have attained puberty. If, however, there is no certainty, then there would be hesitation and difficulty (in declaring it menstrual blood and herself to have attained puberty).

Problem #2: A nursing woman may have menstrual blood. But whether a pregnant woman can also have menstrual blood is a question on which there are two opinions, the stronger being in favour (of the answer being in the affirmative), although it happens rarely. So if a pregnant woman has had blood possessing the conditions and characteristics of menstrual blood, it shall be declared to be such, even if it happens after the appearance of pregnancy, but if she has had the blood discharge after the lapse of twenty days of her regular routine (of menstruation), caution should not be given up by adding what is given up by pregnant women to what is done by women having undue menstruation.

Problem #3: There is no difficulty in declaring a blood to be having the characteristic and rules of menstrual blood even if it is discharged by a finger or the like, and even if it is equal to the tip of a needle, in the same way as in the case of internal pollution of the woman with the blood, so that if cotton is penetrated (inside the woman's genital organ), it becomes soiled, there is no difficulty in its sufficiency to prove its subsistence and continuation. If, however, the (menstrual) blood has come from its place to the empty space of female organ (vulva) in a way that it may be taken out by

means of a finger or the like, but it has not yet come out, then has it assumed the characteristic of menstrual blood, and whether its rules would be applied to it or not, is a question in which there is hesitation and difficulty (in answering it in the affirmative). So caution must not be given up by adding what is given up by a menstruating woman and what is done by a clean woman. In such a case, it is not far from being permissible to take out the blood by means of a tool, and apply to it the rules of menstrual blood.

Problem #4: If a woman doubts the very discharge of menstrual blood, decision would be given in favour of its absence, in the same way when a woman doubts whether what has come out (of her vulva) is blood or any other excrement, she shall be declared to be clean of every pollution. If, however, a woman knows that the discharged matter is blood, but doubts whether it has come out of its (actual) place or some other place, decision shall be given specifically in favour of her being clean. In all the above three cases, it is not obligatory on the woman to make full investigation. If a woman has knowledge about the discharge of blood, but there is doubt about its actual position, then there would be several cases the rules of which will be known during the (discussion on) the forthcoming problems

Problem #5: If the menstrual blood is suspected to be blood of deflowering, as when if a virgin woman is deflowered, and a large amount of blood comes out, and there is doubt whether it is menstrual blood or a blood due to deflowering, or of both, its nature shall be investigated, by penetrating cotton inside (the woman's genital organ), waiting for some time, and then taking it out. It is preferably more cautious to penetrate the cotton inside (the woman's organ), and leaving it there for a long time, and then take it out softly. Then if it is surrounded by rings of blood, it shall be deflowering blood, even if it has the characteristics of menstrual blood. If, however, the blood is immersed in the cotton, it would be menstrual blood.

It is obligatory to make the investigation (the manner) mentioned above. It is, however, not known whether it is also a condition for the validity of the acts (of worship) performed by the woman (Anyhow), according to the stronger opinion, if she performs the acts with the intention of closeness to Allah, her acts shall be valid, provided that it transpires that the blood was not menstrual blood.

In case it is not possible for her to investigate, she may refer to her previous condition whether she was clean or menstruating, and decide accordingly. In case she is ignorant of her previous condition, she must be cautious by giving up the acts given up by a menstruating woman and perform the acts performed by a clean woman.

Problem #6: Apparently the two signs mentioned above, (namely the rings of blood appearing round the cotton or the blood being immersed in the cotton), are the absolute signs of the blood being due to deflowering or menses, even in case there is doubt about the deflowering or menstruation, though the obligation of investigation in such case is not far from being reasonable.

Problem #7: If there is doubt between menstrual blood and blood of the abscess inside the female organ, it is not far from being obligatory to carry out investigation. If the blood comes out from the left side, it shall be menstrual blood; otherwise it would be blood of the abscess. Caution must be, however, not be given up, even with the knowledge of her previous condition. If investigation is not possible, action will be taken according to her previous condition. In case her previous condition is not known, she must perform the acts performed by a clean woman and give up the things which are given up by a menstruating woman.

Problem #8: The minimum period for menstruation is three days, while the maximum period is ten days like the period of cleanness. So if a woman sees blood for less than three days or more than ten days, it shall not be menstrual blood. Likewise, if a woman sees blood after the disconnection of the blood declared to be menstrual blood due to her routine etc. without an interval of ten days, and it is not possible to declare it to be menstrual blood despite the intervening period of cleanness due to the total being more than ten days, it shall not be menstrual blood; rather it would be undue menstrual blood, in the same way as a woman sees blood as a routine for seven days during the days of the routine, and then the blood discontinues, then she sees the blood for three days, then the second blood would not be menstrual blood; rather it would be the undue menstrual blood.

Problem #9: According to the stronger opinion, it is a condition for menstruation that it should be for three consecutive days, and it is not sufficient for it to be during the ten days in a way that she sees the blood for one or two days, and then it discontinues, and then sees it again before the lapse of ten days for a period completing three days. However, caution must not be given up by acting on the duties of the two types of women (namely the menstruating and clean women).

The usual continuation of the discharge of menstrual blood is sufficient for the days to be consecutive, so that there is no harm in the intervals in the ordinary usual habits, the same way as it is sufficient to piece up the days, as when she sees the blood from the midday (of the first day) to the midday of the fourth day.

Problem #10: A day means the time between the dawn to the sunset, so that the nights are excluded. So if a woman sees blood from dawn to the sunset, and then it discontinues, and then she sees it in the same way again for two other days during ten days, it would be sufficient among those who do not consider succession of three days a condition for menstruation.

In case it is considered a condition that the menses must be for three consecutive days, as it is according to the stronger opinion, then the intervening two nights shall only be counted (among the three days), if the blood had started from the beginning of the day; otherwise, three nights shall be counted (among the three days), if the blood had started from the beginning of the night or by piecing together, as in the previous example.

Problem #11: A menstruating woman is either regular or irregular in her habits of menses. An irregular woman is either a beginner who has not seen menses before, or one having disorderly menses (Mudtaribah), i.e. one who has had menses repeatedly, but has no regular habit of menses,

or a forgetful woman (Nāsiyah), i.e., who has forgotten about her periods. A woman who has menses repeatedly twice consecutively with equal number of days or times or both is called a woman having (regular) habits. Thus, she would be called a woman having regular habits in menses as regards the number of times or number of days or both. If a woman sees blood twice or for a definite number of days twice, she may not be free from disorder, and, therefore she should not give up caution.

Problem #12: There is no difficulty in declaring that if a woman has menses once against her usual habit it would not mean the termination of her habit, in the same way as there is no difficulty in declaring that she has attained another habit and termination of disorderliness if she has menses twice both in a similar way against her (previous) regular habit. If, however, a woman has menses repeatedly against her (previous) habit, so that they are not only unequal as regards times and number of days but also different from one another, then it would be a case about are two opinions, the stronger opinion being in favour of declaring that her previous habit has terminated, when the variance has taken place several times in a way that it may be according to the prevalent custom that she has no definite days of menses. If, however, she has dissimilar menses twice (contrary to her habit), then there shall be hesitation in declaring habit still subsists.

Problem #13: If a woman who has a regular habit of time sees blood (i.e. has discharge of blood from her genital organ), according to her habit, regardless whether she is also regular in number of days or not, she shall be declared to be a menstruating woman. So she shall give up her worship (Ibadat), no matter whether the blood has the characteristics of menses or not. The same rule shall apply in case the woman sees blood one, two or more days before or after her usual habit, so that it may be declared that the time of menstruation or her habit have hastened or delayed. If (subsequently) she learns that it was otherwise than menstruation due to its being for a period less than the minimum one, then she shall make up for the worship she has given up (due to being declared a menstruating woman). A woman having habits contrary to those mentioned above shall be (declared) menstruating as soon as she sees blood, provided that it possesses the characteristics of menstrual blood. In case otherwise, she shall give up what is given up by a menstruating woman, and shall perform all the acts performed by a woman having undue menstruation (or a Mustahadah). In case the blood continues for three days, she shall treat it as menstrual blood. If the blood continues for more than three days upto ten days, she shall treat the rest too as menstrual blood, so that it shall suffice for her to perform the duties of a menstruating woman, and she shall not be required to observe the acts of a woman having undue menstruation (or Mustahadah), though caution should not be given up.

Problem #14: If a woman having menses regularly in time sees blood according to her habit or before, or during her habit and after it, or during her habit and on both its sides (i.e. before and after it), then if the total does not exceed ten days, she shall treat the whole as period of menses. In case the total exceeds ten days, she shall treat the total period of menses (i.e. ten days) as that of menses and the rest as that of undue menstruation.

Problem #15: If a woman sees blood consecutively for three days, and then it discontinues before the completion of ten days, and again she sees blood for three or more days, then if total number of the of both bleeding days and the intervening period of cleanness does not exceed ten days, the total number of bleeding days lying on both the sides of the period of cleanness shall be treated as period of menses, and the period of cleanness shall also be attached with the period of menses, regardless whether either or both of the bloods possessed characteristics of menstrual blood or not, and whether she was regular in habits, and either or both the bleeding periods have coincided with her habit or not. If, however, the total exceeds ten days and each of the two bleeding periods and the period of cleanness is less than ten days, then if the woman was one having regular habits of menses, and one of the bleeding occurred during the period of habit to the exclusion of the other, that period alone shall be treated as period of menses to the exclusion of the other. Likewise, if the days of one of them have occurred during her habit, they shall be treated as the (days of) menses to the exclusion of others. Similarly, if a woman has regular numerical habit, and one of two bleeding periods has agreed with her habit, that period shall be treated as (period of) menses to the exclusion of the other. In case the menstrual blood is determined according to its characteristics, according to the stronger opinion, the blood of the woman having numerical habit shall be given preference. If a woman has no habits, or one or some of the bleeding periods have not occurred during her habit, then she shall treat the blood having the characteristics of menstrual blood as menstrual blood to the exclusion of the other. If the woman has regular habit as regards the time and the number of days, and some of the bleeding days of one of the bleeding periods have occurred during the time disagreeing with the number, while the other corresponding with the number has occurred contrary to the time, the woman shall observe caution during both the bleeding periods by giving up what is given up by a menstruating woman and performing acts which are performed by a woman having undue menstruation (mustahadah). If both the bloods are similar in characteristics, but none of them have occurred partially or entirely during the period of her habit, and they also do not agree with the number of her habit, then according to the more cautious, if not according to the stronger opinion, she shall treat the first bleeding period as the menstrual period and observe caution for the entire ten days, so that if she sees blood for three days and has been clean for three days, and then sees blood for six days, she shall treat the first three days as the menstrual period, and observe caution during the rest of the days until the completion of ten days by giving up what is given up by a menstruating woman and performing the acts performed by a clean woman during the intervening period of cleanness, and by giving up what is given by a menstruating woman and performing the acts performed by a woman having undue menstruation during the bleeding period until the completion of ten days.

Problem #16: If a woman having regular habit of menses sees blood exceeding her habit but not exceeding ten days, the entire period shall be treated as menstrual period.

Problem #17: If a woman has a habit of having menses once a month, but she happens to have menses twice a month with an intervening minimum period of cleanness, then, if one of them occurs during her period of habit, she shall treat it as the menstrual period, and so also the other

period as menstrual period if its blood possesses the characteristics of menstrual blood. In case, however, it possesses the characteristics the blood of undue menstruation, she shall observe caution by giving up what is given up by a menstruating woman and performing acts performed by a woman having undue menstruation.

If both the bleeding periods have occurred during a period beyond her period of habit, she shall treat both of them as menstrual periods, regardless whether their blood possessed the characteristics of menstrual blood, or were devoid of such characteristics, or were different from each other, though it would be cautious to act according to the second case in the second bleeding period, and in the third case with regard to the one devoid of the characteristics of menstrual blood, caution should not be given up.

Problem #18: In case of a beginner or a woman having disorderly periods or one who has a habit of having menstrual blood for ten days, if their blood discontinues apparently before ten days with the possibility of its continuation inside, it is obligatory upon them to perform Istibra (or process of cleanliness) by penetrating cotton or the like, waiting for a while and then taking it out, then if it comes out clean, they shall perform the bath (for cleanliness after menses) and may offer prayers. If, however, it comes out soiled (in blood), or even if (soiled) in yellow color, they shall be required to wait until they attain the period of cleanness or the lapse of ten days. If, however the period does not exceed ten days, the whole period shall be treated as menstrual period. If the period exceeds ten days, its rules shall be as given below. In case of a woman having a habit of getting periods for less than ten days, if apparently her bleeding discontinues, she shall perform Istibrā' (in the manner explained above), so that if she becomes clean (of menstrual blood), she shall perform the bath (required after the completion of menses), and may offer prayers otherwise, she shall wait until the completion of the period of habit. If bleeding continues until the completion of the period of habit, and then discontinues entirely, she shall perform the bath (required after the completion of menses), and may offer prayers. The same rule shall apply if apparently the bleeding discontinues according to her habit and she performs the Istibra, and finds herself clean. If the bleeding does not discontinue according to her habit, and exceeds the period of her habit, then, according to the stronger opinion, she shall observe Istizhar by giving up worship for ten days by way of Istihbâb (approval), even if the blood has the characteristics of menstrual blood. According to the more cautious opinion, it is obligatory to observe Istihzar for a single day (after the lapse of the period of habit), while caution should not be given up during the days exceeding the period of habit by giving up what is given up by a menstruating woman and performing the acts performed by a woman having undue menstruation. In such if the bleeding does not exceed ten days; the entire period shall be treated as menstrual period.

Rules Concerning a Woman Having Menses For Over Ten Days

The rules concerning a woman having menses for a period exceeding ten days are given below.

Problem #19: (in case of menses), if bleeding exceeds ten days, whether in a small or large quantity, it means that the menstrual blood of the woman has mingled with her period of cleanness (Tuhr). Now if she has a definite habit as regards time and the number of days, then she shall treat it as menses even if the blood for that period does not possess the characteristics of menstrual blood, while the rest shall be treated as period of undue menstruation (Istihādah), even if the blood of that period possessed the characteristics of menstrual blood. If the woman has not a definite habit, as regards time or the number of days, so that she happens to be a beginner, or one having disorderly periods in time and number of days, or, in the same way, a forgetful one, then if the blood has different colors, so that some of the blood is black, red, or yellow, it shall be determined by investigation. So the blood having the characteristic of menstrual blood shall be declared menstrual blood, while the other blood belonging to undue menstruation (Istihadah), provided that what has the characteristic of menstrual blood has not been for less than three days, nor for more than ten days, and also provided that she does not see other blood possessing the characteristic of menstrual blood after the blood devoid of the characteristic of menstrual blood which continues for less than ten days, such as when she sees blood of black color for five days, then yellow blood for five days, and again blood of black color for five days, then if the blood possessing the characteristic of menstrual blood has been for less than three days or more than ten days, in that case there shall be difficulty in its absolute rejection or acceptance without proper investigation. It is also not far from the necessity of accepting it with the characteristics of the first blood in the last example and completing or reducing it according to her duty by acting upon the traditions or habit of women related to her. If the blood has a similar color, so that it cannot be distinguished, then if, among her near relatives, she has no women having similar habits, according to the more cautious, if not stronger opinion, she shall treat seven days of each month as menstrual period and the rest as the period of undue menstruation. If among her near relatives like mother, sister, maternal and paternal aunts, etc. there are some women having similar habits, and there is knowledge about their position, a beginner shall follow their example. As regards a woman who has no definite habit, but has near relatives as mentioned above, she shall not give up caution, in case their habit is to have menstrual period for less than seven days or more, by observing the difference between the duties of a menstruating woman and one having undue menstruation (istihadah).

Problem #20: It is more cautious, if not according to the stronger opinion, that as soon as a woman who cannot distinguish her blood sees blood, she should declare it menstrual blood. In case she has no near relatives mentioned in the previous Problem, she shall treat seven days as menstrual period. In case she has some near relatives, it is not far from being obligatory to declare her menstrual period equal to their habit in number of days. Anyhow, if the bleeding continues for more than a month, it shall be obligatory upon her to bring harmony among the months, so that if she has seen blood on the first of the first month she should declare first of every succeeding month the beginning of her menstrual period, and if it is the middle of the first month, she should also declare the middle of every succeeding month the beginning of her menstrual period, and so on.

Problem #21: If the bleeding of a woman having a regular habit in time only exceeds ten days, she shall decide about the time according to her habit. As regards the number of days, if it is possible to determine it in the observation of time, she shall decide accordingly, or she shall follow the habit of her near relatives if found, according to the condition mentioned before. Otherwise (If she has no close relatives), she shall treat seven days as her menstrual period, and place them in the days of her habit. A woman having regular habit in number of days only shall make her habit the basis in determining the number of days (her menstrual period). As regards the time, if it is possible to determine it in conformity with the number, she shall decide it accordingly. The same rule shall apply if the number is not in conformity with the time, so that she shall add the difference if the number is less than her habit, and reduce where it exceeds her habit. In case she is not able to distinguish at all, as soon as she sees blood, she shall declare it menstrual blood, as mentioned before.

Rules Concerning a Menstruating Woman

There are several rules concerning a menstruating woman.

Firstly, it is not permissible for a menstruating woman to offer prayers, keep fast, perform circumambulation of Ka'bah (Tawaf) or sit in an uninterrupted seclusion (I'tikāt).

Secondly, every thing that is prohibited for a ritually unclean person (Muhdath) is also prohibited for a menstruating woman, which include touching the Names of Allah, the Exalted, and like wise according to the more cautious opinion, touching the names of the prophets and the Imáms, Peace be upon them, and touching the written words of the Quran, the details of which have already been mentioned under (the Chapter on) Ablution.

Thirdly, everything that is prohibited for a person polluted due to discharge of semen is also prohibited for a menstruating woman, which include reading the Quranic Chapters containing sajdah or some of them, entering the Two Mosques (namely the Masjid al-Haram in Mecca and Masjid-i Nabavi in Madinah), staying in mosques other than the Two Mosques, or keeping anything in the mosques, as mentioned under (the Chapter on) *Janābat*, as a menstruating woman is like a person polluted due to discharge of semen as far as all the rules are concerned.

Fourthly, sexual intercourse through the front female organ (vulva) which is prohibited for both the man and the woman, though it is permissible to enjoy the menstruating woman in a way other than sexual intercourse through the front female organ, like kissing, or rubbing the male organ on the woman's thighs, or the like, and even sexual intercourse with the woman through her backside (anus) though it is extremely abominable, and it is more cautious to abstain from it, and so it is abominable to enjoy her using what lies between her navel and knees. All these mentioned things are prohibited with the knowledge about her being in a state of menstruation according to his own finding or according to the signs given in the canonical law (Shari'at), like the woman's habit or judgement, rather her treatment of seven days as menstrual period or also the basis of her closely related women. Even in case of his ignorance of her being in a state of menstruation a person comes to know of it during the sexual intercourse, he should withdraw. Similar is the case when she was not menstruating before the start of the sexual intercourse, but she starts menstruating during the act. Whenever, a woman informs about her being in a state of menstruating or its termination, her statement has to be relied upon, so that it is prohibited to have intercourse with her even when she has informed about her being in a state of menstruation. However, it is permissible to have intercourse with her when she informs about the termination of her periods.

Problem #1: There is no difference in the prohibition on sexual intercourse with a permanent or temporary wife and a free woman or a slave-girl.

Problem #2: When a woman becomes clean of menses, it is permissible for her husband to have sexual intercourse with her before her taking ritual bath (required after cleanness from menses),

though with an amount of abhorrence, rather (it is permissible) even before washing her front organ (vulva), though it is more cautious to abstain from doing so.

Fifthly, To be more cautious, expiation is due in case of having sexual intercourse with a wife (during her menstrual period). The amount of expiation for sexual intercourse with one's wife (during menstrual period) is one Dinar at the first stage of the period, half a Dinar in its middle and a quarter of a Dinar in its last stage. The woman is not obliged to pay any expiation, even if done with her consent. The expiation is obligatory in case the sexual intercourse has been performed with the knowledge of its prohibition and about her menstrual period, rather, according to the more cautious opinion, despite ignorance due to negligence in some cases.

Problem #3: Here the first stage means the first one-third, the second stage the second one third and the last stage the last one-third of the menstrual period, so that if her entire menstrual period lasts for six days, each one-third will be equal to two days, and if it lasts for seven days one-third will be equal to $2 \frac{1}{3}$ days, and so on.

Problem #4: If a husband has sexual intercourse with her wife despite the impression that she is menstruating, and later it transpires that she is not menstruating, or under the impression that she is not menstruating, but later it transpires that she was menstruating at the time of the intercourse, he shall not be liable for the payment of any expiation.

Problem #5: If the menstruation occurs during the intercourse, but he fails to withdraw, then there shall be difficulty in the establishment of the liability for the payment of expiation, though it is more cautious (to declare that the liability is established).

Problem #6: It is permissible to pay the value of Dinar as it is at the time of the payment of the expiation;

Problem #7: The expiation mentioned above shall be paid to a single poor person in the same way as it is paid to three poor persons.

Problem #8: The expiation multiplies with the repetition of the act, though performed on different occasions for example, if he performs the sexual intercourse with his menstruating wife in the first, middle and last stages of her menstrual period, he shall be liable for the payment of $1 \frac{3}{4}$ Dinars. The same rule shall apply if he repeats the act at the same time with intervening payment of expiation. Otherwise, (if no payment has been made after such intercourse), there are two opinions, the more cautious being in favour of the multiplication of the expiation.

Sixthly, Divorce to a menstruating woman is void if she has been enjoyed sexually but has not conceived her husband is present or like one present, so that in spite of being absent he is able to know easily about the actual position of the wife. If however, the woman has not been enjoyed sexually by her husband, or is pregnant, or her husband is away or like one who is away, so that he

is able to know about the actual position of his wife in spite of being present, divorce to her shall be valid. The details of this case shall be given at another place (under the Chapter of Divorce)

Problem #9: If the husband is away from the wife, and he authorises another person who is able to obtain knowledge about the actual position of his wife, it shall not be permissible to divorce her while she is still menstruating.

Seventhly, after the discontinuation of the menses, it is obligatory to perform ritual bath for every thing for which there is a condition for cleanness from the major pollution (i.e. pollution due to easing nature, etc). The method and rules for the performance of the ritual bath for menses are the same as those for *Janābat* (or pollution due to discharge of semen), with the exception that a ritual bath for menses does not replace ablution. So it is obligatory to perform ablution before or after it for everything for which there is a condition of performing ablution, such as the prayers, contrary to the obligatory bath performed for *Janābat*, as mentioned before. In case it is not possible to perform ablution only, then the woman shall perform the ritual bath (menses) and then perform Tayammum in place of ablution. In case it is not possible to perform the ritual bath (for menses) only, the woman shall perform ablution and Tayammum in its place. In case, however it is not possible to perform the ritual bath (for menses) as well as ablution, she shall perform Tayammum twice, one in place of the ritual bath (menses) and the other in place of Ablution.

Problem #10: If the woman has not sufficient water except for either the ritual bath or ablution, according to the more cautious opinion, she shall perform the ritual bath (for menses).

Problem #11: If a woman performs Tayammum in place of ritual bath (for menses), and then polluted due to Minor Pollution (like urination, etc.), her Tayammum shall not be nullified until she is able to perform the ritual bath (for menses), though it is more cautious to perform Tayammum again.

Eighthly, according to the stronger opinion, it is obligatory on the woman to make up for the obligatory fasts which she had given up while menstruating, regardless of whether they belonged to the month of Ramadān or otherwise. The same rule applies to the prayers, with the exception of the daily (obligatory) prayers (offered five times a day), like Prayers for Ayāt, two Rak'at prayers for circumambulation of the Ka'bah, votive prayers, contrary to the daily prayers given up during her menstruating state as it is not obligatory on her to make up for them. Of course, if she starts menstruating after the arrival of the time of prayers, and so much of the time has passed in which she could perform the minimum obligatory prayers according to her condition, for example, slowly or quickly, in health or illness, while at home or during journey, and in consideration of the conditions not fulfilled by her despite being presently bound by them, like ablution, ritual bath or Tayammum, which she has not performed, then it shall be obligatory on her to make up for the (daily obligatory) prayers, contrary to the woman who has not had that much time for her from the start of the proper time for prayers (in a state of cleanness), and so it shall not be obligatory on the latter woman to make up for such prayers. However, according to the more cautious opinion, she

shall be required to make up for the prayers if she had had ample time for offering the prayers in a state of cleanness, even if she has not sufficient time to fulfill other conditions, although in such a case, according to the stronger opinion, it shall not be obligatory on her to make up for the prayers.

Problem #12: In case a woman becomes clean of menses before the expiry of the due time of prayers, then if there is still time left sufficient for offering a single Rak'at (of prayers) with all the requisite conditions, it shall be obligatory on her to offer it. If, however, she fails to offer it, she shall be bound to make up for it. Rather, according to the more cautious opinion, she shall be bound to make up for it even if there no sufficient time left except for cleanness with all the requisite conditions and offering a single Rak'at (of prayers), though, according to the stronger opinion, it is not obligatory.

Problem #13: If a woman assumes that the time is too short for offering even a single Rak'at (of prayers) with the fulfillment of the requisite conditions, and so she gives up offering it, and later she learns that there was ample time, it shall be obligatory to make up for it.

Problem #14: If a woman becomes clean of menses at the end of the day and finds time sufficient for offering four Rak'ats (of prayers) while she is in her own place, or for offering two Rak'ats while on journey, she shall offer the prayers for Asr while offering the prayers for Zuhr shall be dropped whether on due time or after it. If, however, she finds time for offering five Rak'ats (of prayers) while still in her own place, or for three Rak'ats while on journey, it shall be obligatory on her to offer both the prayers (i.e. for Zuhr and Asr both), so that if she fails to offer them, it shall be obligatory on her to make up for both the prayers. As regards the prayers for Maghrib and Ishā', if from the end of the due time so much time is left as is sufficient for five Rak'ats while she is in her own place or for four Rak'ats while on journey, it shall be obligatory on her to offer the prayers for Ishā' alone, while the prayers for Maghrib shall be dropped in her case whether on due time or making up for it.

Problem #15: If a woman assumes that there is time sufficient for two prayers, and offers them both, and later she learns otherwise, then if she was bound to offer only the second prayers shall be valid, and she shall have no liability.

The same rule shall apply if she offers the second prayers alone, and then she learns about the tightness of the time, then, if she fails to offer both, she shall be bound to make up for the second alone. If, however, due to tightness of the time she offers the second prayers, and then she learns about the sufficiency of the time, it shall be valid, and she shall be bound to offer the first prayers subsequently. If, however, she learns about the sufficiency of the time after the lapse of the due time, it shall be obligatory on her to make up for the first.

Problem #16: It is recommended for a menstruating woman to change the cotton, and perform ablution at each time of prayers, and sit with her face towards the Qiblah upto the time required for offering each prayer, and invoke Allah, the Exalted. It is abominable for a menstruating woman to

dye her hair with henna, etc., to recite the Quran even though less than its seven verses, to carry the Quran even with its cover, or to touch the margin of the Quran and the space between its lines.

Rules Concerning Undue Menses (Istihadah)

Here is a discussion about the blood of undue menses (Istihādah) and its rules.

The blood of the undue menses (Istihadah) is mostly of yellow color, cool, thin and comes out without force, burning or pain. (Sometimes) it possesses the characteristics of menstrual blood, as mentioned before. There is no limit for its minimum or maximum amount. Every blood that a woman sees before her puberty, after her menopause, or in less than three days, provided that it is not the blood of an abscess or wound or puerperal period, it shall be the blood of Istihadha, though there is difficulty in its generality. The same is the case, according to the more cautious opinion, if it is not known to be of an abscess or wound when the woman has neither an abscess nor a wound. The same is the case if the bleeding (of menses) exceeds ten days. In such case, however, as the menstrual blood mixes up with that of Istihadah, therefore it is indispensable for its determination to adopt the method mentioned under (the Chapter on) Menstruation. As regards the rules of Istihādah, it has three kinds: Minor Medium and Abundant.

The First Category, namely, the Minor Istihādah, is when its blood soils the cotton from one side but does not pierce into it and appear from the other side. Its rule includes the obligation of ablution for each prayer, and washing the apparent part of the female organ (vulva), if soiled. It is more cautious to change the cotton or clean it.

The Second Category, namely, the Medium Istihadah is when the blood penetrates into the cotton from one side and appears from the other side, but does not flow upto the cloth over the cotton. Its rules in what has been mentioned under the First Category (namely the obligation of ablution) also include the obligation of performing a single ritual bath for morning prayers, rather, according to the stronger opinion, for every prayer before or during which she becomes unclean (to the blood of Istihada). So if she becomes unclean (due to the blood of Istihadah) after the morning prayers, it shall be obligatory to perform the ritual bath for the prayers of Zuhr and Asr and if she becomes unclean (due to the blood of Istihadah) after the prayers for Zuhr and Asr it is obligatory on her to perform ritual bath for the prayers of Maghrib and Isha'.

The Third Category, namely, the Abundant Istihadah is when its blood flows from the cotton upto the cloth over it. Its rules, besides what has been mentioned before (under the first two categories) upto changing the cloth or cleaning it, include the performance of another ritual bath for the prayers of Zuhr and Asr and offer both these prayers together, and another for the prayers of Maghrib and Isha' and offer them both together. This is the case when she becomes unclean before the morning prayers. If, however, she becomes unclean after it, it is obligatory on her to perform two ritual baths, one for the Zuhr and Asr prayers and another for Maghrib and Isha' prayers. If a woman becomes unclean after the Zuhr and Asr prayers, it is obligatory on her to perform a single ritual bath for Maghrib and Isha' prayers. Apparently the permission to offer two prayers with a single ritual bath applies to the case when they are offered together, and this is permitted and is not obligatory, so that if she does not offer both the prayers together, it shall be obligatory on her to

perform one ritual bath for each of the prayers. It is obvious that the Minor Istihadah is (identical with) a Minor Pollution, like urination. If it continues or occurs before each of the five prayers, it shall be like continuous uncleanness as in case of incontinence of urine, while the Medium and Abundant Istihadahs are (identical with) the Minor and Major Pollutions.

Problem #1: According to the more cautious opinion, it is obligatory on a Mustahadah (a woman having Istihadah) to know about her actual position at every prayer time by penetrating cotton or the like (into her genital organ), and wait for some time in order to know as to which category of women she belongs, so that she may act according to the duties of that category. It is not sufficient to find out her position before the arrival of the due time for prayers, except when she knows fully well that her condition has not changed after that time. If it is not possible for her to know about her condition but she knows about it as its being Minor, Medium or Abundant Istihadah, she shall act on the basis of that previous condition, and act according to the duties of that category; otherwise, she shall act according to the extent she is certain. If she has doubt about its category belonging to the Minor or other categories, she shall act according to the Minor Category. Likewise, if she has doubt about its category belonging to the Medium or Abundant categories, she shall act according to the Medium Category. According to the more cautious opinion, she should act according to the more proper conditions.

Problem #2: In case of continuance of bleeding, it is obligatory on the woman to repeat ablution and the acts mentioned before for every prayer. If, suppose, bleeding discontinues before the Zuhr prayers, she shall have ablution only for Zuhr prayers, and shall not be required to perform ablution for the Asr, Maghrib and Isha' prayers. Likewise, if bleeding discontinues after Zuhr prayers, it shall be obligatory to perform ablution for Asr prayers only, and so on. If, however, bleeding discontinues, and she performs ablution for Zuhr prayers, and her ablution continues intact upto Maghrib and Isha' prayers, she shall offer both those prayers with the same ablution, and shall not require to renew it.

Problem #3: After the performance of the ablution and ritual bath, it is obligatory to hasten to offer prayers in case the bleeding has not discontinued after the ablution and ritual bath, or she apprehends that it will restart before or during the performance of prayers.

Of course, if she performs ablution and ritual bath, suppose, at the beginning of the due time for prayers and the bleeding discontinues during the start of the ablution and ritual bath, even for a short time, and she knows that it shall not return until the end of the prayer time, it shall be permissible for her to delay offering the prayers.

Problem #4: After the performance of ablution and ritual bath, it is obligatory on the woman to prevent the discharge of the blood by penetrating cotton or the like, or binding some piece of cloth on her genital organ, unless there is fear of any harm in it. If the blood comes out due to her failure in its discharge and in binding the piece of cloth, she shall be bound to offer the prayers again. Rather it shall be more cautious, if not according to the stronger opinion, also to repeat the ablution

and the ritual bath. Of course, if the discharge of the blood has been due to excessive bleeding and not due to her mistake in preventing it, then there shall be no objection.

Problem #5: If the Istihadah shifts from lower to higher category, for example if the Minor Category shifts to Medium or Abundant one, it shall have no effect on the prayers she has already offered despite the duties of the lower category, and it shall not be obligatory on her to repeat the performance of prayers. But with regard to the next prayers, she shall have to perform acts according to the higher category. Likewise, with regard to the prayers during whose performance the category has shifted from the lower to the higher one, she shall have to recommence it and act according to the higher category. If the Minor Category has shifted to the Medium or Abundant category after the morning prayers, her prayers shall be valid, and with regard to the Zuhr, Asr and Maghrib and Isha prayers, the case shall be similar to what we have mentioned before as the Istihadah has shifted to Medium or Abundant after the morning prayers, while it formerly belonged to Minor Category. So she shall perform a single ritual bath for Zuhr and Asr prayers in the former case (in case of Medium Category), and two baths for both of them and for Maghrib and Ishā' prayers in the latter case. In case of the Abundant Category, contrary to case when the change would have taken place before or during the morning prayers, when she shall perform the ritual bath for it. Rather, if she has performed ablution before the change, she shall renew the ablution, even if the change has taken place from Medium to Abundant Category after performing the ritual bath for morning prayers. She shall repeat the bath, and shall act in that day according to the acts required for the Abundant Category, as if the Istihadah did not formerly belong to the Medium Category. If the category has shifted from higher to lower, she shall act for one prayer according to the higher category and then according to the lower. If the Abundant category has changed into little Category before the ritual bath for morning prayers and continues in the little category, she shall perform the ritual bath for the morning prayers, and it shall be sufficient to perform ablution for the rest. If, however, the Abundant Category has shifted to the Medium Category after the morning prayers, she shall perform the ritual bath for the zuhar prayers, and it shall be sufficient for her to perform ablution for the Asr, Maghrib and Ishā' prayers.

Problem #6: The fast kept by a woman having istihadah of Minor Category is valid, and there is no condition of her performing ablution for its validity. In case of other Categories, however, according to the stronger opinion, there is a condition of her performing the ritual bath during the day for the validity of fast. In case of the Abundant Category, caution should not be given up by performing the ritual bath on the night before the fasting day.

Problem #7: If bleeding discontinues before cleanness (through performing ablution and ritual bath for Istihadah), she shall clean herself (performing ablution and ritual bath), and offer prayers. If, however, it occurs after the cleanness but before offering prayers, she shall repeat the act of cleanness for menses (ablution and ritual bath), and offer prayers. The same rule shall apply if the interval is extensive enough for cleanness and prayers. If, however, the interval is not extensive enough for both (and prayers), she shall suffice with the previous cleanness and offer prayers. The same rule shall apply if she has doubt as to the extensiveness of the interval, though it is more

cautious to repeat the act of cleanness (ablution and ritual bath) for a woman who knows about the sufficiency of the time, but doubts about the discontinuation being a clearance of bleeding or an interval. If, however, the bleeding discontinues during the performance of the prayers, she shall repeat the act of cleanness and offer prayers, in case the discontinuation was a clearance of the bleeding or an interval extensive enough for the performance of the cleanness and offering prayers. In case the discontinuation of bleeding is not for a time extensive (for the performance of the cleanness and offering prayers), the woman shall complete the same prayers. If, however, the bleeding discontinues after offering prayers, then, according to the stronger opinion, she shall not be bound to repeat the prayers even if the discontinuation was clearance of the bleeding.

Problem #8: The rules concerning Mustahādah, her categories and duties with regard to prayers and fasting have become clear from what has been mentioned before. Now as regards other rules, there is no difficulty in that it is obligatory on her to perform ablution for only the obligatory circumambulation of Ka'bah if the woman belongs to the category of Minor Istihadah. In case, however, the Istihadah happens to be of the Medium or Abundant Categories, it shall be with the addition of the ritual bath. According to the more cautious opinion, the ablution performed for the prayers is not sufficient for the obligatory circumambulation in the former case (in case of the Minor Category) even if the bleeding continues to be of the Minor Category, nor with the addition of the ritual bath in the other case, (in case of the istihadah of the Medium or Abundant Categories), specially when a woman having Istihadah of the Medium Category performs the circumambulation at a time other than the morning, or the woman having Istihadah of the Abundant Category performs the circumambulation at a time other than the three times (of prayers). In all such cases, according to the more cautious opinion, the validity of the circumambulation depends on the performance of the ablution and ritual bath, specifically for the circumambulation. As regards the recommended circumambulation, there is no need of ablution or ritual bath, as the case may be, where there is no condition of being clean of ritual uncleanness, though in ease other than the Minor Category, performance of ritual bath is required for entering the mosque, if we support such opinion. As regards touching the written words of the Quran, there is no difficulty in declaring that it is not lawful for a woman having Istihadah, except after performing ablution only in case of Istihadah of Minor Category and with the addition of ritual bath in other cases (in case of Istihadah of the Medium or Abundant Categories). To be more cautious, ablution performed for offering prayers (a woman having Istihadah) is not sufficient for touching the written words of the Quran, and she is bound to perform ablution or ritual bath specifically for it. Of course, apparently it is permissible to do so at the time of offering prayers for which she has performed cleanness (ablution or ritual bath).

Is a woman having Istihadah of the Medium or Abundant Categories to be treated absolutely at par with a menstruating woman, so that everything that is prohibited for the latter without performing ritual bath shall be prohibited for the former or not? It is more cautious for the husband not to have sexual intercourse with her unless she has performed the ritual bath (for Istihadah but it is not obligatory to add ablution, though it is more cautious to do so. The bath taken for offering prayers is

sufficient for the sexual intercourse, provided that it is performed at the time of prayers before offering prayers. If, however, a man has sexual intercourse with his wife at a time other than the time of prayers, according to the more cautious opinion, he shall be required to perform obligatory bath separately for it, as we have mentioned under (the Chapter on) Circumambulation, as regards the permission for a woman having Istihadah to stay in the mosques or enter the Two Mosques (the Masjid-i-Harām in Mecca and Masjid-'i Nabavi in Madinah), according to the stronger opinion, she is permitted to do so without performing the ritual bath, though it is more cautious to abstain from it for offering prayers or having bath without performing the ritual bath separately for this purpose, as in case of sexual intercourse with one's wife. As far as the validity of divorce to a woman having Istihadah is concerned, there is no difficulty in declaring that there is no condition for the performance of the ritual bath by the woman for the validity of the divorce to her.

Rules Concerning Puerperal Blood (Nifās)

Nifās is the blood seen by a woman any time within ten days before or after childbirth, even if it is an aborted child, and soul has not been breathed into it, and even if it is merely a lump of flesh or a clot, as it is known to be the beginning of the formation of a child. In case there is doubt about it, it shall not be declared puerperal blood. There is no limit for its minimum period, so that it may be for a moment during the ten days. In case a woman does not see any blood, or sees it ten days after the childbirth, it shall not be puerperal blood. Its maximum period is ten days, and it is counted from the completion of the childbirth, not from its beginning. If the childbirth takes place in the first part of the day, the last night shall be excluded. If the childbirth takes place in the first part of the night, it shall be part of the puerperal period, even if it is not counted among the ten days. If the childbirth takes place in the midday, so much of the day shall be taken out of the eleventh day. If there are twins, the beginning of the Nifās shall be counted from the birth of the first child, while the beginning of the ten days shall be counted from the delivery of the second.

Problem #1: If the bleeding discontinues on the tenth day or earlier, the entire blood seen by the woman shall be puerperal blood, regardless whether she has seen it throughout the ten days or some of the ten days, and whether she be one having a definite menstrual habit or not. According to the stronger opinion, the intervening interval between the two bleedings or several bleedings shall be included in the puerperal period, so that if a woman sees blood for a single day after childbirth, and then the bleeding discontinues, and then again she sees the blood on the tenth day the entire period shall be considered puerperal period. The same shall be the rule if she sees the blood day after day, but short of ten days. If, however, she has not seen the blood except on the tenth day, it shall be considered puerperal blood, while the previous cleanness shall entirely be considered period of cleanness. If she sees blood on the third day and then on tenth day, the latter shall be considered puerperal blood.

Problem #2: If she sees blood throughout the ten days, and the bleeding continues till it exceeds i.e. limit of ten days), if she has a habit of definite number of days in menses, in her puerperal blood too she shall follow the number of days of her menses, regardless whether they are ten days or less than ten days, and shall subsequently act according to a woman having Istihadah. In case she has not the habit of a definite number of days in her menses, she shall consider ten days to be her puerperal period, and shall act according to a woman having istihadah, though, to be cautious, she should observe the duties of a woman having puerperal blood as well as Istihadah for eighteen days, and this is a caution which she should not give up.

Problem #3: It is a condition that there should be an interval of minimum period of cleanness, and that is ten days between the puerperal blood and the following menses. So if she sees blood since the childbirth until seven days, and then sees it again for three days or more after the lapse of ten days, it shall not be menstrual blood, but shall be the bleeding of istihadah, though, to be more cautious, she should fulfill the duties of a woman having puerperal blood as well as one having

istihadah, in case she happens to be one not having a habit of definite number of days of menses, as mentioned before. According to the stronger opinion, it is not a condition that there should be an interval of minimum period of cleanness between this period and the previous menses. So if a woman sees blood for three or more days uninterruptedly or intermittently before the childbirth within a period of less than ten days, it shall be specifically menstrual blood, in case it conforms to her habit.

Problem #4: If bleeding continues for more or less than one month, and the period of her habit has passed in case she happens to be one having a definite habit, or ten days have passed in case she happens to be one not having a definite habit, it shall be declared Istihadah. Of course, after the lapse of ten days since the puerperal bleeding, there is likelihood of its being menstrual blood. If, however, she happens to be one having a definite habit (of menses), and the bleeding coincides with the period of habit, it shall be declared menstrual blood. Otherwise, the matter shall be decided according to the characteristics found in the blood as well as discernment, or according to the habits of the close relatives of the woman, or lastly, seven days shall be considered menstrual while the rest puerperal period, according to the details already given under (Chapter on) Menstruation, (q.v)

Problem #5: If the puerperal bleeding discontinues apparently, it shall be obligatory on the woman resorting to Istizhar as had already been mentioned under (Chapter on) Menstruation. If the bleeding has actually discontinued, it shall be obligatory on her to perform ritual bath like one having menses for all the things for which there is a condition of performing ritual bath.

Problem #6: The rules for a woman having puerperal blood are similar to those of a woman having menses, so that it is prohibited to have sexual intercourse with her, a divorce to her is invalid (given during Istihadah). It is also prohibited for her to offer prayers or keep fast, and similarly touching the written words of the Quran, or reading the Quranic Chapters containing sajdah, enter the Two Mosques, (namely, the Masjid-i Haram in Mecca and the Masjid-i Nabavi in Madinah), or staying in other mosques, as well as it is obligatory on her to make up for the fasts but not the prayers (she has given up during Istihadah), as well the other things the details of which have been mentioned under (Chapter on) Menstruation.

Rules Concerning Obligatory Bath for Touching the Dead

Touching the dead body of a person after it becomes entirely cold and before it is ritually washed, but not after it, is a cause for making it obligatory for the touching person to perform obligatory bath, even if the bath of the dead body has been performed in emergency, as when the dead body has been washed all the three times with pure water in the absence of availability of the Two Mixtures (the leaves of the Sidr or the Lotus Tree and camphor), or even if the dead body has been ritually washed by an infidel due to unavailability of a Muslim of the same gender, though according to the more cautious opinion, ritual washing the dead body by an infidel is not sufficient, and the ritual washing should be accompanied by Tayammum, in case of there being an excuse, though according to the more cautious opinion, it is otherwise. There is no difference if the dead body is that of a Muslim or an infidel, a minor or an adult, or even of an aborted child who has completed four months, whether it has been born alive or otherwise, whether it touches or is touched when the word touching is applied to it, so that the bath becomes obligatory even if the nail of a person touches the nail of the dead body. Of course, if the hairs of the dead body touch or are touched by a person, it shall not make it obligatory on the latter to perform ritual bath.

Problem #1: Touching a part of the body separated from a live person, falling under the category of the dead, makes it obligatory to perform the ritual bath, if it contains a bone. If however, it does not contain a bone, there shall be no obligation for a bath. It is more cautious to affiliate a bone without flesh to a part having flesh, though according to the stronger opinion, it is otherwise. However, touching any part of a dead body separated from it would entail the obligation for performing bath in case it happens to be one which would entail the obligation for bath had it been joined with the body.

A **Problem #2:** A martyr is like the dead who has been washed, and so touching him does not entail the obligation for performing bath. Likewise, touching the dead body of a person who has been sentenced to death due to Qisas (retaliation for murder) or Hadd (punishment by lash or death according to Islamic penal laws), so that he is ordered to be ritually washed before being punished by death.

Problem #3: If a person touches a dead body, but doubts whether he has done it before or after it had become cold, it shall not be obligatory on him to perform the ritual bath. The same rule shall apply in case he doubts whether the dead was a martyr or otherwise, contrary to the case when he doubts whether he has touched the dead before it was ritually washed or not, in which case it shall be obligatory on him to perform the ritual bath.

Problem #4: If a limb of a live person dries up and it becomes entirely lifeless, touching it would not entail obligation for ritual bath as long as it is not separated from the body of the person. It shall be obligatory to perform the ritual bath if it is touched after the limb has been separated from the body of the person, provided that it contains a bone; otherwise, there is difficulty (application of the rule to it).

Problem #5: According to the more cautious opinion, touching the dead nullifies ablution, and this opinion is not devoid of force. Therefore, it is obligatory to perform ablution after the performance of the ritual bath (to touching the dead) for all things for which the performance of ablution is a condition.

Problem #6: According to the more cautious opinion, it is obligatory to perform the ritual bath for touching any thing for which there is a condition of being clean of Minor Pollution (urination, etc.). Rather it is not devoid of force, and it is a condition in all those things for which there is a condition of cleanness, like prayers, obligatory circumambulation and touching the written words of the Quran. Rather, it is not devoid of force.

Problem #7: It is permissible for a person who has touched the dead to enter the mosques and holy shrines or staying in them, or reading the Quranic Chapters containing Sajdah and if she is a woman, it is permissible to have intercourse with her, so that touching the dead is like the Minor Pollution (urination, etc.), except that touching the dead makes it obligatory to perform the ritual bath for offering the prayers or the like.

Problem #8: Repetition of touching does not make it obligatory to repeat the ritual bath, like other pollutions, even if there are several things (or dead bodies) touched.

Chapter on Rules Concerning the Dead

It is obligatory for a person on whom the signs of death are apparent to fulfill the rights of mankind and rights of Allah and to return the things in his trust or to make a will in their respect with the assurance that it will be implemented. Likewise, if he has sufficient property, he should make will for the fulfillment of the obligations which cannot be fulfilled through an agent during one's life, like prayers, fasting and in most cases Hajj, or the like. It is upto the dying person to intimate the executor of his will of the matters which have to be performed by him on his behalf like prayers and fasting and make a will about them.

Problem #1: It is not obligatory (on a dying person) to appoint a Qayyim (administration) for his minor children, except when failure to do so would mean their loss, or the loss of their rights. If he appoints an administrator (for his children), the latter must be an honest person. Similarly, the person appointed by him for the fulfillment of obligatory rights must also be an honest person.

Problem #2: According to the more cautious opinion it is obligatory collectively on all the duty-bound persons, if carried out by some, others are relinquished of it, and if carried out by none all are considered to have committed a sin. Rather it is not devoid of force, that a Muslim person who is close to death should be laid on his back with his face towards the *Qiblah* with the soles of his feet and face towards the *Qiblah* in a way that while sitting his face should be towards the *Qiblah*, regardless whether the dying person is a man or a woman, a minor or an adult. It is more cautious to keep him in such position facing the *Qiblah* as long as he is not shifted from his dying place.

As regards keeping the dead person in such a position in all circumstances, even after finishing his ritual washing, according to the stronger opinion, it is not necessary, though it is more cautious to keep him in such position even afterwards. It is, however, better, rather more cautious even after finishing the washing of the dead until shrouding him to place him in a position as he used to be while praying.

Problem #3: It is recommended to recite the two formulas of testimony, (namely, There is no god but Allah, and Muhammad is His Servant and Messenger), acceptance of the Twelve Imams, Peace be upon them (as the leaders), and words of relaxation, shift him to his place of offering prayers (*Musalla*) when his agony of death becomes intense, provided that it is not troublesome for him, and to recite the two Quranic Chapters of *Ya-Sin* and *al Saffat* near him to bring quick comfort to him. Likewise, it is recommended to close both his eyes and mouth, bind his chin, straighten his hands on both sides, straighten his legs, cover him with a cloth, light a candle near him at night and make an announcement to the believers to be present in his funeral, and make haste in preparing him for burial, except in case of suspicion about his position, in which case it may be delayed until certainty is obtained about his being dead. At the time of his death, it is abominable to touch him, place any heavy thing on his stomach and leave him alone. Likewise, it is disapproved to let a person in a state of *Janabat* (pollution due to discharge of semen) or a menstruating woman come close to him at the dying moments.

Rules Concerning the Ritual Washing of the Dead

According to the more cautious opinion, it is obligatory collectively on all duty-bound persons to ritually wash a dead Muslim, even if he belongs to the opposite sect (i.e. a non-Shi'ah), if carried out by some, others become relinquished of it and if carried out by none all are considered to have committed a sin, so that it is more cautious to wash the non-Shi'ah person according to our ritual method as well as his ritual method. It is not permissible to ritually wash infidels or those considered infidels from among the Muslims, like the *Nawasib* (those openly hostile to Ahl al-Bayt) or *Khawarij* (those opposed to Imam Ali,) etc, whose details shall be given under (the Chapter on) *Najasat* (Unclean things and persons).

The children of Muslim parents, including even the illegitimate ones born of Muslim parents, are governed by the rules applicable to Muslims, and it is obligatory to ritually wash their dead bodies. Rather it is obligatory to ritually wash even an aborted child, provided that it has completed four months (in its mother's womb), and it is to be shrouded and buried in the usual way. If, however, the aborted child is less than four month, it is not obligatory to ritually wash it, and it is to be wrapped in a cloth and buried.

Problem #1: The ritual washing of a martyr is dropped, because he is considered to have been killed during Jihād along with the Imam, Peace be upon him, or his special deputy, provided that he has died in the battle-field while busy in fighting or otherwise, before the Muslims have found him alive. If, however, the Muslims have found him in the battle-field after the fight, and there was still a spark of life in him, according to the more cautious opinion, it shall be obligatory to ritually wash and shroud him if he has expired in the battle-field.

If he has died away from the battle-field, apparently it shall be obligatory to ritually shroud him.

A person killed while defending the faith of Islam shall be affiliated with the martyrs, so they shall neither be ritually washed, nor applied camphor or shrouded, but shall be buried in his own garments (he wore at the time of death). Of course, if he had no garments on his body (which were, for example, taken away by the enemy), then he shall be wrapped in a shroud.

Likewise, the ritual washing shall be dropped in case of a person who is to be killed by Rajm (stoning to death as a punishment for fornication) or Qisās (in retaliation for murder), because the Imam, or his special or general deputy orders him to be ritually washed, shrouded and applied camphor like a dead person, and then killed, and then people offer prayers (as offered for the dead) and bury him without ritually washing him (again). Apparently the person ordered to wash the person before being killed in punishment pronounces the Niyyat (ritual intention), although, according to the more cautious opinion, the person ordering the performance of the ritual washing should also pronounce the intention (Niyyat).

Problem #2: It is not obligatory to ritually wash a part of the dead body if separated before the ritual washing, provided that it does not contain a bone, rather, according to the more cautious opinion, it shall be wrapped in a piece of cloth and buried.

In case the part contains a bone other than of the chest, it shall be washed and buried being wrapped in a piece of cloth.

In case it is a bone alone (without flesh), it shall also be affiliated to it as regards burying; rather, according to the more cautious opinion, it shall also be affiliated to it as regards washing, though (an act) contrary to it shall not be devoid of force.

In case, it is a chest bone, or contains the chest-bone or a part of the chest which was be place of the heart when the person was alive, though not containing it now, it shall be ritually, washed, shrouded, offered prayers and buried. It may be confined to be shrouded in a cloth and wrapper. Except when it also contains a part of waist (it shall not suffice). If it contains some parts which touch the ground in prostration, those parts shall be applied camphor.

If a part was separated from the body of the person when he was alive, there is difficulty in affiliating it with what has been mentioned before relating to the dead, though caution should not be given up by affiliating it with it and by dissociating with it as regards touching it after being washed in case it happens to be a bone or contains a bone.

Problem #3: Ritual washing of the dead like his shrouding and offering prayers is the collective duty of all the duty-bound Muslims and if performed by some, it relinquishes the rest from their duty, though the foremost among the people are the foremost among the deceased's heirs, which means if the deceased guardian (foremost heir) intends to carry out the duty or appoints a person for this purpose, it is not permissible to interrupt him. Rather if some other person acts in this respect, according to the stronger opinion, he shall be required to obtain prior permission of the deceased's guardian, and his action is not permissible without the guardian's permission. Of course, this condition drops in case of the guardian's abstention or failure to take action in this regard, though it is more cautious to obtain permission of the heir of the next degree.

In case of negligence or absence of the Wali (guardian), it is not far from being obligatory to obtain the permission of the religious authority, and the permission includes clear or tacit approval or what is certain from the circumstantial evidence.

Problem #4: A Wali (guardian) means a person inheriting the deceased through parentage or matrimonial relation who is not to be interrupted and whose permission is obligatory to be obtained. The guardianship right of such heirs is arranged according to the degrees of inheritors, so that the heirs of the first degree are to be preferred to those belonging to the second degree and those of the second degree are to be preferred to those of the third degree.

In absence of the relatives on the maternal side, it is more cautious to obtain the permission of the master who has emancipated the deceased, then the person who has stood guarantee against offence of the deceased, and lastly the religious authority.

Among the degrees of the heirs, it is not far from force to give preference to males over females, but caution should not be given up by obtaining permission from the female heirs too.

Among the heirs, the adult ones are to be preferred to the minors, and those who are related to the deceased through both the parents are to be given preference over those related through one of the parents, and the paternal relatives are to be preferred to the maternal ones. Among the first degree, the father is to be preferred to the mother and children, and the latter to their children

Among the relatives of the second degree, the grandfather is to be preferred to brothers and sisters in one respect, though it is not free from hesitation. The brothers and sisters of the deceased are to be preferred to their own children.

Among the relatives of the third degree, the paternal uncles are to be preferred to the maternal uncles, and the latter are to be preferred to their own children.

Problem #5: A husband is to be preferred to all other relatives in placing the dead body of his wife in her grave, regardless whether she is a permanent or temporary wife, though there is difficulty in accepting this rule in case of the latter.

Problem #6: If the deceased has assigned some one other than the guardian for making arrangement for his burial, it shall be more cautious to obtain permission from him as well as the guardian.

Problem #7: It is a condition that the person washing the dead must be of identical sex, a male for a male and a female for a female, so that a male should not ritually wash the dead body of a female and otherwise, although the washing is done behind the curtain and without touching, except in case of a child not exceeding three years of age, in which case a male or female can ritually wash the dead body of the opposite sex, even if the body is naked.

There is, however, an exception for the husband and wife, as either of them is allowed to ritually wash the dead body of the other, in spite of availability of a person of identical sex and despite the dead body being naked, even with the permission to each of them to look at the private parts of the other, though with some repugnance.

There is no difference whether the wife is a free woman or a slave, permanent or temporary, or divorced revocable before the expiry of the 'Iddah for divorce, though there is difficulty in accepting the rule in respect of the last two.

Problem #8: There is no difficulty in the permissibility of a man ritually washing the dead body of his close relatives within the prohibited degrees, or otherwise, provided that there is no person of sex available, even if the dead body is naked, provided that its private parts are covered.

In case, however, there is a person of identical sex available, there is hesitation and difficulty (in the application of this rule), and so caution must not be given up.

Problem #9: A master can ritually wash the dead body of his slave girl, provided that she is not married (to some other man), nor is passing an 'Iddah (divorce given by some other man), nor Mubadah, or, according to the more cautious opinion, even a Mukātibah.

As regards the ritual washing of the slave girl by her master, there is difficulty (in its permission).

Problem #10: The dead body of a person of doubtful sex, in respect of being a male or female, due to its being a hermaphrodite, shall be ritually washed by a man or woman from behind a cloth (or curtain).

Problem #11: It is a condition that the person ritually washing the dead body (a Muslim) must be a Muslim, rather a Mu'min (i.e. a Shi'ah) in ordinary circumstances.

In case a washing person of identical sex available is confined to a Kitābi (Ahl-i Kitāb: a Jew or a Christian) man or woman, he/she should be ordered first to perform ritual bath, and then ritually wash the dead body (of a Muslim), and, if possible, not to touch the water or the dead body, or must wash the dead body in water in quantity of a Kur or running water.

If the available washing person of identical sex is a Kitābi or one belonging to the opposite (i.e. a non-Shi'ah) sect, the latter shall be preferred.

Problem #12: If a person of identical sex, although a Kitābi (Ahl-i Kitāb), is not available, according to the stronger opinion, the ritual washing of the dead body shall be dropped, and it is not far from being permissible to give up the ritual washing and bury the dead in its own clothes, in the same way as it is more cautious to dry up the dead body before burying it due to the possibility of some uncleanness left on the body which may pollute its shroud.

Problem #13: According to the more cautious opinion, there is a condition that the person performing the ritual washing of the dead body should be an adult. So, according to the more cautious opinion, it is not permissible for a discreet minor to perform the ritual washing of a dead body, even if his prayers are considered valid, as is the case according to the stronger opinion.

Procedure of Washing the Dead

First of all it is obligatory to remove the uncleanness from the body of the dead. According to the stronger opinion, it is sufficient to wash each part of the body before performing its ritual washing, although it is more cautious to clean the entire body before beginning to perform its ritual bathing.

It is obligatory to ritually bath the dead body thrice ; firstly, with the water mixed with the leaves of the lotus tree (Sidr); secondly with the water mixed with camphor; and thirdly with pure water.

If the above order has not been observed, it should be repeated in the above order so that the above order may be observed.

The procedure of each of the three baths shall be similar to that of an obligatory bath for *Janābat* (pollution due to discharge of semen).

The ritual bath of the dead body shall start from the head and the neck, then the right side, followed by the left side. According to the more cautious opinion, it is not sufficient to dip the body in water in the three baths, so that each time a single dipping may be sufficient. Of course, it is permissible in the three ritual baths to dip each part of the body in a large amount of water observing the necessary order.

Problem #1: It is a condition in the leaves of the lotus tree and camphor each to be in such a quantity that the water may be considered to have been mixed with each of them, while the water may remain in a state of purity.

Problem #2: If out of the leaves of the lotus tree and camphor any or both of them are not available, according to the more cautious opinion, the ritual bath of the dead body shall be performed with pure water in place of what is not available, rather its obligation is not devoid of force. The bath shall be performed with the intention of being compensatory, observing the necessary order.

Problem #3: If water is not available, Tayammum shall be performed thrice in place of the three baths in the necessary order, but, according to the more cautious opinion, another Tayammum shall be performed with the intention of being in place of all, though, according to the stronger opinion, it is not necessary.

Tayammum shall also be performed if the dead person has been wounded, burnt or infected with small-pox in a way that there is fear that his skin will be split if washed. Caution should not be given up by performing the Tayammum by the live person as well as with the hand of the dead person, if possible, though sufficiency of the Tayammum, being performed by the hand of the dead, if possible, is not far from being permissible. It is sufficient to strike the face and both hands (on the earth) once, though, to be more cautious be done repeatedly. sufficient to strike the face and both hands (on the earth) once, though, to be more cautious, it should be done repeatedly.

Problem #4: If there is no water except in a quantity that is sufficient for the performance of a single bath, the dead body shall be bathed once followed by two *Tayammums*.

If there are both the things to be mixed with the water, (namely, the leaves of the lotus tree and camphor) and the leaves of the lotus tree alone, the water shall be spent in the first bath followed by *Tayammum* for the other two baths.

According to the stronger opinion, the same shall be the case if both the things to be mixed with the water (namely, the leaves of the lotus tree and camphor) are not there, though it is a distant likelihood of being obligatory to use the water for the third bath, and perform *Tayammum* for the first two baths. The cautious way is to observe both the possibilities by performing *Tayammum* in place of the first two baths respectively by way of caution, and then two *Tayammums* should be performed with the intention of caution, one in place of the second bath and the other in place of the third. If there is camphor alone, it shall be used in the first bath, followed by two *Tayammums* for the second and third baths, though there is a distant likelihood of using the camphor for the second and *Tayammum* should be performed for the first and the third baths. It is more cautious to perform *Tayammum* first in place of the first bath, then the bath should be performed with the water mixed with camphor with the intention of being a bath in place of the water mixed with the leaves of the lotus tree or its being the second bath. Then two *Tayammums* should be performed, one in place of the water mixed with camphor and the other in place of the bath with pure water. If there is water sufficient for two baths only, then if there are both the things required to be mixed with the water, they shall be used in the first two baths, and *Tayammum* shall be performed for the third bath. The same shall be the case if there were only one or none of the things required to be mixed with the water.

Problem #5: If the dead person had tied *Ihram* before death, he shall be bathed thrice like one who has not tied *Ihram*, but the water shall not be mixed with camphor in the second bath, except when his death has occurred after having the shaving the head during *'Umrah*, and after Sa'y during *Hajj*. Likewise, he shall not be applied camphor except after the two cases.

Problem #6: If *Tayammum* has been performed due to inability to perform the ritual bath, or the dead body has been bathed with pure water due to unavailability of the things to be mixed with water (namely, the leaves of the lotus tree and camphor), and then the excuse is removed, then if it occurs before burial, it shall be obligatory to perform the ritual bath in the former case, and according to the more cautious opinion to repeat the bath after mixing the water with the things required to be mixed with it in the latter case. If, however, it has occurred after the burial, then it should be treated as something that has already passed.

Problem #7: If the performance of the ritual bath for *Janabat* (pollution due to discharge of semen), menses or the like has been due to be performed by the dead before his death, then the performance of the ritual bathing after death shall be sufficient.

Problem #8: If a dead person has been buried without the ritual bath or due to forgetfulness, it shall be obligatory to exhume the dead body for bathing it, if there is no excuse like dishonoring the dead due to the decomposition of the body, or harm to the living persons due to its stink or (the trouble caused by the necessary) arrangement of the bath and burial. The same rule shall apply in case some of the baths have been given up, or later it transpires that they were void. The same rule shall apply if the dead body has been buried without being duly shrouded. If the dead body has been buried with a usurped shroud, and there is no due excuse for exhuming the body, it shall be obligatory (to exhume and bury it with a lawful shroud). If there are any of the excuses mentioned before, then there is difficulty (in permissibility of the exhumation). According to the cautious opinion, the person from whom the shroud has been usurped shall receive its price. If, however, the usurper happens to be the dead person himself, then according to the stronger opinion, it shall be permissible to exhume his body even if it involves dishonor to the body. If, (after burial), it transpires that prayer has not been performed for the dead, or it is learnt that the prayer was invalid, it shall not be permissible to exhume the body; rather prayer shall be performed at his grave.

Problem #9: It is not lawful to charge some remuneration for performing the bathing of the dead, except when the remuneration is charged for some things not obligatory, for example, softening the fingers and joints of the dead, washing both the hands of the dead upto half a cubit before the bath, washing the head of the dead with the lather of the leave of the lotus tree or marsh mallow, washing the private parts of the body of the dead with (the lather of) the leaves of the lotus tree or saltwort or drying up the body (after the completion of the ritual bathing) with clean cloth, or the like.

Problem #10: If the body of the dead becomes unclean after the ritual bath or during its performance due to the discharge of unclean matter or due to some external unclean matter, according to the stronger opinion, it is not obligatory to repeat the bathing even in case of excretion of urine or feces, though it is more cautious to repeat it if it has occurred during the performance of the ritual bath. Of course, it is obligatory to remove the refuse from the body of the dead. It is more cautious to do so, even if it was after placing the dead body in the grave, except when there is some due excuse even if it causes dishonor to remove the dead body from the grave.

Problem #11: It is not obligatory to wash the plank or cot on which the dead body has been ritually washed after the completion of each of the three baths. Of course, it is more cautious to wash it for bathing another dead body, though according to the stronger opinion it also becomes clean with the washing of the dead. The same rule applies to the cloth placed on the dead body, as it also becomes clean with the washing of the dead.

Problem #12: It is more cautious to place the dead body facing the *Qiblah* at the time of the ritual bath in the same position as it was placed at the time of breathing the last, though, according to the stronger opinion, it is one of the *Sunnah* (recommended) practices.

Problem #13: According to the most valid opinion, performance of ablution is not obligatory for the dead body. Of course, it is strongly recommended; rather it is more cautious, and it should precede the ritual bath.

Etiquettes for Washing the Dead

The etiquettes of washing the dead include the following practices:

The dead body should be placed on a plank or cot, and its shirt should be removed from the side of the legs, though it may cause ripping it open, but at the time of removing it, to be more cautious the consent of the deceased's heirs must be kept in view; the dead body must be under a shade of roof, a tent or the like; the private parts of the dead body must be covered, even if no one is looking at them, or even if the bath is being performed by a person who is allowed to look at them; the fingers and joints of the dead body should be gently softened; both the hands of the dead must be washed upto half a cubit before the bath, and its head must be washed with the lather of the leaves of lotus tree or marsh mallow, both its private parts must be washed with (the lather of the leaves of the lotus tree or saltwort before the ritual bath; the dead body must be rubbed gently in the first two baths, except when the dead body happens to be of a pregnant woman; in each bath, each of the parts of the dead body must be washed thrice, so that the total washing takes place twenty seven times; the dead body must be dried up with a clean cloth after completion (of the ritual bath),and the like.

Problem If some thing falls from the body of the dead like (a piece of) skin, a hair, a nail or a tooth, it shall be placed with the dead body in its shroud and buried.

Rules Concerning Shrouding the Dead

Like the ritual washing of the dead, its shrouding is also a collective duty of all the Muslims (which if performed by some, relinquishes others from it, and if carried out by none, all are considered liable for the commission of the sin).

The shroud includes the following three obligatory things:

Firstly, an apron to cover the body from the navel to the knee;

Secondly, a shirt, according to the more cautious opinion, it must cover at least upto half of the shin; and

Thirdly, a loincloth to cover the entire body, so it is obligatory that its length must exceed the length of the body, and its width must be such that one of its side may be placed on the other and, when wrapped, may cover the entire body. In case it is not possible to provide all the pieces of the shroud, then whatever is possible may be provided, so that if there are two pieces of cloth, the one having more covering capacity must be preferred. Even if only so much of the shroud is possible as may cover both the private parts, it shall be obligatory (to provide even that much).

Problem #1: It is not permissible to use usurped shroud for the dead, even if in case of emergency, nor of cloth made of pure silk, even for a child or a woman, nor made of skin of a dead (animal), or made of an unclean thing, including even an unclean thing which is allowed in offering prayers, nor made of the skin, hair or fur of an animal whose meat is forbidden for eating, or, according to the more cautious opinion. even made of skin of an animal whose meat is allowed for eating, excluding its wool, hair and fur, as there is no objection (in using them for shroud).

Problem #2: The absence of permissibility for what has been mentioned before except the usurped things is applicable particularly in case of option; otherwise. they are permissible in case of emergency; rather if the skin of an animal whose meat is allowed for eating is used in a way that it may be treated as a cloth, it is also permissible where there is an option.

In case, however. it is not treated (as a cloth); it cannot be used even in case of an option. (In case clean cloth is not available), unclean cloth shall be given preference over other things, then, according to the more cautious opinion, a silken cloth, and then the skin of an animal whose meat is allowed for eating, and then other things.

Problem #3: If the shroud becomes unclean before the dead body is placed in the gravel it is obligatory to remove the unclean objects from the shroud by washing or cutting as much as may not cause any deficiency in the shroud.

The same rule shall apply even if the dead body is placed in the grave, in which case it is better to cut the unclean part of the shroud.

In case it is not possible to wash the unclean part of the shroud when it depends only on taking the dead body out of the gravel it shall be indispensable to cut the unclean part of the shroud, as also it shall be indispensable to wash the unclean part of the shroud if it is not possible to cut that part due to depriving the shroud of its purpose of covering the body of the dead.

Of course, if washing the unclean part of the shroud depends on taking the dead body out of the grave, causing thereby dishonor to it, then it shall not be obligatory (to wash the unclean part of the shroud); rather it shall not be permissible (to do so).

In case both the things (namely, washing or cutting) are not possible, then the shroud shall be changed, if possible, when it does not cause dishonor to the dead body; otherwise, it shall not be permissible (to do so).

Problem #4: The (expenses on the) shroud shall be taken out from the actual amount of inheritance, besides the other exceptional things, and given preference over the other dues, legacies, and (shares of the heirs in the) inheritance. Apparently an amount according to the prevalent custom which is in conformity with his social position shall be taken out, and so also the other expenses on the burial arrangement. Of course, caution should not be given up to avoid anything more than what is necessary at the same time preventing any dishonor to the dead. Likewise, the expenses on the actual water, leaves of the lotus tree, camphor, price of land, wages of the porter, grave-digger, etc. shall be defrayed out of the amount earmarked for the burial arrangements, including even the amount charged by the government for burying the dead in the land belonging to none.

If the property left by the deceased belongs to some other persons due to insolvency of the deceased or its being mortgaged, even then apparently preference shall be given to the amount earmarked for his burial. Of course, there is difficulty in giving preference to it over the payment for the crime committed by the deceased (like compensation for murder by the deceased).

In case no property is left by the deceased to defray the burial expenses, he shall be buried naked (i.e., without shroud), and the Muslims shall not be bound to pay its expenses, though it is recommended to do so.

Problem #5: The expenses on the shroud and other arrangements of burial of the wife are borne by her husband, although the wife may be quite well-off, regardless whether she was an adult or a minor, sane or insane, a free woman or a slave-girl, consummated or otherwise; obedient or contumacious.

In case of a temporary wife, there is difficulty (in declaring the husband responsible to bear the expenses of her burial), particularly if the term of the temporary marriage is too short. Caution should not be given up in case of a revocably divorced wife; rather the expenses on her burial shall be borne by her husband.

Problem #6: If the shroud for a dead woman is arranged by a person voluntarily without being a disgrace for her, her husband shall be absolved of its liability.

Problem #7: If the husband dies after, before or with his wife, and has left property sufficient for meeting the burial expenses of a single person, then preference shall be given to meeting the expenses for the husband's burial over those of the wife.

Problem #8: If the husband is in straightened circumstances, the burial expenses shall be defrayed from the property left behind by the wife.

If the husband becomes well off after the burial of the wife, her heirs shall not be entitled to demand the recovery of the expenses on her burial from him.

Problem #9: It is not obligatory on a man to bear the expenses of the close relatives whose maintenance he is liable to pay other than his wife.

Of course, the burial expenses for the slave- girl are borne by the master, except the one who is married (to another man), in which case the expenses on her burial shall be paid by her husband.

Recommended Things for the Shroud and its Etiquettes

Besides the three obligatory pieces of shroud, it is recommended to cover (the dead body of each man or woman upto the two thighs with a piece of cloth, the cloth being three and a half cubits long and one to one and a half span of the hand wide which should be bound strongly from both the loins, then wrapped very tightly on the two thighs in a way that nothing should be visible from them until it reaches both the knees, then its upper part should pass from under both the legs to the right side and placed at the place where the wrapping ends, then something of cotton be prepared and placed between both the buttocks in a way that it may cover both the private parts after sprinkling some fragrant powder on it. Before wrapping with the said piece of cloth some cotton must be placed inside the anus if there is fear of something coming out of it, and rather in the genital organ of the woman too, particularly when there is fear of discharge of puerperal blood or the like from it. Then another sheet in addition to the obligatory one must be placed over the body, which is preferably to be a Yemenese sheet, rather, according to the stronger opinion, it is recommended that there should be a third sheet, particularly for a woman.

For a man, there should be a turban bound round his head in a way that its two sides should pass from under his chin and its right end should fall on the left and vice versa, then both the ends should extend to his chest. For a woman particularly there should be a veil in place of a turban and a sheet to cover both the breasts upto her back. It is also recommended that the shroud should be new, made of a clean material without any suspicion (of uncleanness), and that it should be made of cotton. It should be of white color except in case of the (Yemenese) shawl (Habarah). It is better that it should be red (Yemenese) sheet and that it should be made of the cloth which the person has used for *Ihram* or which he has used while praying. If the shroud is to be stitched, it should be stitched with the yarn of the shroud itself, and on each of the pieces of cloth some camphor and fragrant powder must be sprinkled. On edges of all the pieces of the shroud and both the palm branches (stripped of leaves) should be written (in Arabic) that: "Such person, son of such person, bears testimony that there is no god but Allah. He is One. He has no Partner And Muhammad is His Messenger. Allah's Blessings be on him and his Posterity. And that Ali, Hasan, Husayn (upto the last Imam) are his Imams, his Masters and his Leaders. And that Resurrection, Reward and Punishment are true."

Similarly, it is also recommended that the *Jowshan al-Kabir* should also be written on the shroud. Of course, it is better, rather more cautious that all these words should be written on what is certainly believed to be safe from uncleanness and filthiness. It is more cautious to avoid writing these words in places which according to the custom are considered repugnant to their honour. It is better that if the shrouding of the dead body is being done by the person who has ritually washed the dead, then, before shrouding the dead, he (or she) should perform bath for touching the dead body as well as ablution. In case, it is some one other (than the person who has ritually washed the dead body), then he should first clean himself of the Major and Minor Pollutions.

Rules of Camphorating (*Hunut*) the Dead Body

Camphorating (anointing the dead body with camphor) is, according to the most authentic opinion, obligatory, regardless whether the dead person is an adult, a minor, male or female. As already mentioned, it is not permissible to camphorate a person who has tied *Ihram* (for *Hajj* or *Umrah*). It is a condition that the camphorating must be done after the performance of the ritual bath or *Tayammum* (of the dead). It is permissible to camphorate before, during and after shrouding, though the first one is the most preferable.

Its procedure is that camphor is anointed on all the seven parts of the body used in prostration. It is recommended to add the side of the nose; rather it is more cautious to do so. It is not far from being recommended to camphorate both the armpits, chest and joints. It is preferable to do so with the intention of hope, and it cannot be replaced by any other fragrance, even if needed.

Problem #1: No particular amount of camphor is obligatory while anointing, but what is obligatory is to use as much of camphor as may be called anointing with it. The most preferable is seven mithqals of treasures (sayrafi), inferior to it in degree of preference is four canonical (shar'i) mithqals, and then (weighing) four Dirhams, and then one canonical (shar'i) mithqal, and inferior to it is one Dirham (in weight). If it is not possible even to the extent of being nominal, then the dead body shall be buried without camphorating it.

Problem #2: It is recommended to mix the camphor with an amount of the holy dust of (of Imam Husain's grave), but then it should not be anointed on places repugnant to its honour, like the two toes of feet.

Rules Concerning the Two Palm Branches

It is among the emphatically recommended things to place two fresh branches with the irrespective of his being an adult or a minor, male or female. Placing them with a child is with the intention of hope (that it would be agreeable to Allah). It is most preferable that the two branches must be of a palm tree, in case they are not available, then of a lotus tree; otherwise, of a willow (tree), a pomegranate (tree), or any fresh tree. It is better that each of them should be equal to the arm bone in length, though the most permissible being at least of the span of the hand and at the most a cubit long. It is better to place one of them on his right side near his collar bone, sticking to his skin, and the other on the left side, close to the collar bone reaching above the shirt upto the covering sheet.

Rules Concerning the Funeral of the Dead

The attendance in the funeral of the dead has lot of virtue and reward. It has been said in a Tradition (of the Holy Prophet): “Whosoever participates in the funeral (procession) of the dead, for every step he takes until he returns has (a reward) of hundred billion (thousand thousand) good deeds and one hundred billion (thousand thousand) sins are forgiven, and his rank is elevated by a hundred billion (thousand thousand) degrees. If a man offers prayers for the dead, a billion (thousand thousand) angels shall accompany him and ask pardon for him. If a man attends the burial of the dead, Allah appoints a hundred billion (thousand thousand) angels to ask pardon for him until he resurrects from his grave. Whoever offers prayer for the dead, Gabriel and seventy billion (thousand thousand) angels shall offer prayers for him, and all his previous sins shall be forgiven. If he stays there till the dead is buried, and throws dust on his grave, and returns from the burial, then for every steps he takes on returning to his house, he shall get a Kerat of reward, a Kerat being equal to Mount Uhud which thrown in his account as a reward”.

Etiquettes of the Funeral

As regards the etiquettes of the funeral, they are also numerous.

Firstly, that those who carry the bier of the dead should recite (in Arabic):“Bismillàh, va ãh, va Sallallàhu ‘ala Muhammadin va al-i Muhammad. Allàhummaghfir lil-Mu’mini na val- Muminat”.

Secondly, that the dead body should be carried on the shoulders, not on a beast of burden, or the like, except due to some due excuse like (long) distance, so that they may not be deprived of the virtue of carrying the dead on the shoulders. It is however, not known whether it is abominable to carry the dead on a beast of burden.

Thirdly, that one who participates in the funeral (procession) should fear God, pondering the time and imagining as if it is he himself who is being carried, and he has asked for his own return to the world, and it has been granted.

Fourthly, that those participating in the funeral (procession) should walk on foot as riding is disapproved, except with due excuse. Riding, however, is not disapproved while returning after the funeral.

Fifthly, that one should walk behind the (bier of the) dead, or on its both sides, though it is ore preferable to walk behind it.

Sixthly, a participant in the funeral (procession) of the dead should hold all the four ends of bier (one by one). It is more preferable to start from the front of the bier on the right side of the dead and place it on his left shoulder, then place the other right side on his right shoulder, then the other left side on his left shoulder. Then he should shift to the front on left side, and place it on his left shoulder.

Seventhly, the most grieved mourner of the deceased should walk barefooted, put aside his cloak or change his appearance in some other way, fit for the mourner, so that he could be (easily) recognized.

It is disapproved to laugh, engage in frolics, or for one other than the chief mourner the dead to put aside his cloak, or walk quickly in a way that may be discourteous to the dead, particularly when it is the form of running ; rather, those participating in the funeral (procession) should adopt moderation in walking. It is also disapproved to carry fire behind the bier, except a lamp, rather to carry (in the funeral procession) any lighted thing at all. It is also undesirable for a sitting person to stand up at the time the funeral (procession) is passing, except when the dead happens to be an infidel in which case a (sitting) person may stand up. It is better for women not to participate in the funeral procession, even if the dead were a woman. It is not far from being disapproved for young women to participate in the funeral (procession).

Rules for the Prayer for the Dead

It is obligatory to offer prayer for every Muslim (dead person), even if he belongs to the opposite (non-Shiah) sect. However, if he is an infidel of any category whatsoever, even if he is an apostate, or one who is declared a non-Muslim even if he unduly assumes the title of Islam like Nawasib (openly hostile to Ahl-i Bayt) or Khawārij (i.e, those who oppose Imam Ali), it is not permissible to offer prayers on their dead.

If a dead body is found in a Muslim town, he shall be affiliated to Muslims.

The same rule shall apply to a foundling who is found in a Muslim town.

If, however, a foundling is found in a town of the infidels where Muslims also reside, there is likelihood of its belonging to them; there is difficulty (in accepting this likelihood).

The children born of Muslim parents, as far as the obligation for offering prayers on their dead body is concerned, are treated as Muslims like their parents, even if they are illegitimate children born of Muslim parents, provided that they are six years old. In case a child who was born alive, but who has not attained the age of six years, there is hesitation (in the application of this rule being desirable).

If a child is born dead, even if soul was breathed into it, (while still in its mother's womb), it is not desirable (to offer prayers on its dead body).

It has already been mentioned that a part of the body, if it is chest or one containing chest or part thereof which was the place of the heart, even if it does not contain it now, shall be treated as the whole body as far as the obligation for offering prayers on it is concerned.

Problem #1: The time for offering the prayer for the dead body is after the completion of its washing and shrouding, and it is not lawful to offer the prayer before the completion of these two formalities.

The obligation for offering the prayer does not drop even if it is not possible to wash and shroud the dead body, in the same way as it does not drop even if it is not possible to bury the dead body.

If a dead body is found in a waterless desert, and it is not possible to wash, shroud or bury it, prayer shall be offered for it, and it shall be left (in the desert). The conclusion is that whatever is not possible from the obligatory things shall drop, and whatever is possible is established (as obligatory).

Problem # 2 It is a condition for the person offering prayer for the dead body (a Shi'ah Muslim) that he should be a Mu'min (i.e. a Shi'ah), and the prayer of a person belonging to the opposite (non- Shiah) sect is not enough, not to speak of prayer offered by an infidel.

According to the stronger opinion, it is not a condition for a person offering prayer for the dead to be an adult, as a prayer offered by a discreet child is also valid, but there is hesitation in his prayer being sufficient without the participation of adult duty-bound (*Mukallaf*) persons.

It is also not a condition that the person offering the prayer for the dead must be a male, so that the prayer offered by a woman, even for a man, is valid. The absence of males is not a condition for the validity of the prayer offered by a female, but in the presence of males, they are to be preferred to the females; rather, it is more cautious (to do so).

Problem #3: As regards offering prayer for the dead, though it is a collective duty of all the Muslims (which, if offered by some, its obligation is relinquished from others, but if carried out by none, it means commission of a sin by all), except that, like all the other funeral arrangements, here too preference is to be given to him who enjoys preference over others among the heirs of the dead, so that if he intends to do it by himself, or assigns the job to someone else, he is not to be opposed; rather the validity of an act performed by any other person requires his prior permission. If the deceased has willed that a particular person should offer prayers for him, his guardian must permit him to do so, and it is upon the person appointed by the deceased by will to perform the job after obtaining permission from the guardian of the deceased.

Problem #4: It is recommended to offer the prayers collectively (al-Jamā'ah). It is a condition that all the qualifications required in the person leading the other prayers (Imam), like moral soundness (Adalat) and the like, should also be found in the person leading the prayers for the dead; rather all the conditions required in a congregational prayer (al-Jamā'at), like the absence of any obstacle, or the like, must also be found in the congregational prayer offered the dead, though it is not far from being likely that none of the conditions required usually for the person leading the prayers and the congregational prayers are required here except what is required to treat them as such according to the custom, like absence of excessive distance or thick obstacle. (Contrary to the usual congregational prayer), the person leading the prayer for the dead does not recite anything in place of those following him in the prayer (so that those following him in the prayer have to recite every word of the prayer for the dead).

Problem #5: It is permissible for several persons to offer prayer individually for a single dead person, or in the form of several congregational prayers, and it is permissible for each of them to intend offering the prayers as obligatory as long as none of them has finished the prayer; otherwise, the remaining persons should intend to offer the prayer as recommended one or for closeness (to Allah). The same rule applies in case there are several persons offering the prayer in a single congregational prayer (for the dead).

Problem #6: It is permissible for a person standing behind the leader of the prayer (Imam) to intend to offer prayer individually during the prayer for the dead, provided that he is not at a distance from the dead body which is harmful for the prayer nor outside the limits required for the person offering individual prayer.

Procedure for Offering Prayer for the Dead

The prayer for the dead (is performed in Arabic and) consists of five Takbirs (saying: Allah-o-Akbar, (Allah is greatest)). The first Takbir is followed by the two Testimonies, the second by sending Blessings on the Prophet and his Progeny, the third by praying for the believing men and believing women, the fourth by praying for the dead, the fifth by concluding the prayer.

Less than five Takbirs are not permissible, except by way of Taqiyyah (dissimulation of one's faith in the face of threatening death). The prayer for the dead has no Adhān (the Call for prayer and no iqāmat (the short Call just before beginning Prayer), no Qirā'at, no "Ruku" (Kneeling), 'Sajdahs" (Prostrations) and no 'Tashahhud' (reciting the Two Testimonies) and no "Salām" (i.e., the Three Salutations at the end of the usual Prayer). It is sufficient to name those referred to in the four Takbirs. So after the first Takbir one should say: "I bear witness to that there is no God but Allah, and I bear witness to that Muhammad is (his Servant and) His Messenger; after the second Takbir: "O Allah, send Blessing on Muhammad and the Progeny of Muhammad"; after the third Takbir: "O Allah, Forgive the Believing Men and Believing Women", and after the fourth Takbir: "O Allah, Forgive this dead person". Then one should (recite the fifth Takbir) saying: "Allāh-o- Akbar" (Allah is the Greatest), and (thereby) conclude (the prayer).

It is better that after the first Takbir one should say (in Arabic) "I bear witness to that Allāh is One. He has no Partner. He is One god, the Matchless, the Eternal, the Single one, the Everlasting, the Endless, the Ever- Enduring. He has no Female Companion, nor a Child. And I bear witness to that Muhammad is His Servant and His Messenger. 'He has sent him with Guidance and True Faith, so that he may make it prevail over all the beliefs, even if it be undesirable for the Polytheists' (see Sūrah Al-Saff, verse No.9)."

After the second Takbir one should say (in Arabic): "O Allah, send Blessing on Muhammad and the Progeny of Muhammad, and send benediction on Muhammad and the Progeny of Muhammad, and have Mercy on Muhammad and the Progeny of Muhammad, even more than Thou sent Blessing and Benediction, and had Mercy on Abraham and the Progeny of Abraham. Certainly Thou art Praiseworthy and Glorified. And send Blessing on all the Prophets and Messengers.

After the third Takbir, (one should say in Arabic): "O Allah, forgive the believing men and believing women, and the Muslim men and the Muslim women, the living from among them and the dead. O Allah, let them and us be followed by Virtues. Certainly thou hast Power over every thing.

After the fourth Takbir, (one should say in Arabic): "O Allah, this shrouded man in front of us is thy servant, son of thy servant and thy maid servant. He has come down to thee and thou art the best of those to whom one may come down. O Allah, thou hast taken out his soul to thee. He needs thy Mercy, and thou art in no need to punish him. O Allah, certainly we have no knowledge about him but of virtue, and thou hast better knowledge about him than ourselves. O Allāh if he was virtuous,

then increase his good deeds. If he was an evil doer, forgive his evil deeds, and forgive us and him. O Allah judge him among those who are friendly to him and love him and keep him away from those who keep away from him and who loathe him. O Allah affiliate him with thy Prophet and introduce him to the Prophet and the Prophet to him, and have Mercy on us when we die, O Lord of the Universe. O Allah write down his name among those having the highest status with thyself, appoint as his successor behind him those who are left behind, place him among the friends of Muhammad and his purified Progeny, and Bless him and us with thy Mercy, O Most Merciful among the merciful. O Allah, (we ask) thy Pardon, Thy Pardon, Thy Pardon.”

If the dead be a female, then in the above prayer, instead of the words: “This shrouded manthy maid servant”, one must say: “This shrouded woman in front of us is thy maid servant, and the daughter of thy servant and maid servant”, and instead of masculine pronouns use the feminine pronouns.

If the dead were a child, in the fourth part of the prayer, one must pray for its parents and say “O Allah make him for his parent and for us an excessive reward in advance.”

Problem #1: The masculine pronouns can be used for both the males and females. Masculine may be used in view of the words for the dead and the person are masculine in Arabic, while the word “Janāzah” (meaning the bier or funeral procession) is a feminine noun in Arabic and so one can use feminine pronouns for it.

In case it is not known whether the dead is a male or female, it makes matters easy, and in that case there is no need of repeating the prayer and pronouns.

Problem #2: If a man doubts between the minimum and maximum Takbirs in prayers for the dead, according to the more cautious opinion, he shall recite both the minimum and maximum Du’ās with the intention of hope (that it would be desirable to Allah). If, for example, he doubts between two and three, he shall decide in four of the minimum (i.e. two), and send Blessing on the Prophet and his Progeny, Blessing and Peace be upon them and pray for the believing men and women, and then recite Takbir and pray for the believing men and women, and pray the dead and recite Takbir and with the intention of hope (that it would be desirable to Allah), he shall pray for the dead and recite Takbir.

Conditions for the Prayer for the Dead

In the prayer for the dead it is obligatory to have the intention of closeness (to Allah) and specify the dead in a way that would remove confusion, even if he intends to offer the prayer for the dead lying before him and as specified by the person leading the prayer (Imam). It is also obligatory to face the Qiblah, stand up and place the dead in front lying on its back parallel to himself when a person is leading the prayer or is offering the prayer individually, contrary to the case when he is behind the person leading the prayer in the row parallel to him. It is also obligatory that the head of the dead should be on the right side of the person offering prayer and its legs on his left side, and that there should be no obstacle between the dead body and the person offering prayer like curtain due to wall due to which the prayer offered by him may not be treated to have been offered for the dead or due to which the prayer offered by him may not be treated to have been offered for the dead body, except when the dead body is placed in a bier or the like lying before the person offering the prayer. It also obligatory that there should not be so much distance between the dead body and the person offering the prayer on it that the person offering the prayer may not be treated as one standing (for offering the prayer) for the dead body, except when he is offering the prayer behind another leading the prayer standing in rows joined with one another.

It is also obligatory that the dead body and the persons offering prayer should not be inordinately higher than each other. It is obligatory that the prayer should be offered after the completion of washing, shrouding and camphorating the dead, except in case of a person when they have been dropped, as in case of a martyr, or in case of a person for whom they are not possible (or available), so that in their case prayer shall be offered without the performance of the above formalities. It is also obligatory that the private parts of the dead body should be covered. Even in case of a person whom it has not been possible at all to shroud, if it is possible to cover his private parts with some thing before he is placed in the grave, they should be covered and then prayer offered on him. Otherwise, his grave shall be dug, and he shall be laid on his back, hiding his private part with unbaked, stones or earth, and then prayer shall be offered on him. After the prayer he shall be laid in the way it is obligatory to do and buried in his grave.

Problem #1: It is not a condition to be clean of ritual impurity and refuse in a prayer for the dead, nor other conditions required in prayer having kneeling and prostration necessary in it. It is also not a condition to remove other obstacles except those like laughter or speech, so that caution should not be given up in its case, rather it is more cautious to observe all the conditions required in usual prayer.

Problem #2: If it is not possible at all to face the Qiblah, its condition shall be dropped. If the Qiblah becomes doubtful, and it is not possible to obtain knowledge about it and the signs which are referred to in absence of the knowledge are also not present, action shall be taken according to assumption, if possible. If it is not possible, prayer shall be offered in all the four directions.

Problem #3: If the person offering prayer is not able to stand, and there is no person available who may offer prayer while standing, he shall be required to offer prayer while sitting. If there is some one who can offer prayer while standing, it shall be obligatory on him personally. Apparently his prayer shall not make good the one due the incapable. If, however, the capable person commits disobedience, and does not perform his duty, then it shall be obligatory on the incapable person to perform his duty. In case of unavailability of a capable person, the incapable person offers prayer while sitting, then according to the more cautious opinion, the capable person shall repeat the prayer, though the sufficiency of the former is not devoid of significance. Of course, according to the stronger opinion, it would be otherwise, in case the incapable person believes that there is no capable person, then it transpires otherwise, and it appears that the capable person was already there.

Problem #4: If a person finds out a person to lead the prayer during the performance of the prayer, it is permissible to let him enter along with him, and he shall follow the leader in the latter's Takbir, and shall treat his first Takbir the start of the prayer. So he shall recite the Two Testimonies. When the person leading the prayer, for example, recites the third Takbir, he shall also recite it with him, and it shall be the third for him too. Then he shall send Blessing on the Prophet and his Progeny (Peace be upon them). When the person leading the prayer finishes the prayer, he shall complete the Takbirs with the Du'ās, if he is able to do, though in a brief way. If the people do not let him do so, he shall confine himself to the Takbir without Du'ā in the place where he happens to be standing.

Problem #5: The liability for prayer does not drop from the duty-bound, until some of them do not perform it in the proper way. In case there is doubt as to whether the prayer has been offered for the dead or not, judgement shall be given against it. If, however, it is known that the prayer has been offered, but there is doubt about its being valid or not, judgement shall be given in favour of its validity. If it becomes certain that the prayer offered has not been valid, it shall be obligatory to offer it again even if a person offering the prayer was sure of its validity. Of course, if a person offering the prayers differs from the other from the point of view of Taqlid or Ijtihad, so that he believes that the prayer was valid from the point of view of Taqlid or Ijtihād, while it was invalid according to the other from the point of view of both Taqlid and Ijtihad, then there is a significance for its being sufficient is not free from difficulty. So caution should not be given up.

Problem #6: It is obligatory to offer the prayer before burial and not after it. Of course, if a person was buried before the prayer due to omission or some other excuse, or the prayer transpires to be invalid, it shall not be permissible to exhume the dead body for the sake of offering prayer; rather, the prayer shall be offered on his grave, observing the necessary conditions like facing the Qiblah, etc. unless so much of time has not passed since the burial that it may no longer be considered to have died presently. Rather, if a person has not offered prayer for the dead person for whom prayer has been offered before his burial, it shall be permissible to offer prayer for him subsequently until the lapse of one day and night. If the time lapsed is longer than that, it would be more cautious to give up (offering prayer for that dead person).

Problem #7: It is permissible to repeat prayer for the dead with an amount of disapproval, except when the person happens to be dignified, or having high status and honour.

Problem #8: If a bier is brought for prayer at the time of the obligatory prayer, then in case the prayer for the dead does not interfere in the performance of the obligatory prayer due to sufficient time for it and there is also no fear of the decomposition of the dead body if the prayer for it is delayed, there shall be option to offer either of the prayers, though it is preferable to give priority to offering prayer for the dead. If, however, it interferes in the performance of the obligatory prayer at its preferable time, then there shall be difficulty and hesitation in giving priority to offering the prayer for the dead. It is obligatory to give priority to offering prayer for the dead if there is fear of its decomposition in case the prayer for it is delayed, in the same way as priority shall be given to offering the obligatory prayer in case there is not sufficient time left for offering it and there is also no fear of decomposition of the dead body. If there is fear of decomposition of the dead body and there is also insufficient time left for offering the obligatory prayer, then if it is possible to save the dead body from decomposition in any way even if by burying it, offering the obligatory prayer and then offering prayer for the dead already buried, this course shall be adopted.

In case it is not possible, but the time for offering the obligatory prayer would interfere in burying the dead who would save the dead body from decomposition, then also, according to the stronger opinion, priority shall be given to offering the obligatory prayer, confining it to offering the minimum obligatory prayer.

Problem #9: If several biers are brought (for offering prayer), then they shall be singled out for offering prayer if there is no fear of decomposition of some of them in case offering prayer is delayed for them, in which case it would be permissible to make them share a single prayer, in a way that all the biers shall be placed before those offering prayer observing the condition of (the rows) being parallel and also observing in the Du'ā for them after the fourth Takbir what is suitable as regards the use of pronoun as Tathniyah (dual number) or plural, and the masculine and feminine genders.

Problem #10: If during the prayer for a dead another dead body is brought for prayer, suppose after the first Takbir of the first dead body, it would be permissible to let the second share the prayer with the first in the remaining Takbirs, so that the second Takbir of the first shall be the first of the second, and the third Takbir of the first shall be the second Takbir of the second, and so on. When the Takbirs of the first are over, the remaining Takbirs of the first shall be recited, and with every Takbir the particular Du'ā for each of them shall be recited and after the common Takbir, both the Du'ās shall come together. So after the Takbir which is the first of the second and the second of the first, the Two Testimonies shall be recited for the second and Blessing on the Prophet and his Progeny, Peace be upon them, for the first, and so on.

Etiquettes of Offering Prayer for the Dead

The Etiquettes of offering prayers for the dead include the following:

Firstly, before the prayer, the word “Al-Salat” should be called out (loudly) thrice which is tantamount to Iqāmat in usual prayer, and, according to the more cautious opinion, it should be done with the intention of Rijā’ (hope), (that it would be desirable to Allah).

Secondly, the person offering the prayer must have performed ablution, ritual bath or Tayammum for the ritual impurity. Here it is permissible to perform Tayammum in place of ablution or ritual bath; even when water is available, but person fears loss of the prayer if performs ablution or ritual bath, rather even otherwise.

Thirdly, the person leading the prayer or one offering the prayer alone shall stand in the middle of the dead body of a man, or generally the dead body of a male, while he shall stand in front of the chest of the dead body of a woman, or generally the dead body of a female.

Fourthly, the shoes should be taken off, rather it is undesirable to offer prayer wearing a sandal and that is a shoe without thick sole or socks, though it is preferable to be barefooted, particularly for the person leading the prayer.

Fifthly, raising the hands at the time reciting Takbir, particularly while reciting the first Takbir.

Sixthly, offering the prayer at the place reserved for the purpose of offering the prayer for the dead, and it is rationally preferable, but its preference from religious point of view is not established.

Seventhly, the prayer for the dead should not be offered in any mosque except the Masjid-i-Haram (in Mecca).

Eighthly, the prayer for the dead should (preferably) be offered collectively (with Jamà’at).

Rules for Burying the Dead

Burying the dead body of a Muslim, or one treated as a Muslim, is a collective duty of all the Muslims (which if performed by some, relinquishes others from the liability, and if performed by none, all are considered to have committed a sin). Burying the dead means digging a pit in the ground and hiding the dead body in it. So it is not sufficient to place the dead body on the surface of earth and erect a structure on it unless the dead body is hidden.

It is also not sufficient to place the dead body in a bier, even if made of stone or iron despite capacity to hide it in the earth.

Of course, if it is not possible to dig the earth due to its hardness, it shall be sufficient to erect, for example, a structure on it and place the dead body in it, or do some other kind of things for concealing the dead body.

If it is possible to shift the dead body to the earth which can be dug before some thing happens to the dead body, it shall be obligatory to do so.

It is more cautious if the pit is such that may protect the dead body from beasts, and its bad odor is checked from the people, although, according to the stronger opinion, the mere concealment of the dead body in the earth shall be sufficient after acquiring satisfaction in respect of both the matters, whether it is due to absence of beasts or absence of people who would feel troubled due to the bad odor of the dead body, or erecting a structure on the grave of the dead after having concealed it.

Problem #1: If a person dies while sailing in the sea, and it is not possible to take his dead body to the land for fear of its decomposition or some other obstacle, or when it is very troublesome, the dead body shall be washed, shrouded and camphorated and prayer shall be offered on it, and it shall be placed in a cask or the like, and its lid shall be strongly closed, or a stone or the like shall be fastened to its feet, and it shall be thrown into the sea. It shall be more cautious to adopt the first course, if possible.

In case it is feared that the enemy shall exhume the grave of the dead person and turn it into pieces, his dead body shall be thrown into the sea in the manner described above.

Problem #2: It is obligatory to bury the dead body in a way that it should be facing the Qiblah, and it should be laid on its right side in a way that its head should be towards the west and its feet towards the east, for example, in the countries situated in the north (i.e., northern hemisphere), or in other words, his head should be on the right of the person standing with his face towards the Qiblah and his face should be on his left side.

The same rule shall apply if the dead body is without a head, or there is a head without body, or there is a chest alone, except when the dead body belongs to an infidel woman who is pregnant with

the child of a Muslim, in which case, she shall be buried on her left side with her back towards the Qiblah, so that the child (in her womb) should be facing the Qiblah.

Problem #3: The expenses on the burial of the dead, including even what is required for strengthening the grave and the building material, rather what is charged by an oppressor for burying the dead in a lawful land shall be defrayed from the actual property left by the dead.

Likewise, the expenses on throwing a dead body in the sea, like the cost of stone or iron fastened to the dead body or the cask in which it is placed.

Problem #4: If there is confusion about the Qiblah, then if it is possible to obtain the knowledge or what is treated as such, although with some delay in a way that there is no fear against the dead nor is it troublesome for those present, it shall be obligatory to obtain the knowledge; otherwise, to be more cautious, action shall be taken according to the assumption. In its absence, the condition of facing the Qiblah shall be dropped.

Problem #5: It is obligatory to bury the parts of the body separated from the dead, even including the hair, teeth and nails. It is more cautious, if not according to the stronger opinion, to attach them to the dead body and bury them with it as long as it does not require exhuming the dead body; otherwise, there shall be hesitation (in the application of this rule).

Problem #6: If a person dies in a well, and it is not possible to take his dead body out of it, nor placing it facing the Qiblah, it shall be left where it is, and the well shall be covered and turned into its grave, provided that there is no other hindrance in it, as the well being the property of some one else.

Problem #7: If a foetus has died in the womb of its mother, and there is fear for the woman in case it is left in her womb, it shall be obligatory to resort to some means for taking it out of the womb by whatever device by adopting the milder methods, even if it is done by cutting the dead baby into pieces, and, if possible, it should be done by the husband personally; otherwise, by women, or by those within prohibited degree for the woman. Even if this also is not possible, then it may be done by those not falling within the prohibited degree for the woman.

If a pregnant woman dies and there is a living foetus in her womb, it shall be obligatory to take it out of the womb, though by cutting the womb open. It would be more cautious to cut (her stomach from) the left side in case there is no difference in the left or other sides. Otherwise, it should be cut open from the place where it is safest to take the foetus out, then the foetus shall be taken out and the part cut open shall be stitched and the dead body of the woman shall be buried. In this case, there is no difference whether there is hope of the survival of the child after it has been taken out or not, though there is hesitation (in accepting this rule).

In case both the pregnant woman and the foetus are alive, and there is fear of death of both, the matter shall be left to the will of God to decide as He likes.

Problem #8: It is not permissible to bury a dead body in a usurped land, whether the land or its usufruct, including lands endowed for a purpose other than burial, or a land belonging to another, like a land mortgaged without the permission of the mortgagor. It is more cautious not to bury a dead body in the grave of another dead person unless the body of the latter has fully decayed. Of course, it is not permissible to dig the grave for the purpose (of finding out whether it has fully decayed or not).

As regards the permissibility of burial of a dead body in mosques when it is not harmful for the Muslims nor it is disturbing for those offering prayer, it is controversial, and according to the more cautious, rather stronger opinion, it is not permissible.

Problem #9: It is not permissible to bury the infidels and their children in the graveyard of Muslims. Rather, if they are buried (in the graveyard of Muslims), they shall be dug out, particularly when the graveyards are endowed for the Muslims.

Likewise, it is not permissible to bury a Muslim in the graveyard of the infidels. If a Muslim is buried (in the graveyard of the infidels) as an insurgence or by way of forgetfulness, then, according to stronger opinion, it is permissible to dig him out, particularly when keeping dead body there is disgraceful for him, and so it is obligatory to exhume his body and shift it (to the graveyard of Muslims).

The Desirable and Undesirable Things for Burial

(A- The Desirable Things)

There are several desirable things for burial. (They are as follows :)

First, the grave should be dug equal to the collarbone or the size of the dead person.

Second, select a hard piece of land for the grave, so that within the wall of the grave facing the Qiblah, a pit shall be dug equal to the body of the dead, and the body shall be placed in it. Within the gap of the soft land in the depth of the grave, a pit shall be dug identical with a canal and the dead body shall be placed in it and it shall be covered like a roof.

Third, before laying the dead body in the grave, the bier of a man shall be placed on the side of his both feet and the bier of a woman shall be placed on the side of the Qiblah in front of the grave.

Fourth, the dead body should not be laid down in the grave hastily and suddenly, but should rather be placed at a distance of two or three cubits close to the grave, and it should be left there for a while, then it should be brought forward a little, and let it remain there for while. Then it should be placed on the edge of the grave, so that it may get itself ready (lit. take up his equipment) for the interrogation (by the two angels: Munkar and Nakir), as there are great horrors of the grave; we ask the protection of Allah from them. Then it should be pulled out gently by itself and treated with gentleness, taking out his head first if it is (the dead body of) a man, and widthwise if it is (the dead body of) a woman.

Fifth, after placing it in the grave, all the knots of its shroud should be untied.

Sixth, its shroud should be opened from the side of its face, and its cheek should be placed on the earth, and a pillow made for it, and it should be supported with a small brick or clod of earth, so that it may not fall on its back.

Seventh, the grave may be closed with bricks or stones so that earth may not reach the body, and if it is strengthened with mud, it would be better.

Eighth, the person laying the dead body in the grave should be clean, bare-headed, his buttons (of the shirt) opened, having no turban or cloak on, and bare-footed.

Ninth, the person laying the dead body of a woman and undoing the knots of her shroud be her husband or one of those within the prohibited degree. In their absence, someone from among her close relatives should do the job, and in their women (from among her close relatives) shall do it, and lastly, it shall be done by those not related to her. Anyhow, the husband is to be preferred to all others (for the job).

Tenth, those not related by consanguinity to the dead person should throw dust with the back of their palm.

Eleventh, during pulling the dead body from the bier, while looking at the grave, laying the dead body down and placing it in the grave, after placing it in the grave and while closing the grave or coming out of it and throwing dust on it, a person should recite the Du'as related (from the Ma'sums, i.e. the Fourteen Impeccable Persons, namely, the Prophet, his daughter Fātimah and the Twelve Imams) which are given in the detailed books in their respective places.

Twelfth, after placing the dead body in the grave and before the grave is closed, it should be instructed the true beliefs like the principles of his faith and religion related (from the Ma'sums).

Thirteenth, the grave should be raised from the surface of the earth upto four open or closed fingers.

Fourteenth, the grave should be in the form of a square in the sense that it be properly levelled and made in the form of four right angles, and it is disapproved to give it the form of the hump of a camel, and it is more cautious to give it up.

Fifteenth, water should be sprinkled on the grave, and it is better that it should be done with the face towards the Qiblah, beginning the sprinkling from the side of the head upto the feet, and then make a round of the grave and end up on the side of the head, and sprinkle the remaining water on the middle of the grave.

Sixteenth, one should place his open fingers on the grave and press them in a way that they may leave their impression on the soil of the grave, and recite the Surah: "Innā anzalnāhu fi Lailatil Qadr" (Chapter 97 of the Quran) seven times and seek forgiveness, and pray for the dead person, in the following way (i.e., in the following words): "O Allah, make the earth hollow on both his sides, raise his soul to thee, drop for him thy favour, calm down his grave with thy Mercy which may make him free from the kindness of others than thee."

He should also recite the following Du'â: "O Allah, have mercy on his separation from his dear ones; grant him salvation from his solitude, calm down his loneliness, relieve him of his fright; hurry on him thy kindness; tranquillize him with the coolness of thy forgiveness and expanse of thy pardon and thy compassion which may render him free from the favour of other than thyself and raise him (on the Day of Resurrection) with those who are his friends". These things mentioned above are not recommended for such case only, but they are recommended for the time one happens to pass by a dead Mu'min at any time and in any circumstances, as there are specific etiquettes and particular Du'as for such occasions mentioned in the detailed books.

Seventeenth, after the burying the dead and return and dispersion of the participants in the funeral procession, the guardian, or the person to whom the guardian assigns this job, shall instruct loudly the person buried the principles of his faith and religion like the avowal of the Unity of God,

prophet hood of the Chief of the Messengers and the Imâmat (leadership) of the Impeccable Imams, acknowledgement of what the Prophet, Blessing of Allah on him and his Progeny, has brought with himself (i.e., the Quran and Islamic faith), Ba'th (Resurrection), Nushuz (Restoration to Life of all the Dead), Judgement, Mizân (Weighing of the good and bad deeds), Sirat (Bridge which only the righteous can cross on the road to Paradise), Paradise and Hell. It is with this instruction that the dead Mu'min shall, by the Grace of God, the Exalted, overcome the interrogation by the Munkar and Nakir (the two angels who are assigned the job of interrogating the dead about their beliefs and deeds after the burial).

Eighteenth, the name of the dead person should be written on his grave or on a plate or stone and fixed on the upper end of the grave.

Nineteenth, the close relatives should be buried close to one another.

Twentieth, strengthening the grave.

(B- The Undesirable Things)

As regards the undesirable things in respect of burying the dead, they are as follows:

First, it is undesirable to bury two dead bodies in a single grave, as also placing two of them in a single bier.

Second, paving the floor of the grave with concrete except when the floor is damp. But as regards the undesirability of paving the floor with something else than concrete like stone or brick, there is also hesitation, as the desirability of placing the dead body on simple earth is not free from significance.

Third, father's entering the grave of his son, due to the fear of his lamentation and consequent loss of the reward (for burying the dead).

Fourth, throwing dust on the grave of the dead by those related to the dead by consanguinity.

Fifth, closing the grave of a person with the dust of the grave of another and coating his grave with the mud made of the dust of another person's grave.

Sixth, restoration of the grave after its demolition, except in case of the graves of the prophets, peace be upon them, the saints, the pious, and the religious scholars.

Seventh, sitting on the grave.

Eighth, easing nature in the graveyard.

Ninth, laughing in the graveyard.

Tenth, leaning on the grave.

Eleventh, stepping on the grave without emergency.

Twelfth, raising the grave higher than four open fingers from the surface of the earth.

Conclusion Concerning Burial

The Conclusion comprises the following problems.

Problem #1: It is permissible to shift the dead body from the place of death to another place before it is buried, though it is disapproved, except when shifted to the holy shrines and sacred places, where it is not disapproved to shift the dead body, rather it is meritorious and preferable to do so.

If the dead body is shifted to any place other than the holy shrines, it is permissible without being disapproved only when long distance and delay in burial shall not bring any change in the dead body or cause decomposition or dishonor to it.

In case the shifting may have such harmful results, it shall not be permissible to shift the dead body except to holy shrines absolutely. It is more cautious to give up shifting it even to the holy shrines where it may have such results and trouble to participants.

After the burial, if, however, it is found necessary to take out the dead body from the grave, or it comes out due to one or the other reason, it shall be treated as the dead body not yet buried.

As regards the exhumation of the dead body, it is not permissible except for shifting it to the holy shrines. There is difficulty and hesitation in exhuming the dead body even for shifting it to the holy places.

The action of some people who deposit the dead body as a trust and do not bury it in the usual way in order to shift it later to the holy shrines with a view to be saved from the prohibition of its exhumation is unlawful and, according to the stronger opinion, it is obligatory to bury the dead body by concealing it under the earth.

Problem #2: It is permissible to mourn the dead, rather it is desirable in case of profound grief, but nothing must be said which may entail the divine wrath.

Likewise, it is permissible to lament the dead in prose or poetry, provided that it does not contain vain things like false statements or other forbidden things; rather, to be more cautious, the lamentation should not contain wailing or bursting in loud laments. Similarly, according to the more cautious opinion, it is not permissible to slap, scratch or tear the hair or pull them out or scream far from moderation. It is also not permissible to tear one's clothes, except for the father or brother of the dead, rather some of these cases entail expiation. (For example), if a woman tears her hair in grief, it entails the expiation of (breaking the fast in) Ramadān. If she pulls them out, she shall be liable for the expiation of (breaking) an oath. Likewise, she shall be liable to the expiation for (breaking) an oath if she scratches her face in a way that it may lead to bleeding, rather, according to the more cautious opinion, she shall be liable to the expiation in all cases of scratching her face.

If a man tears his clothes on the death of his wife or child, he shall be liable to feed or clothe ten poor persons, or emancipate a slave. In case it is not possible, he shall be liable to keep fast for three days.

Problem #3: It is forbidden to exhume the grave of a Muslim or one treated as a Muslim, except with the knowledge of its demolition and its turning to dust.

Of course, it is not permissible to exhume the graves of the Prophets and the Imams, peace be upon them, even if it is a long time (since they were buried). Rather the same rule applies to the graves of the children of Imams, pious persons and martyrs, whose graves have been turned into mausoleums or places of refuge.

By exhumation is meant exhuming the body of the buried dead person once it has been concealed (under the earth) by burial. If, therefore, the grave is dug and its earth is taken out without the dead body becoming visible, it shall not be called a forbidden exhumation.

The same rule shall apply if the body of the dead person was placed on the surface of earth and a structure has been built over it, or it was placed in a bier of stone, or the like, and was taken out.

Permissible Cases of Exhumation of a Dead Body

It is permissible to lay open the grave in the following cases.

First, if a dead body was buried in a location usurped by itself or by its usufruct, forcibly, through negligence or forgetfulness, and it is not lawful for the owner to permit its staying there gratis or against payment (of the price of its land), though it shall be better or more cautious to let it remain there even against payment (of the price of its land), particularly in case the dead was an heir or relative or buried by mistake.

If the owner of the land permits the burial of the dead in his land or declares it to be lawful, he shall not be entitled to withdraw his permission or declaration of its being lawful after the dead has been buried.

If, however, the dead body comes out of the grave for one reason or the other, it shall not be obligatory for the owner to permit its reburial in that location, rather he shall be entitled to withdraw his permission.

The burial of a dead body with a usurped shroud or any other usurped material is like burying it in a usurped land. So it is permissible to excavate the grave to take away the usurped article.

If there is some article belonging to him like ring or the like which has been buried along with him, there is difficulty and hesitation in permissibility for his heirs to excavate his grave for taking it out, particularly in case it may not mean any considerable harm to the heirs.

Second, for the performance of ritual bath, shrouding or camphorating the dead body, in case it has been buried without fulfilling them, now that their performance has become possible. All these things can be done provided that they shall not cause decomposition of the dead body or its dishonour. If the dead person has been buried without the above things due to some excuse, as the unavailability of the water, shroud or camphor, and they have become available after the burial, then there is difficulty and hesitation in the permissibility of exhuming the dead body for the fulfillment of these shortcomings, particularly in case when due to unavailability of the water, Tayammum was performed in place of the ritual bathing and the dead body was buried, and now the water is available; rather, according to the stronger opinion, it would not be permissible to exhume the dead body for the performance of the ritual bath now. In case the dead body was buried without offering prayer for it, it shall not be exhumed absolutely for offering the prayer, but prayer shall be offered on his grave, as mentioned before.

Third, when the establishment of a right depends on looking at the dead body.

Fourth, when the dead body was buried in a location bringing dishonour to it, as when it has been buried in a sewer or a place where people throw garbage. The same rule shall apply if the dead body was buried in the graveyard of infidels.

Fifth, for shifting the dead body to holy shrines, in case the dead person has left a will that his body should be shifted there after burial, or before it, and his will has been violated due to negligence, forgetfulness or ignorance, and he has been buried in some other location, or without any will, so that in the second case, according to the stronger opinion, it shall be permissible (to exhume the dead body), but in the first and third case, there is difficulty and hesitation (in its permissibility). It shall be permissible in the second case, provided that the dead body has not changed, and it may not change until the time of burial, which may mean dishonour and trouble.

Sixth, when there is fear of beasts, flood, enemy or the like.

Problem #4: It is permissible to wipe off the remnants of the graves about whose dead bodies there is knowledge that they have been effaced, provided that there is no hindrance in it such as when they have been the property of their builder, or it is a lawful land obtained by the guardian of the dead person for the latter's grave, or the like.

It shall be better to wipe off the remnants of the graves, if they are situated in a tomb bequeathed as a charitable endowment for the Muslims whenever needed by them, except what has been mentioned before like the graves of martyrs, pious persons, religious scholars and children of the Imāms, peace be upon them, which have since been turned into tombs.

Problem #5: If a dead body has been taken out of its grave by way of insubordination or lawfully, or it has come out due to one reason or the other, it shall not be obligatory to bury it in the same place again, but it shall be permissible to bury it in some other place.

Final Conclusion Concerning the Dead

This final conclusion consists of two matters.

First, it is emphatically recommended to condole those inflicted by some calamity, sympathise with them and easing their grief by mentioning what is suitable for the situation and what has full conformity with the fulfilment of this purpose, such as describing the trials and tribulations of the world and how quickly they disappear, and that every person in this world shall perish and their end is very close, and referring to the traditions which have been reported about the reward promised by Allah for those who bear the misfortunes (with patience), particularly those who bear the loss of their children, so that the children intercede for their parents. Even an aborted child shall stand up at the gate of the paradise angrily, saying: “I shall not enter the paradise until my parents enter it.” So Allah lets his parents enter the paradise, and so on.

It is permissible to condole before and after the burial, though it is preferable to condole after the burial. There is enormous reward for condolence, particularly for condoling a woman whose young son is dead or one whose father is dead.

Whoever condoles a person inflicted by calamity gets a reward identical with that of the latter without there being any reduction in the reward of the inflicted person.” Every Mu’min who condoles his brother inflicted with calamity is dressed with the garment of dignity by Allah.”

Prophet Moses, Peace be upon him, while conversing secretly with his Lord, asked Him: “O Lord, what is the reward of one who condoles a woman whose young son is dead?” His Lord replied: “I shall provide him with my shelter on the day when there shall be no shelter except mine.” And that “Whoever silences a crying orphan, shall certainly be awarded paradise.” “Whoever rubs the head of an orphan with kindness, Allah, the Exalted and Dignified writes a (reward for) good deed equal to every hair from which his hand passes”, and such other Traditions which have come down (on this subject).

Simple presence before the person afflicted in a way that the latter may see the condoling person is sufficient for condolence for the calamity,. As it has its effect in satisfying the heart and extinguishing the flame of grief.

It is permissible for the relatives of the dead to sit to receive the condolence, and, according to the stronger opinion, there is no disapproval in it. Of course, it is better that it should not prolong for more than three days, as it is recommended to send food to them during this period, rather, for three days, even if they have been sitting less than that period.

Second, It is recommended on the night of burial to offer prayer for the dead which is known among the people as “the Prayer for Fright” (of the grave), as there is a Prophetic Tradition saying: “There is no time harder for the dead than the first night. So have mercy on your dead by giving Sadaqah (voluntary alms-giving). If you do not find it, then each of you should offer two Rak’ats of

prayer. The procedure for the prayer referred to in the Tradition is that one should recite in the first Rak'at Surat al- Fātihah (Chapter 1 of the Quran) once and Surat al- "Ikhlas" (Chapter 112 of the Quran) twice, and in the second Rak'at the Surat al-Fātihah once and the Surat al-Takathur (Chapter 102 of the Quran) ten times, and, after the Salām, should say (in Arabic): "O Allah, send Blessing on Muhammad and his Progeny, and send the reward (of this prayer) to the grave of such a one, son of such a one." So Allah at the same time shall send one thousand angels to the grave of dead, each angel carrying clothes (sic.; apparently: reward) and garments, and his grave shall be broadened until the Day of Blowing the Trumpet, and the person offering the prayer shall be given (reward of) good deeds equal to the number of things on which fall the rays of the sun, and his rank be raised by forty degrees.

According to another Tradition: "one should recite in the first Rak'at Sūrat Al- Hamd (Chapter 1 of the Quran) and Ayat al-Kursi {Verse # 255 from Chapter 2 of the Quran) once, and in the second Rak'at one should recite Surat Al-Hamd once and Sūrah "Qadr" (Chapter 97 of the Quran) ten times, and after the prayer should say (in Arabic): "O Allah, send Blessing on Muhammad and his Progeny, and send the reward (of this prayer) to the grave of such a one."

If a person offers (the Prayer for Fright) in both the above methods, it shall be better. A single prayer from a single person shall be sufficient. There is no mention of the forty or forty one prayers (for Fright) known among the people. Of course, there is no objection if it is offered (so many times) without intending to follow it as if has come down in the canonical law (Shar'). It is more cautious to recite the Ayat al-Kursi upto "Hum Fihā Khālidun" (at the end of the Rukū # 34 of Surat Al Baqarah, Chapter 2 of the Quran). According to the stronger opinion, it is permissible to hire some one to offer the Prayer for Fright, as also it is permissible to get some remuneration for offering this prayer. It is more cautious to pay for offering this prayer by way of gift and beneficence (Ihsān), and also voluntarily offering the prayer by the person offering it. The time for offering the prayer is the whole night (of burial of the dead), though it is better to offer it in the first part of the night.

Chapter Concerning the Recommended Baths

The recommended baths have several categories; from the point of view of time, place and action.

A. Recommended Baths from the point of view of Time

There are many baths which are recommended from the point of view of time. (They are as follows :)

1. The Friday Bath. It is emphatically recommended. Some of the religious authorities have even declared it to be obligatory, but, according to the stronger opinion, it is simply recommended. The time for it is from the early morning upto noon and after midday to sun set. Its Qada (compensatory) bath may be performed from the early Saturday morning to its end, but the more cautious one is to perform it from noon to sun-set on Friday intending closeness to Allah without mentioning due or compensatory. As regards the bath on Saturday, there is hesitation in its religious sanction. Caution, however, should not be given up by performing it with hope (of being desirable to Allah). It is permissible to offer it on Thursday in advance when there is fear of unavailability of water on Friday. If, however, it becomes possible to perform it (on Friday) before noon, it would be desirable to repeat it. If he gives it up even at that time, it is recommended to perform its compensatory bath after noon and on Saturday. If one has to opt between performing it in advance (on Thursday) or as a compensatory one, then the first alternative shall be preferable. There is hesitation in affiliating the Friday night with Thursday. It is more cautious to perform it with the hope (of its being desirable to Allah), as there is an amount of significance in affiliating absolute inability with the unavailability of water on Thursday, but it is more cautious to perform it in advance with the hope (of its being desirable to Allah).

2. Ramadhan Nights Baths. It means odd nights of the month of Ramadhān like the first, third, and fifth etc., and all the last ten nights. The nights of al-Qadr (the nights of revelation of the Quran), the 15th, 17th, 25th, 27th and 29th nights are emphatically recommended. It is recommended that on 23rd night a second bath should be taken (in addition to the one taken at its start). The time for the bath is the whole night. It is, however, better to take the bath before the sun-set, except in the last ten nights, when it is not far from being preferable to take the bath between the Maghrib and Ishā' prayers.

3. Fitr and Adha Baths. The baths on two festivals, Eid al-Fitr and Eid al-Adha are emphatically recommended. Their time is from morning till noon, and it is probably extended upto sun-set and it is more cautious to take these baths after noon with the hope (of its being desirable to Allah).

4. Tarvih Day Bath. This is the bath recommended to be taken on the 8th of Dhu'l Hijjah (the last month of the Hijrah lunar Calendar).

5. Arafah Day Bath. (This is the recommended Bath on the 9th of Dhu'l Hijjah, which the Hajj pilgrims pass at the plain of Arafat). It is better to take this bath close to noon.
6. Rajab Baths. These are the recommended baths to be taken on the first, 15th and last days of the month of Rajab.
7. Ghadir Day. This bath is to be taken on the Eid-i- Ghadir (i.e. on 18th of Dhu'l Hijjah). It is better to take this bath on the mid-day.
8. Mubahalalah Day. This is the bath to be taken on 24 of Dhu'l Hijjah (Eid-i Mubāhalah).
9. Earth Flattening Day. This bath is to be taken on the 25 of the month of Dhu'l Qa'dah. It should be taken with the hope (of being desirable to Allah) and not as included in the days commanded (by the canonical law or Shar).
10. Mab'ath Day. This is the bath to be taken on the 27th of the month of Rajab.
11. 15th Sha'bān. (This is called Shab-e Barāt in Persian, and is also the birth-day of the 12th Imam)
12. Prophet's Birth-Day. This is the recommended bath to be taken on 17th of the month of Rabi'ul Awwal, which is to be taken with the hope (of being desirable to Allah).
13. Nowruz (The New Year Day, according to the Iranian calendar).
14. 9th Rabi'ul Awwal. This bath is to taken with hope (being desirable to Allah).

All these baths are not to be compensated if not taken on their particular days, as they are not to be taken in advance for fear of being lapsed.

B. Recommended Baths from the point of view of Place

The recommended baths from the point of view of place are the baths which are commended for the entrance in some particular places, as the Haram of Mecca, its city, its mosque (Masjid al-Harām) and Ka'bah as well as the Haram of Madinah, its city and its mosque (called Masjid al-Nabi). As regards the baths for entering other holy places, it is performed with the intention of hope (of being desirable to Allah).

C. Recommended Baths for some Acts

As regards the baths recommended for some acts, they are of two categories.

First, a bath which is performed for the sake of the act one intends to do, or an act which one wants to happen, such as the bath for lhrām, circumambulation, pilgrimage, staying in (plain of) 'Arafāt (during Hajj). But the bath to be performed for staying in Mash'ar is to be performed with the intention of the hope (of being desirable to Allah), and the bath for Sacrifice, shaving the head, and

for seeing any Imam in dream, as it has been reported from Imam (Musa) al-Kāzim, Peace be upon him, “when a man desires to see any Imam in the dream, he shall take bath for three nights and implore the Imams and he shall see them in the dream”, and for the prayer for a wish, Istikhārah, or the performance of Istiftāh, called the contrivance of Umm-i Dāūd or taking the sacred dust from its place, for the intention of journey, particularly for pilgrimage to the tomb of Imam Husayn, Peace be upon him, for the prayer for rain (Istisqa) on penitence for infidelity (Kufr), or for every sin, for demanding justice or complaining to Allah against one who has done injustice to him, (for all these purposes) one shall perform bath and offer two Rak’ats of prayer at a place under open sky, and then recite (Arabic):

“O Allah, so and so, son of so and so has done injustice to me, and I have no one to turn to except thee, so get my right from him just now, just now, by the name of one with whose name whenever someone in plight prayed for thy help, thou has granted his prayer, and hast removed his predicament and blessed him with power and strength on earth and appointed him thy vicegerent on thy subject. So I ask thee to send Blessings upon Muhammad and the Progeny of Muhammad, and that get my right just now.” So he shall get immediately what he has desired.

Similarly, one should perform a bath for fear of an oppressor and offer prayer, and then place his bare knees close to his place of prayer and recite one hundred times (in Arabic) “O One who is all Living, the Everlasting, O there is no god but Thou, I beseech Thy Compassion, Come to my Succor. So send Blessing upon Muhammad and the Progeny of Muhammad, and Have favour on me, subdue (enemy) on my behalf; find some stratagem for me ; find a solution for me (my enemy’s trick) ; save me from (the enemy’s) deception ; and save me the trouble of so and so, son of so and so without inconvenience.

Second, Bathing for an act which one has done. There are several baths of this category.

1. For killing a frog.
2. For looking at person hanging on the gallows, provided that he has looked upon that deliberately.
3. For failing to offer prayers for lunar or solar eclipse when there has been a full solar or eclipse. It is recommended to perform a bath while offering a compensatory prayer, caution should not be given up in this case.
4. For touching a dead body after it has been ritually washed.

Problem #1: The time for performing the bath from the point of view of time is before entering those places in a way that after performing the bath one should enter the places Without long delay. It is sufficient to perform the bath at the beginning of the day or night and then until the end of the day or night. Rather the sufficiency of performing a bath during the day for entering at night and vice versa is not devoid of force, and if he has failed to perform the bath before entering such places, it is not far from desirable to perform it while in still in such places, particularly in case he

had not been able to perform the bath before entering those places. As regards the first category of the baths for performing an act which it is recommended to perform a bath before performing the act, such as tying Ihram, or performing pilgrimage, etc., the time for such baths is prior to performing the acts, but it is not harmful to make delay in the performance of the bath and the performance of the act upto the extent mentioned. However, in case of the second category of the above baths, its times is the actual occurrence of the act, and is extended upto the end of life, though it is recommended to make hurry in its performance.

Problem #2: The sustenance of validity of the baths from the point of view of time and the second kind of the baths from the point of view of act, and the lack of their nullity even for the occurrence of some pollution are some thing in which there is hesitation, but the canonical (Shar') does not mention any obligation for the performance of the bath after the occurrence of the pollution. However, in case of the baths from the point of view of place and the first kind of the baths from the point of view of act, apparently with the occurrence of the minor pollution, the bath is nullified, not to speak of the occurrence of the major pollution. If, therefore, pollution takes place between the performance of the bath and entering such places, or between the performance of the bath and the performance of the acts, the bath must be repeated.

Problem #3: If a person is required to perform several baths, from the point of view of time or place or mixed ones, it is sufficient to perform a single bath for all of them, provided that he solemnly intends it for all of them.

Problem #4: There is hesitation and difficulty in the sufficiency of performance of Tayammum in case of inability to perform these baths It is more cautious to perform Tayammum with the intention of hope (of its being desirable to Allah) and the likelihood of its being desirable.

Chapter Concerning Tayammum

A discussion on the Circumstances in which it is Permissible, Things on which it is Allowed to be Performed, its Procedure, its Conditions and its Rules.

A. Circumstances in which Tayammum is Permissible

Tayammum is permissible in the following circumstances:

1. Unavailability of water in a quantity sufficient for the performance of cleansing, bath or ablution.

Problem #1: (In the above circumstance,) it is obligatory to make a thorough search for water till there is no hope for it. In the world (lit. creatures), it is sufficient to search in the rugged and hard ground upto the extent of an arrow - throw and in the level, soft and plane ground upto the extent two arrow-throws all the four directions, provided that there is possibility of finding it in all the directions, and the search would drop in the direction where it is certainly not to be found, as it would drop once it becomes certain that there is no water available in any direction, though there is likelihood of its being available beyond the above limit.

Of course, if it is learnt that the water is available beyond the above limits, it would be obligatory to obtain it if there is still time left (for offering prayer) and it is not distressing.

Problem #2: Apparently it is not obligatory (to go to fetch the water) personally, rather it is to assign the job to one or more persons on whose statement one may get satisfaction,

as apparently a single person from among a group is enough, provided that his statement is relied upon. The absolute sufficiency of a trustworthy and reliable person for this purpose is a matter in which there is difficulty.

Problem #3: If the land in some directions is rugged and hard and on others it is soft and plane, in each direction its respective rule of the extent of a single arrow-throw and two arrow-throws shall apply.

Problem #4: The criterion for the arrow, bow, wind and archer shall be as prevalent usually. The criterion for the throwing of arrow is the maximum limit to which an archer can throw the arrow.

Problem #5: If the search is given up and the time is tight, the person shall perform Tayammum and offer prayer, and the prayer shall be valid, though he has committed a sin (by not searching for water), and it is more cautious to offer compensatory prayer, particularly in case where had he searched for water, he could have found it.

In case there is ample time left (for offering prayer), his prayer and Tayammum shall be nullified in case where had he searched for the water, he could have found it; otherwise, in case he had already had the intention of closeness (to Allah), it is not far from being valid.

Problem #6: If a person carried out the search upto the required extent, (but could not find water, and) then performed Tayammum and offered prayer. Subsequently he succeeded in getting hold of water within the place of search, or his belongings or his caravan, his prayer shall be valid, and there shall be no obligation to offer compensatory prayer or repeat the prayer.

Problem #7: If there is fear of a beast, thief or the like for the person's life, honour or considerable property, it shall not be obligatory to carry out search for water.

The same rule shall apply if the time is too short for carrying out the search for water. If a person believes that the time is too short, and so he gives up the search, performs Tayammum and offers prayers, and later it transpires that there was sufficient time, then if he is still in the same place where he had offered the prayer, he shall restart the search, provided that there is sufficient time left for offering prayer. If he fails to get hold of water, his prayer shall be treated as valid, but if he finds the water, he shall repeat the prayer. In case there is not sufficient time left for offering prayer, then it is more cautious to repeat Tayammum and offer prayer.

The same rule shall apply in the following cases where we have given the verdict in favour of repetition of prayer in case of unavailability of water. If the person shifts to another place, and knows that if he makes a search for water, he shall find it, and then he shall repeat the prayer, though he may be unable to carry out search in that place and he would be duty-bound to perform Tayammum. In case he knows perfectly well that he would not succeed in finding out water even if he had carried out search for it, his prayer (which he has already offered with the Tayammum,) shall be valid, and he shall not be required to repeat it. In case of confusion about the fact, there is difficulty (in the application of the above rule). So caution should not be given up by repeating the prayer or offering a compensatory prayer.

Problem #8: Apparently there is no condition of carrying out search for water at the nick of time of prayer. If a person has carried out search for it before, and has not found it out, he shall not be required to renew his search for water. The same rule shall apply if a person has carried out search for water at the time of offering one prayer, then it shall be sufficient for the next prayers. Of course, if there is likelihood of finding out water after the search, provided that there are some presumptive signs for it, rather according to the more cautious opinion, even otherwise, it would be obligatory to restart the search.

Problem #9: If a person has water sufficient for only carrying out cleansing, it shall not be permissible for him to spill it out after the arrival of time (of prayer). (Likewise,) if a person has already performed ablution, and has no water (for performing ablution again), it shall not be permissible for him to nullify that ablution.

If, however, he defies the rule and spills away the water or nullifies the ablution, his Tayammum and prayer shall be valid, though it shall be more cautious to offer compensatory prayer; rather the absence of permissibility of spilling out the water or nullifying the ablution before the arrival of the time of prayer, and even at the nick of time, is not devoid of force.

Problem #10: (In case of unavailability of water), if a person is able to dig a well without much inconvenience, according to the more cautious opinion, it shall be obligatory upon him (to do so).

2. In the effort for obtaining water there may be fear of some thief, beast, or being lost, or the like which may cause fear of harm to one's life, honour or considerable property, on the condition that the fear must have some rational ground.

3. The use of water may cause some disease, eye-sore, inflammation, wound, abscess or the like, in a way that the harm caused by the use of water may not be affiliated to splint or what is treated as such. There is no difference in the fear of the occurrence of such diseases or that of their aggravation, or delay in their recovery and the severity of pain by its use in a way that it is not tolerable due to cold, etc.

4. In the use of water there is fear of some noble animal remaining thirsty.

5. Obtaining or using water may lead to some distress and extreme inconvenience which are not tolerable in ordinary circumstances, though there may not be any harm or its fear at present, or may cause some gratitude which is not usually tolerable due to its request for favour, or the disgrace and degradation caused by the labor done in order to buy it.

6. If obtaining water depends on the payment of all one has, or so much as is detrimental to him in the present circumstances. In case it is not detrimental, it would be obligatory (to obtain it), even if its price may be many times more than its usual price.

7. The time may be so short that obtaining or using water is not possible.

8. It is obligatory to use the water in hand for washing something unclean or the like in which nothing can replace water, in which case it shall be indispensable to resort to Tayammum, but it is more cautious first to use water for washing (the uncleanness) and then perform Tayammum.

Problem #11: There is no difference in the thirst that makes Tayammum permissible, whether it leads to death, causes disease or some extreme distress which is not tolerable, though at present there is no fear of its harm, in the same way as there is no difference in what leads to death, or there is fear of harm to his own life or that of some one else, regardless whether it is a human being or some other being, a slave or otherwise, whether it is one whom it is obligatory to protect ; rather, it is not far from being extended to those whose killing is permissible in one way or the other, as the injurious animals, or one whose killing is permissible like a Harbi (one belonging to a country at war), an apostate by birth, or the like. If it is possible to quench the thirst by something forbidden like wine or unclean things, and a person has pure water, it would be obligatory for him to save it for quenching his thirst, and perform Tayammum for his prayer, as the existence of some thing forbidden is like its non-existence.

Problem #12: If it is possible for a person to clean himself with water and perform prayer, but he delays it so much that the time becomes too short for the performance of ablution or ritual bath, he shall perform Tayammum and offer prayer. In this case his prayer shall be valid although he has committed a sin by causing delay. According to the extremely cautious opinion, he should also offer a compensatory prayer.

Problem #13: If a person doubts about the amount of time left (for offering prayer), hesitating between the shortage of time for which he must perform Tayammum or sufficiency of time for which he may perform ablution or bath, it is obligatory on him to perform Tayammum.

The same rule shall apply if he knows the amount of time left (for offering prayer), though approximately, but doubts whether he has enough time for performing cleanness with water, he shall perform Tayammum and perform prayer.

Problem #14: If a person has to opt between offering full prayer in due time with Tayammum or a single Rak'at of the prayer with ablution; he shall prefer the former, but he should not give up caution by performing compensatory prayer with water.

Problem #15: A Tayammum performed due to shortage of time despite the availability of water does not render permissible except the prayer whose time had become tight, and is of no avail for the other prayer, despite the unavailability of water at the time of the other prayer.

Of course, if water has become unavailable during offering the former prayer, the same Tayammum is not far from being sufficient for the next prayer. It is more cautious to give up all acts which require the performance of Tayammum except that prayer, even if done during the performance of the same prayer. So, according to the more cautious opinion, it is not permissible to touch the words of the Quran (with the same Tayammum).

Problem #16: There is no difference whether the water is not available at all or it is available but is not sufficient for all the parts of the body involved in ablution and it was sufficient for a few of the parts with shifting to Tayammum for them. If something not rendering the pure water impure is mixed with the water which is not sufficient for the performance of cleanness thereby rendering it sufficient, then according to more cautious opinion, it would be obligatory (to mix it with the water).

Problem #17:: If a person on whom it is obligatory to perform Tayammum violates the rule, and performs ablution or ritual bath, according to the more cautious opinion; his act of cleansing shall be void, though it is superior to the former.

If the person performs Tayammum due to shortage of time in order to be clean or with some other intention, it would be valid.

The same rule shall apply if a person violates the rule and pays so much of price for water as is detrimental to him, or has gone under obligation of some one, or has borne some degradation, or

has obtained water despite fear of danger in it or any other similar case in which cleanness itself was not prohibited but only its preliminaries, but the cleanness itself was detrimental or causing inconvenience, then apparently it would be void.

Of course, if the harm or inconvenience was borne by someone else and a person violates the rule and performs cleanness, then validity is not far from being likely.

Problem #18: It is permissible to perform Tayammum for the prayer for the dead or before going to sleep, but the Tayammum performed before going to bed must be for minor pollution, and there is nothing objectionable if it is performed for the major pollution too with the intention of hope (of its being desirable to Allah), in the same way as it is better to confine Tayammum to the case when he lies down on his bed and then remembers that he has not performed ablution ; otherwise, in other cases he shall perform the Tayammum with the intention of hope (of its being desirable to Allah), as it is better in the former case to perform Tayammum with the intention of hope (of its being desirable to Allah), in case there has been no fear of missing the prayer.

B. Things on which Tayammum can be Performed

Problem #1: It is a condition for a thing on which Tayammum is performed that it should be Sâ'id which means the surface of earth, without there being difference in its being ordinary earth, sand, stone, clod of earth, gypsum land, unsoaked lime, earth of a grave, and the other things used for Tayammum, colored or uncolored which comes under the name of earth, though there may not remain anything stuck on the hand, but it is more cautious to perform Tayammum on earth, contrary to things which do not come under the name of earth, though they may be produced from it, such as vegetables, gold, silver or other metals which do not fall under the name of earth.

The same rule applies to ashes which belongs to the category of earth.

Problem #2: If a person doubts about a thing whether it is earth or something else on which Tayammum cannot be performed, then if he knows that it was formerly earth, and doubts about its transformation into something else, it shall be permissible to perform Tayammum on it.

In case he is ignorant of its previous condition, then depending on its previous condition he shall perform Tayammum on it and add to it Tayammum on the subsequent condition like dust or mud, if found; otherwise, he shall perform Tayammum on the suspected thing and offer prayer within the due time and also add to it another prayer after the due time.

Problem #3: According to the more cautious opinion, it is not permissible to perform Tayammum on soaked gypsum or limestone, if it is possible to do so on earth or the like. In case of its unavailability, it is more cautious to perform Tayammum on either of them, and add to it Tayammum on dust or mud which have a position secondary to earth.

In case of sole availability of soaked gypsum or limestone, he may perform Tayammum on either of them and later repeat the prayer, or offer compensatory prayer.

As regards Tayammum on pottery, or a brick, or the like made of soaked mud, it is permissible to perform Tayammum on any of them.

Problem #4: It is not permissible to perform Tayammum on unclean earth, even due to ignorance or forgetfulness, nor on a usurped land, except when a person is compelled to stay there, such as when he is imprisoned, or he was ignorant of the matter. It is also not permissible to perform Tayammum on something mixed with the earth in a way that the name of earth is no more applicable to it. But there is no objection in performing the Tayammum, if the other thing disappears after mixing with earth or remains apparent but still the name of Tayammum on earth is applicable to it.

As regards the rule applicable to something suspected to be usurped or mixed, it is similar to that of water in relation to ablution or bath (when it is suspected of being usurped and mixed), contrary to the thing suspected to be unclean but being solely available, it is permissible to perform Tayammum on both categories of earth. If a person has water and earth, and knows about one of them being unclean, in case of availability of both solely, he shall perform both Tayammum and ablution or bath, with Tayammum preceding ablution or bath.

As regards the condition of lawfulness of the earth and the place of Tayammum, it is similar to the condition of lawfulness of water and the place mentioned under ablution. What is according to the stronger opinion has already been mentioned before.

Problem #5: It is permissible for a person who has been imprisoned in a usurped place to perform Tayammum without there being any objection, provided that the place on which he strikes (his hands for performing Tayammum is outside the limits of the usurped place. As regards the Tayammum in case the place of striking (the hands for the performance of the Tayammum) is included in the usurped place, according to the stronger opinion, his Tayammum shall be valid, though it shall not be free from objection. As regards ablution in that location, if it is with lawful water, it would be like Tayammum in that place, and there would be no objection in it, particularly if the person prevents the water from falling on the floor of the prison.

As far as the performance of ablution with the water found in the prison is concerned, it shall not be permissible as long as the person does not obtain the permission of its owner, as is the case with the water outside the prison. Without the permission of the owner, the person shall be like one having no water, and, therefore, it shall be obligatory on him to perform Tayammum.

Problem #6: If there is no plane ground, a person shall perform Tayammum on the dust of his garments, the felt carpet of the saddle, or mane of his beast of burden on which apparently there is dust of earth, striking his hands on things on which there is dust. It is, however, not sufficient to strike the hands on something which has dust inside without its apparent part, even if dust is raised

by striking the hands. This is when it is not possible to shake the things and collect the dust, and then perform Tayammum; otherwise, it is obligatory to perform Tayammum in the same way.

In case dust is not available, a person may perform Tayammum on mud, and, if it is possible to dry it, and then perform Tayammum, it shall be obligatory to do so. Wet earth and wet land is not mud, and occupies the first rank (among the things on which Tayammum is permissible).

If a person performs Tayammum on mud, according to the sounder opinion, it is not obligatory to remove it, but it should be rubbed off as one removes the dust by shaking it. As regards the removal of the mud by washing, it is undoubtedly not permissible.

Problem #7. Performance of Tayammum on ice (or snow) is not proper. If a person does not find any of the things mentioned before except ice (or snow), and is not able to wash with it, or it is troublesome, he shall be considered to be one having neither of the two cleaning things (namely pure water and earth), and, therefore, according to the stronger opinion, offering prayer on due time drops and, according to the more cautious opinion, the compensatory prayer shall be established ; rather, according to the more cautious opinion, offering the prayer on time shall also be established, and it is rather more cautious to rub the ice (or snow) on the parts of the body involved in ablution and perform Tayammum with it and offer prayer on its due time, and subsequently, when possible, offer compensatory prayer.

Problem #8: It is disapproved to perform Tayammum on sand, and likewise on salt marsh rather, it is not permissible to perform Tayammum on some of its categories which are outside the term of land.

It is approved to shake the hands after striking it on the earth, and that it should be done on high ground; rather, it is disapproved to perform Tayammum on low level of land.

C. Procedure of Performing Tayammum

Problem #1: In case of ability, a person shall strike the two palms of his hands together simultaneously on the earth, then rub his both hands together on his forehead and both eye-brows overlapping the place of growing of hair to the upper part of the nose to both sides of the forehead, and it is more cautious to rub both the eye-brows and nose. Then he should rub the palm of the left hand on the whole apparent part of the back of the right hand from the forearm to tips of the fingers, and then rub the whole apparent part of the back of the left hand with the palm of the right hand, but what lies between the fingers is not included in the apparent parts, as what is intended is to rub the apparent skin of the rubbing hand, and it is not a condition to be too minute and meticulous in it.

It is not sufficient merely to place the hands on the earth, but, according to the more cautious opinion, it should be what is called striking, though it is not devoid of force. The strike should be done by a single hand, nor with both the hands one after another, nor with their backs, or with only

a part of the palm in a way that it may not be called striking with the whole of the palm in ordinary circumstances. The rubbing should also not be done by a single hand or both one after the other.

In rubbing the face it is sufficient to rub the entire part rubbed with the whole rubbing part on the forehead and both the eye-brows in the usual manner, i.e., rub the right part with the right hand and the left part with the left, and, at the time of rubbing the hand, it is sufficient to place the palm of each hand on the back of the other upto the tips of the fingers.

Problem #2: If a person is not able to strike or rub with the palms of his hands, he may do so with their backs. This rule applies when there is absolute inability. If, however, he is able to use part of the palms, or use the whole palm by placing something on it, it is more cautious to strike and rub with part of the palm or the whole palm by placing something on and, between them, by the back of the hand.

Shifting to the forearm in place of the back of the hand is not far from being permissible, where there is an option to use either of them, while it is more cautious to use both of them.

Shifting to the forearm is not permissible in case the palm is unclean without being infecting other parts (when touched), when removal of the uncleanness is not possible; rather the person should strike and rub with the same palm.

In case the uncleanness is such as is an obstacle and it is not possible to clean or remove it, then it is more cautious to strike with the palm as well as the back of the hand rather, in the previous case too, caution should not be given up by using both.

If the uncleanness reaches the earth and it is not possible to dry it up, in that case shall be shifted to the forearm or the back of the hand.

If the uncleanness is on the parts to be rubbed, and it is not possible to clean them or remove the uncleanness, the person should perform the rubbing on them.

D. Obligatory Conditions for Tayammum

Problem #1: In Tayammum, Niyat (intention) is a necessary condition, as mentioned under (the chapter on) Ablution, mentioning therein as to whether it is being done in place of ablution or bath. The intention is to be had simultaneously with striking (the hands on earth), which is the first act in Tayammum.

It is a condition to perform it personally, and in the order explained before, and continuously, i.e., without an interval repugnant to its format and shape. The rubbing should be done from the uppermost to the lowest in the forehead and both the hands, as it is usually done, and remove the obstacle in the rubbing and rubbed part of the body, including even a ring.

The rubbing and rubbed parts must be clean, but the hair growing on the parts involved in Tayammum shall not be considered obstacles, and rubbing can be performed on them.

Of course, it is a condition to remove the hair growing from the head to the forehead, when they are more than usual, and are usually considered an obstacle, though not so, if there is one or two hairs.

All these conditions are required in ordinary circumstances, but in case of emergency, the conditions are dropped in difficult circumstances, but they are not dropped in easy circumstances.

Problem #2: A single striking is sufficient for the face and both the hands in place of ablution and bath, though it is preferable to strike (the hands on earth) twice in which case the person has the option to strike twice one after the other before rubbing the face, or divide them in rubbing on the face and both hands. It is even more preferable (to strike the hands on the earth thrice, twice one after the other before rubbing on the face and once before rubbing on the hands).

Nevertheless, caution must not be given up by striking (the hands on the earth) twice particularly in case Tayammum is performed in place of a ritual bath, by striking once for the face and another for both hands. It is better and more cautious to strike (the hands on the earth) once and rub them on the face and both hands, and strike again and rub the palms of the hands on the back of both the hands.

Problem #3: Tayammum may be performed by another person to a disabled person, but the other person must strike both the hands of the disabled person (on the earth) and perform the rubbing with them.

In case of inability, the other person shall strike his own hands, and perform the rubbing with them. If this job is to be done on payment, according to the more cautious opinion, it is obligatory to pay the remuneration for it, even if the remuneration is higher than in normal circumstances, provided that it is not detrimental in his circumstances.

Problem #4: A person whose one hand has been chopped off shall strike the earth with the existing hand, and rub his forehead with it, then rub its back on the earth, though it is more cautious to do so and also assign the job to some one else, if possible, so that he may strike his hand on the earth and rub with it the back of his chopped hand.

If both the hands of a person have been chopped off, he shall strike his forehead on the earth. It is more cautious to assign the job, again, to some one else, if possible, so that the other person may strike both his hands on the earth and rub them on the face of the intended person.

This rule applies in case a person has no forearm; otherwise, the person shall perform Tayammum with his forearm and the existing hand. It is more cautious to perform the rubbing on the entire forehead and both the eye-brows with the existing hand after performing the rubbing with it and with the forearm in the usual manner. This is to be done in the first case.

The same rule shall apply in the second case. So a person whose both hands have been chopped off shall perform *Tayammum* with his forearm. This is preferable to rubbing the forehead on the earth or assigning the job of performing *Tayammum* to some one else. Rather, it is more cautious in case of a person whose both hands have been chopped off that the forearm should take the place of both the palms for rubbing on the back of both hands, and, in case of the persons whose one hand is chopped off, the forearm should take the place of the chopped hand in performing the rubbing of the back of the other hand.

Problem #5: In case of performance of rubbing the forehead and both hands, it is obligatory to draw the rubbing parts on the rubbed parts. So it is not sufficient to draw the rubbed part under a mild movement in the rubbed part is not harmful, if the term “rubbed part may usually apply to them.

E. Rules Concerning *Tayammum*

Problem #1: According to the more cautious opinion, it is not proper to perform *Tayammum* for the obligatory prayers before the arrival of their due time, even if the person knows that it shall not be possible for him to perform *Tayammum* on time, though there is difficulty (in accepting this rule).

According to the more cautious opinion, as a precaution, the person who knows that he shall not be able to perform it on time may perform *Tayammum* before hand for some other purpose, and let it not be nullified upto the due time of prayer in order to be able to perform it in a state of cleanness at its due time; rather its being obligatory is not devoid of force.

As regards the performance of *Tayammum* after the arrival of the due time of prayer, it is valid, regardless of whether there is hope of removal of the cause of inability at its end or not. Caution should, however, not be given up in case there is hope of the removal of the cause, and with the knowledge of its removal, it is obligatory to wait (till the end), and it is more cautious to wait until the time becomes tight in all circumstances.

If a person performs prayer with proper *Tayammum*, he is not bound to repeat the prayer after the removal of the cause, irrespective of the removal taking place within the due time or after its expiry.

Problem #2: If a person performs *Tayammum* on the arrival of the due time of prayer, and it is not nullified, nor the cause of inability is removed until the arrival of the due time of the next prayer, it shall be permissible for him to offer the next prayer at the beginning of its time, except when he has knowledge of the removal of the cause before the expiry of its due time, in which case it shall be obligatory on him to delay (offering the prayer).

In case there is hope of the removal of the cause, he should not give up caution; rather, in case he has performed *Tayammum* for any purpose like prayer, it shall be lawful for him to perform any other purpose like a clean person as long as his *Tayammum* is intact and the cause is also not

removed. So he may do anything in which there is a condition of cleanness like touching the words of the Quran and entering the mosques, etc.

Whether earth can be used in place of water in every case where ablution or ritual bath is required, even if it is not for the sake of cleanness, and whether *Tayammum* is permissible in place of approved baths or renewed or formal (*Suri*) ablution, are questions (in whose answering in the affirmative,) there is hesitation and difficulty, so it is more cautious to perform *Tayammum* in such cases with the hope of being desirable (to Allah).

Problem #3: A person having major pollution other than one due to discharge of semen (*Janabat*) shall have to perform two *Tayammums*, one in place of ritual bath and the other in place of ablution.

In case he has water which is sufficient especially for only either of them (i.e., either for ritual bath or ablution), he shall use it for one of them (for which it is sufficient) and perform *Tayammum* in place of the other. If he has water which is sufficient for either of them (i.e. either for the ritual bath or ablution), but it may be used for both, it shall be more cautious for him to perform the ritual bath first; rather it shall not be devoid of better reason for preference, and perform *Tayammum* in place of ablution. In case of pollution due to discharge of semen (*Janabat*), it is sufficient to perform a single *Tayammum*.

Problem #4: If there have gathered different causes for the major pollution, there shall be difficulty in considering a single ritual bath sufficient for all of them. So it is more cautious to perform a separate ritual bath for each of them. If, for example, a person is required to perform ritual bath for discharge of semen (*Janabat*), and for touching the dead body, he shall perform two *Tayammums*.

Problem #5: The *Tayammum* performed in place of ablution is nullified due to minor and major pollutions, in the same way as the *Tayammum* performed in place of ritual bath is nullified by a pollution which entails the obligation for a ritual bath.

Whether a *Tayammum* performed in place of a ritual bath is nullified by a pollution which nullifies ablution and the person returns to his previous (polluted) position, so that a man who has performed *Tayammum* due to *Janabat* shall be required to renew his *Tayammum*, if he has a minor pollution, or for example, if a menstruating woman has a ritual impurity (*hadath*), whether her *Tayammum* is nullified or not; rather in case of minor pollution it is not obligatory to perform anything except ablution or *Tayammum* in its place until water is available or one is able to use it for ritual bath, then whether what had been performed in its place is nullified:

There are two opinions on these points, the more prevalent being the former one, while the stronger one is the latter, particularly in case of one who has not been polluted by *Janabat*, so that if a person polluted by *Janabat* has a ritual impurity after performing its *Tayammum* occupies the position of a person who has ritual impurity after having performed his ritual bath who is required to perform only ablution or *Tayammum* in its place, while if a menstruating woman has ritual impurity after *Tayammum*, she occupies the position of a woman who has ritual impurity after she has performed

ablution and ritual bath, in which case only her *Tayammum* in place of ablution is nullified, while it is more cautious for a person who is able to perform ablution also to perform *Tayammum* in place of ritual bath, while for a person who is not able to perform ablution, it is more cautious to perform a single *Tayammum* intending thereby to perform what he is liable to do when he is doubtful whether he should do it in place of ritual bath or ablution, in case he is polluted due to *Janabat*. In case he is not polluted due to *Janabat*, by way of caution, he shall perform two *Tayammums*, one in place of ablution and the other in place of ritual bath.

Problem #6: If a person obtains water and he is able to use it legally and reasonably, or his cause of inability is removed before the prayer, his *Tayammum* shall be nullified, and it is not valid for him to offer prayer with it.

In case water again becomes unavailable or the cause of inability recurs, it shall be obligatory for the person to repeat his *Tayammum*.

Of course, if the time of availability of water or removal of the cause of inability is not extensive enough for the performance of ablution or ritual bath, the *Tayammum* is not far from being unnullified, though it is more cautious to repeat it in all circumstances.

The same rule shall apply if the availability of water or the removal of the cause of inability has taken place while the time is very short, his *Tayammum* shall not be nullified, and it shall be sufficient for the prayer for which very short time is left.

Problem #7: The *Tayammum* of a person polluted due to *Janabat* who has performed *Tayammum* shall not be nullified when he finds water sufficient for the performance of ablution. But any other person who has performed two *Tayammums*, his *Tayammum* which he has performed in place of ablution shall be nullified, if he finds water sufficient to perform ablution.

If a person obtains water which is sufficient only for the performance of the ritual bath, and it is not possible to use it for the performance of ablution, he shall perform the ritual bath only, and shall perform *Tayammum* in place of ablution.

If it is possible to use the water for either, but not both of them, then it is more cautious to use it for the ritual bath and to perform *Tayammum* in place of ablution, though it is not far from being likely that the previous *Tayammum* still subsists.

Problem #8: If a person obtains water after offering prayer, it shall not be obligatory to repeat It, but it shall be considered to have finished the prayer and the prayer to be valid.

The same rule shall apply if he obtains water during offering the prayer after *Ruku'* (Kneeling) in the first *Rak'at*.

If, however, it takes place earlier, then there is difficulty in declaring his *Tayammum* and prayer invalid. It is not far from being not invalid and being preferable to revert and offer prayer again

after attaining the state of cleanness by the use of water. It is cautious to complete the prayer and repeat it, provided that there is sufficient time for it when the prayer should not be left incomplete.

Problem #9: If a person doubts about the validity of some portions of *Tayammum* after having completed it, he should not pay heed to it, and should treat it as valid.

According to the stronger opinion, the same rule shall apply if he doubts about the validity of some portions of *Tayammum* during its performance, regardless whether it is in place of ablution or ritual bath, though it is more cautious to pay heed to the doubt.

Chapter on Najasat (the Unclean Objects)

Their Discussion, Rules, How they pollute and which of them are Excused

Problem #1: There are eleven unclean objects.

First & Second: The urine and excrement of an animal having a spurting blood whose meat is not eaten even if the prohibition is accidental, such as one eating unclean things or one with whom a man has committed bestiality.

However, as regards the urine and excrement of animals whose meat is allowed for eating, they are treated as clean.

The same rule applies to the animals that have no spurting blood or meat, like flies, mosquitoes and the like.

As regards the animals having meat, there is difficulty (in treating their urine and excrement as clean), though cleanness is not far from being the case, particularly their excrement being treated as clean, in the same way as, according to the stronger opinion, the urine and excrement of birds which are not eaten are treated as unclean.

Problem #2: If a person doubts about the excrement of an animal whether it belongs to an animal whose meat is eaten or it is forbidden, or the doubt may be about the animal being one whose excrement is treated as unclean or clean, in the same way as when a person sees something but he does not know whether it is the excrement of a mouse or cockroach, it shall be declared clean.

The same rule shall apply if a person doubts about the excrement whether it belongs to an animal having spurting blood or otherwise who has no meat as mentioned in the previous case.

If a person doubts whether the excrement belongs to an animal having (spurting) blood or otherwise, or it belongs to an animal having meat though it is ascertained that it belongs to an animal whose meat is not allowed to be eaten, then there is difficulty in applying the rule to it, though there is some reason to declare it to be clean.

Third: The semen of any animal having (spurting) blood, regardless whether it is allowed to eat its flesh or it is forbidden, except an animal not having (spurting) blood whose semen is treated as clean.

Fourth: The dead part of the body of an animal having spurting blood which was alive before it was separated from its body, or what is chopped off from its body while it was alive, except small pieces separated from its body like the pimples, warts and the crusts which are formed on the lips or the wounds etc. at the time of recovery, or the crusts on the skin of a leper, or the like, as also the other lifeless things like bones, horns, beaks, nails, hooves, hair, wool, fur and feathers are treated as clean.

Likewise, an egg of a dead animal whose meat is allowed for eating which is covered by a membrane, rather the egg of a dead animal whose meat is not allowed for eating (is also treated as clean). To this is affiliated the fermentative substance for cheese of yellow color which is found in the stomach of the foetus of sheep before it takes grass, as also the milk in the breast, both of which are not treated as unclean in their place, and what is more cautious which should not be given up is that this rule applies specially to the milk of an animal whose meat is allowed for eating.

Problem #3: If it is proved that the bag of the musk deer when it was separated was alive, or if it was separated from a live deer, or from a dead one before its maturity, independence or deprivation of life from it, while the deer was still alive, according to the stronger opinion, it shall be unclean.

If it reaches the stage when it is indispensable to eject, then according to the stronger opinion, it shall be treated as clean, regardless of whether it was separated from the deer when the animal was alive or dead.

In case there is doubt about its being alive, it shall be declared clean. But in case there is knowledge or doubt about its reaching that stage, then it shall be declared unclean.

As regards its musk, there is no difficulty in declaring it clean in all circumstances, except when dampness has penetrated into it which is declared unclean, then its being is not free from difficulty. In case of ignorance about its actual position, however, it shall be declared clean.

Problem #4: If meat, fat or skin is obtained from the hands of a Muslim or a market of Muslims, it shall be declared clean if there is no knowledge of its being previously in the hands of an infidel, even if there is no knowledge about the animal having been slaughtered according to the Islamic canonical law (Shar').

The same rule shall apply to a thing which has been found lying in the lands of the Muslims.

If, however, there is knowledge of the thing being previously in the hands of an infidel, then if there is likelihood that the Muslim who has obtained it has already investigated about its actual position, and that it has already been slaughtered according to the Islamic canonical law, (it shall be declared clean). Rather, according to the more cautious opinion, if a Muslim has treated it in the way a lawfully slaughtered animal is treated, then it shall also be declared clean. If, however, there is knowledge that the Muslim has taken the thing from infidel without carrying out due investigation, then, according to the more cautious, rather stronger, opinion, it is obligatory to abstain from it.

Problem #5: If a person has obtained meat, fat, or skin from an infidel or from a market of infidels, and it is not known whether it belongs to an animal having spurting blood or otherwise, such as a fish or the like, it shall be declared clean, though it is not ascertained that it had been slaughtered according to the Islamic canonical law, but it is not permissible to offer prayer with it.

Problem #6: If a person obtains something from infidels or from their market and it is not known that it is from among the parts of body of an animal, or otherwise, it shall be declared clean, as long it is not known that it has associated with some pervading unclean thing. Rather it shall be proper to offer prayer with it. To this category belong rubber and the candles for burning incense from the infidel countries these days, while their actual position is not clear.

Fifth: Blood of an animal having spurting blood, contrary to the blood of an animal not belonging to this category, like a fish, mosquito, louse and fleas, which is clean. If there is doubt whether it belongs to the animals of the former category or pattern, it shall be declared clean.

It is more cautious to abstain from semen transformed into a blood clot, or the coagulated blood in an egg, though the cleanness of the coagulated blood in an egg is not devoid of preference, and according to the stronger opinion, the blood found inside an egg is clean, though it is more cautious to abstain from it, rather from the entire contents of such an egg, except when the blood lies in a vein or under the skin between the blood and the rest of the egg.

Problem #7: The blood that remains in an animal slaughtered according to the Islamic canonical law, if it belongs to an animal whose meat is not allowed for eating, it is more cautious to abstain from it. otherwise, it is clean after it has come out of the animal after it has been slaughtered by slitting the throat or piercing a spear, etc, into the neck of an animal (like a camel, etc.), regardless whether it has remained in its stomach, meat, veins, heart or kidney, unless it has not been rendered unclean by any other object like the slaughtering weapon, etc.

The same rule shall apply if the blood has remained in the parts not meant for eating, though it is more cautious to abstain from it.

The blood which returns into the interior of the animal due to swallowing the breath or due to raising the head of the slaughtered animal is not like the clean blood which has remained in the animal.

The clean blood which remains in an animal is not allowed to be eaten, except what has mixed up with the broth, etc., or it has been there in the meat in a way that it is treated as a part of it.

Problem #8: If there is doubt whether an object is blood or something else, it shall be clean, such as what comes out of a wound, and there is doubt whether it is blood or not. If a person due to darkness or blindness, etc. doubts whether what has come out of a wound is blood or puss, (it shall be clean), and it is not obligatory to make investigation about it.

Likewise, (the same rule shall apply) if a person doubts whether the blood belongs to an animal having spurting blood or not, due to ignorance about the actual position of the animal, as, for example, a snake, or due to the doubt about the blood, as, for example, whether it belongs to a sheep or a fish.

So, if a person sees blood on his garment, and does not know whether it belongs to himself or a mosquito or a flea, it shall be declared clean.

Problem #9: The blood that comes out from between the teeth is unclean, and it is forbidden to swallow it. If it is mixed with the saliva, it shall become clean, and it shall be permissible to swallow it, and it shall not be obligatory to cleanse mouth by rinsing.

Problem #10: The blood coagulated under the nails or skin due to bruise is unclean, if it appears due to splitting of the skin, or the like, except when it is known that it has transformed itself. If the skin has split and water has penetrated into it, it shall be rendered unclean, and it shall be difficult to perform ablution or ritual bath with that water. It shall be obligatory to remove the blood, if there is no harm in it.

In case the blood is left there, it shall be obligatory to place something like a splint on it, and perform the ritual rubbing on it, or the person should perform ablution or ritual bath by dipping it into water which is not rendered unclean by touching something unclean like water in a quantity of *Kur* or running water. This is the case when there is already knowledge of its being coagulated blood. But if there is likelihood of its being meat which has turned into the form of blood due to bruise, then it shall be clean.

Sixth and Seventh: A dog and a pig, both belonging to the animals living on land, themselves or their saliva and all their parts of body even those treated as lifeless like hair, bones or the like (are unclean). But an otter or beaver and sea-pigs are clean.

Eighth: An intoxicant which is by nature liquid (is unclean), excluding the one that is by nature solid like hemp which may temporarily be fermented and consequently become fluid. But the grape juice is apparently clean if it is boiled and its two-third part has not evaporated, though it is forbidden undoubtedly.

Likewise, the juice of raisins is also clean, and according to the stronger opinion, it is not forbidden.

If, however, the grape juice or raisins juice becomes fermented automatically and turns into intoxicants, as mentioned, they shall be unclean (as well as forbidden). The same rule shall apply to dates juice (with similar supposition). In case, there is doubt (about their being intoxicant), they shall all be declared clean.

Problem #11: There is no objection in eating raisins and dates if they become fermented in oil, or they are put generally in a stuffed or cooked food or broth. Particularly when there is doubt about the fermentation of their interior, as is usually the case.

Ninth: Beer, a special drink mostly made of barley (is unclean and forbidden). But if it is made of any other thing, then there is hesitation in its being forbidden and unclean, even if it is named beer, except when it is intoxicant.

Tenth: An infidel (is also unclean). He is one who professes a faith other than Islam, or one who professes Islam but renounces what he knows to be among the essentials of faith, in a way that his renunciation amounts to the rejection of prophet hood (of Prophet Muhammad), or denial of the Prophet, Allah's Blessings be on him and his Progeny, or censuring his holy *Shari'at* (canonical law), or he has committed an act, or made a statement which is tantamount to his disbelief (*Kufr*), regardless of whether he is an apostate or an original *Harbi* (citizen of a country at war with a Muslim country), infidel or a *Dhimmi* (a non-Muslim subject of a Muslim country). As regards the *Nawasib* (those who openly disparage *Ah/-i Bayt*) or *Khawarij* (those who openly oppose Imam Ali), Allah's damnation be upon them, are both unclean without any hesitation, and that is due to their denial amounting to the denial of Prophethood (of Prophet Muhammad). As regards the extremists among them, if their extremism necessitates denial of Allah or His Unity or the Prophethood (of Prophet Muhammad), they shall be declared infidels; otherwise not.

Problem #12: Those belonging to Shi'ah sects other than the *Ithna Ashari*, as long as there is no display of open opposition or enmity or disparagement of the Imams In whose *Imamat* they do not believe, are clean. But in case of display of open opposition, enmity or disparagement, they shall be similar to other *Nawasib* (those who openly disparage *Ahl-i Bayt*).

Eleventh: The sweat of a camel eating filth (is unclean), while, according to the stronger opinion, the sweat of other filth-eating animals is clean, though it is more cautious to abstain from it, in the same way as, according to stronger opinion, the sweat of a person who has become polluted unlawfully is clean, though it is more cautious to abstain from him while offering prayer, and caution should be observed from him in all circumstances.

Rules concerning *Najasat* (Unclean Objects)

Problem #1: Cleanness of the body is a condition in offering prayer or performing circumambulation, obligatory or voluntary, including the hair, nails, etc. which are the adjuncts of the body as well as the garments covering the body, etc., except what is excluded from the *Najasat* (unclean objects), or what falls under their category from among the unclean objects, their small ones even if equal to the eye of a needle being like their large ones except what is excluded from them. It is also a condition in the validity of prayer that the place of prostration should also be clean excluding other places, so that there is no harm in their being unclean as long as their uncleanness does not spread upto the body or garments of the person which is not to be excused.

According to the more cautious opinion, it is obligatory to remove the uncleanness from the mosques including all its portions, such as its land and building structure, even the outer sides of the walls, as it is forbidden to pollute them. To them are affiliated the holy shrines and sacred graves, and all those things whose veneration is obligatory in a way to avoid defiling them like the earth of Imam Husayn's grave, rather the earth of the Prophet's grave, Allah's Blessing be on him and his Progeny, and that of the graves of other Imams, the Holy *Mushaf* (i.e., the Holy Quran) including even its binding cover and outer covering, rather, according to the more cautious opinion, the books containing the Traditions of the (fourteen) *Masumin* (Impeccable personalities), Peace be upon them, or, according to the stronger opinion, if it brings disgrace to them, rather generally in case of some of them.

The cleanness of the objects mentioned is obligatory collectively on all believers and not particularly on one who has defiled them, in the same way as it is obligatory to expedite their cleanness in case of capability. If it requires spending some money, it shall be obligatory to do so. Whether the cost is to be borne by the person who has been responsible for defiling them is a question which is to be reasonably answered in the affirmative.

If the act of cleanness of the mosque requires the excavation of its land or destruction of some of its part, it shall be permissible; rather it shall be obligatory. As regards the liability of the person who has defiled it for the payment of the cost of repair, there is strong support for it. If a person finds some unclean object for example; in a mosque and the due time of prayer has already reached it is obligatory on him to expedite its removal before offering prayer provided that there is ample time for it so that if he fails to do so despite his capability and occupies himself in offering prayer he shall be considered to have committed a sin but according to the stronger opinion his prayer shall be valid. Even in case the time for offering prayer is tight he shall give priority to the removal of the unclean object (from the mosque).

Problem #2: According to the more cautious opinion the mats and carpets of the mosque are like the mosque itself as regards the prohibition of defiling them and the obligation of the removal of their uncleanness even if it requires chopping off the defiled portion.

Problem #3: It makes no difference whether the mosque is in function, ruined or deserted rather the rule shall also apply when its title is changed as in case it has been usurped and turned into a residential house a caravansary or a shop.

Problem #4: It is known that the person making an endowment has excluded some of the parts of the mosque from his endowment; they shall not be governed by the relevant rules. In case of doubt the place shall not be affiliated to the mosque unless there are clear signs of its being part of the mosque.

Problem #5: As it is forbidden to defile the Mushaf (i.e. the Holy Quran) it is also forbidden to write it with unclean ink. If a person writes it (with an unclean ink) due to ignorance or deliberately it shall be obligatory on him to rub off what is possible to be rubbed and it is obligatory to clean the rest like the printing ink.

Problem #6: If a person offers prayer wearing unclean garments deliberately, his prayer shall be invalid and it shall be obligatory on him to repeat it regardless whether there is time left for the prayer or not. As regards a person who offers prayers with unclean garments out of forgetfulness his case is similar to that of one who does it deliberately. As regards one who does it out ignorance until he has finished it he shall not be required to repeat it within the due time or after it though it is more cautious to repeat it.

If a person comes to realize about the uncleanness during offering the prayer then if he does not know that it was there even before the prayer and it is possible to remove it by taking the garments off or in some other way so that it may not be repugnant to prayer and his privy parts may also be duly covered he may do it and continue his prayer. If it is not possible to do so he must offer prayer again (after changing his garments) If there is sufficient time for it. If it is possible to take off the clothes and offer prayer without clothes according to the stronger opinion he must do so, and if this also not possible he must offer prayers wearing the unclean clothes. The same rule shall apply if the uncleanness takes place during offering the prayer and he knew that it was there before offering prayer it shall be obligatory on him to offer it again provided that there is ample time for it.

Problem #7: If a person has only an unclean garment for covering his private parts, and he is not able to take them off due to cold or the like he shall offer the prayer wearing that unclean garment if the time for prayer is too short or when there is reasonably no likelihood of the removal of the cause for inability and he shall not be required to offer the prayer again.

If it is possible to take off the unclean garment, then, according to the stronger opinion, shall offer the prayer without wearing the clothes, provided that the time for offering prayer is short, rather even if there is sufficient time for offering prayer while there is no likelihood of removal of the cause of inability, and he shall not be required to offer compensatory prayer.

Problem #8: If a clean garment becomes suspected with an unclean one, and he has no other clothes, he shall repeat the prayer wearing the same garments. If, however, there is no sufficient

time left, then it shall be more cautious to offer prayer without wearing clothes, if possible, and the person shall offer compensatory prayer after the due time wearing clean clothes.

If it is not possible, he shall offer prayer in one of the clothes, and, according to the more cautious opinion, offer compensatory prayer in clean clothes.

If the suspected clothes are three or more in number, the person shall offer prayer in each of them in a way that he may know that he has offered prayer in clean clothes.

How a Clean Thing Becomes Unclean

Problem #1: A clean object does not become unclean if it touches an unclean object provided that both are dry.

Nor does a clean object become unclean if it touches an unclean object despite their being wet, provided that the unclean wet object does not transfer some of its contents into the clean object.

Of course, the clean object becomes unclean if either of them is wet in a way that its wetness reaches the other object.

So it is not sufficient for a thing to be fluid like quicksilver, rather even melted gold or silver unless some wetness does not reach it from outside. Thus the melted gold in an unclean crucible shall not become unclean, unless there is some pervading wetness in the crucible or in the gold.

Even if there is some pervading wetness in either of them, it will not defile the gold except its apparent portion, as is the case with a solid object.

Problem #2: If there is doubt about wetness or its being pervading, verdict shall be given in favour of absence of uncleanness. So if a fly sits on an unclean object and then on a garment, the garment shall not be declared unclean due to the likelihood of the wetness in the feet of the fly not reaching the garment.

Problem #3: No verdict as to the cleanness or uncleanness of an object shall be given unless its uncleanness is established with certainty or by the information given by the person in whose hands it is, or by the testimony of two just witnesses. There is difficulty in accepting the testimony of a single witness as sufficient. So caution must not be given in both the cases. So also in both cases, a judgment shall not be established by means of mere conjecture, even if it is strong. Nor is it established by doubt, except in case of what comes out before Istibrâ', as has been understood before.

Problem #4: A brief knowledge is like a detailed knowledge. So if there is knowledge about the uncleanness of one of two objects, it is obligatory to abstain from both, except when one of them has not been subject to suspicion before obtaining knowledge, in which case it is not obligatory to abstain from the object subject to suspicion, but there is difficulty in accepting this opinion, though in our view this one is preferable.

Brief knowledge is like brief testimony if it relates to a single subject. If there is no testimony in its favour, there shall be difficulty in accepting the opinion, and so caution should not be given up in it, or in what there is testimony in a brief way, even in the presence of two witnesses.

Problem #5: If two witnesses have given testimony in favour of prior uncleanness (of an object), but a person has doubt about its removal, it shall be obligatory on him to abstain from it.

Problem #6: A person in whose hand an object exists means any person in whose charge it is, regardless whether it is by ownership, rent, loan, trust rather even by usurpation. So if the wife, maid servant or slave-girl informs about the uncleanness of what she has in her hand, like the clothes of the husband or master or the utensils of the house, it shall be sufficient for declaring the object unclean.

The same rule shall apply if the governess of a child informs about the uncleanness of the child or its clothes.

The statement of a master about his slave is, however, an exception to this preceding general rule. So there is difficulty in accepting the statement of a master regarding the uncleanness of the body of his slave, or slave-girl or the clothes in their possession, rather its unreliability is not free from force, particularly when both of them inform about cleanness, so that according to the stronger opinion, their statement shall be reliable but not of the master.

Problem #7: If an object is in the hands of two persons like partners, the statement of each of them regarding its uncleanness shall be acceptable. If, however, one of them says that the object is unclean while the other says that it is clean, the statements of both of them shall be dropped, in the same way as the testimony of two witnesses is dropped when they contradict each other.

In case of contradiction, the testimony by two just witnesses shall be preferred to the statement of the person in whose hands the object lies. This is all when the information of one of the two partners or one of the testimonies is not based on principle, and the other on conscience, otherwise the one based on conscience shall be preferred. So if one of the partners informs about the cleanness or uncleanness of an object based on principle, while the other contrary to it based on conscience, the latter shall be preferred.

The same rule shall apply in case of testimony.

Likewise, the testimony based on principle shall not be preferred to the statement of the person in whose hands the object lies.

Problem #8: It makes no difference whether the person in whose hands an object lies is morally sound (*Adil*) or profligate. There is difficulty in accepting the statement of an infidel as reliable, though, according to the stronger opinion, it is reliable.

It is not far from being likely to treat the statement of a child as reliable, when he is adolescent; rather caution must also be observed in case of a discreet child who is not adolescent.

Problem #9: A defiling object is defiling when there are a few intermediaries like one or two, while if the intermediaries are more, according to the cautious opinion, it shall still be a defiling object, though, according to the opinion closer to traditional authority, in case of their being numerous, it shall not be so. It is more cautious to apply the rule relating to unclean object to one defiled by such object, so that a thing which has touched a thing defiled by urine shall be washed twice. So also a

utensil which touches a utensil licked by a dog shall be treated like the latter, as regards the act of cleanness, particularly when the saliva of the dog has fallen into it, so that it is obligatory to rub it with earth.

Problem #10: If a thing touches some unclean thing within the body, it is not rendered unclean. So if phlegm touches blood within the body and comes out without being stained by blood, it is clean.

Of course, if something enters from outside and touches an unclean object within the body, then it is more cautious to abstain from it, though, according to the stronger opinion, there is no necessity to do so.

Chapter Concerning the Unclean Things which are Excused in Prayers

Problem #1: Following unclean things are excused in prayers.

First. The blood of wounds and abscesses on the body or garments until their recovery. It is more cautious to remove the uncleanness or change the garments in case there is no trouble generally for the people in it, except when it is troublesome. So it is not obligatory to the extent that he may be free from the trouble.

The criterion in the excuse are two things:

Either there is trouble generally for the people in cleaning or changing the garments, then it shall not be obligatory absolutely.

Or it is troublesome particularly for the person, though it may not be so generally for the people, in which case it is not obligatory on him to the extent that he may be free from the trouble.

Similar is the case with the blood of piles, though there may not be an abscess outside.

Similarly, all internal abscesses and wounds whose blood comes out are not devoid of force.

Second. The blood on the body or garments, if, widthwise, it is smaller than the Baghaly Dirham, but not menstrual, puerperal or Istihādah blood, or the blood of the unclean things which cannot be cleaned (Najis al-'ain) or of a carcass.

The blood of Istihādah and the subsequent two bloods are included by way of being more cautious, though the excuse for blood of the two things subsequent to Istihādah is quite reasonable; rather it is better to abstain if the carcass belongs to an animal whose meat is not allowed for eating.

Whenever the width of Baghaly Dirham is not known, it is better to confine it to the certain extent, and that is the width of the joint of the index finger.

Problem #2: If the blood is scattered on the garments and body, its amount shall be estimated together, and that shall be the basis for its excuse, but, according to the stronger

opinion, it is to be excused even if it is sprinkled generally.

If the blood has spread from one side of the garment to the other, it shall be treated a single blood, though caution should not be given up in a thick cloth.

As regards the upper and lining and the thing which is wrapped in many folds, or the like, they shall be counted separately.

Problem #3: If a person doubts whether a blood which is less than a Dirham (in width) is among the exceptions like the three categories of blood (menstrual, puerperal and istihādah blood) or not, it shall be declared to be excused as long as it is not known whether it is of the same category.

If, subsequently, it transpires that it was included in the exceptions, the person shall be considered to be ignorant of the unclean objects, though there is difficulty in accepting it, even if it is not devoid of significance.

If, however, it transpires that it was otherwise, and he doubts whether it is less than a Dirham or not, then, according to the stronger opinion, it shall be excused, except that it was formerly more than the excusable amount, and the person doubts whether it has reached that amount.

Problem #4: An object which is turned unclean by blood is not identical with blood as regards its being excusable, in case it is less than a Dirham, but if the blood is removed, its place shall be governed by the rule of excusability.

Third. Everything without which prayer cannot be offered like waistband, or socks or the like is excused even if it is unclean, though it is defiled by some unclean object belonging to an animal other than one whose meat is allowed for eating.

Of course, it shall not be excused if it is made of an unclean object like a piece of a carcass, hair of a dog, pig or an infidel.

Fourth. Everything that has become a part of the internal limbs and their accessories (after having been digested) like the meat of a dead body which a person has eaten, the wine he has drunk, the unclean blood which has reached under his skin, or the unclean thread with which he has stitched his skin is excused in offering prayers. But, according to the more cautious opinion, he should abstain from keeping an unclean thing, particularly a carcass with himself.

The same rule shall apply to the unclean substance with which prayer can be offered.

As regards the objects with which prayer cannot be offered like a knife and Dirhams, according to the stronger opinion, it is permissible to offer prayer with these articles.

Fifth. The clothes of the governess of a child, regardless whether she is the child's mother or some one else, are excused in offering prayer, even if it is defiled by the child's urine. It is more cautious, however, for her to wash them every day for the first prayer during whose time her clothes have been defiled (by the child's urine), and so offer it with the clean clothes. Then she may offer prayers with the same clothes without there being any necessity for cleaning them; rather it is not devoid of significance.

This rule, however, does not extend to case of other than (the child's) urine, nor from the clothes to the body, or from the governess to the male caretaker (of the child), or from one having a single garment to one having several garments without needing to wear all of them; otherwise, they shall fall under the category of one having a single garment.

Chapter Concerning Things that Clean Other Things (*Mutahhirat*)

There are eleven things that clean other unclean things.

First: Water. It cleans every unclean thing, even water itself, as mentioned under the Chapter on Water. Its procedure has already been mentioned.

As regards the process of cleaning other things, in case of rain water it is sufficient to let it reach all the parts of the unclean object after removing the unclean substance itself and after rubbing with earth, if the object has been licked by a dog.

The same rule applies in case of water upto the quantity of *Kur* as well as running water. Otherwise, according to the more cautious opinion, in case of objects which can be squeezed, it is a condition to squeeze it, or do something which may take its place like rubbing, and dipping or the like, even shake it so hardly that the water inside it may come out.

There is no difference in the kinds of uncleanness and the unclean objects except the utensils which have been licked by a dog or a pig or in which a large size rat has died in it, in which case, according to the more cautious opinion, cleaning it in a water upto the quantity of *Kur* or running water is similar to cleaning it in a little water, rather, it is more cautious to clean every unclean utensil like cleaning with little water, though it is preferable to dip the utensil in it once.

In case of other unclean objects, however, in which the water and uncleanness cannot penetrate, it is sufficient only to dip the objects into the water upto the quantity of *Kur* or running water after removing the uncleanness itself or the obstacle, if any.

In case of the unclean objects, which cannot be squeezed, like small jug of clay or Wood, soap cake, or the like, their apparent part is cleaned by only dipping them in a *Kur* or running water, but their interior can only be cleaned by pure water reaching inside them in a way that it may be considered to have cleaned their interior, But cleaning interior of such objects is extremely difficult, rather apparently it takes place, but rarely, In case there is doubt about the penetration (of the uncleanness or water) or the cleaning having taken place, verdict shall be given in favour of continuance of uncleanness. In case of achievement of certainty (about the penetration of water and ultimate cleanness), but there being doubt about the water remaining pure, verdict shall be given in favour of cleanness of the objects. These are some issues relating to *Kur* and running water, and some more of them shall be mentioned under the following problems.

As regards cleaning with a small quantity of water, in case an article other than a utensil has been defiled by urine, it is a condition that it should be washed twice, but according to the more cautious opinion, this should be done after removing the urine.

In case an article has been defiled by something other than urine, provided that it is not a utensil, it is sufficient to wash it only once after removing the unclean substance. But it is not sufficient to

wash with what the uncleanness has been removed. Of Course, after removing the unclean substance, it is sufficient to wash the article with the little water only once. In cleanness, it is a condition that the cleaning agent (*Ghassalah*) should be separated (from the cleaned object). In case of objects like clothes in which water penetrates and they can also be squeezed, separation of the *ghassalah* should take place by squeezing or the like.

In case of objects in which water does not penetrate, though moisture does, like soap cakes and grains, which cannot be squeezed, their exterior is cleaned by pouring water on them, while it is not harmful if their interior remains unclean, as it cannot be cleaned like their exterior.

As regards a utensil, if it is defiled as a result of licking by a dog, when containing water or anything else which can be licked, it shall be washed thrice, first by rubbing earth. According to the more cautious opinion, it is a condition that the earth must be clean. Nothing takes the place of earth, even in case of emergency.

While washing a utensil with earth, it is more cautious first to rub the utensil with pure earth, and then it should be washed by pouring water on it in way that it Should not cease to be called earth. Caution Should not be given up by affiliating the dog's touching the utensil with his mouth in any way with the rule relating to licking like licking with the tongue or the like, drinking without licking and throwing saliva without licking, but, according to the stronger opinion, if the dog touches the utensil with any other part of its body, it would not be affiliated with the act of licking. Anyhow, caution is more advisable.

Problem #1: If a utensil has been defiled as a result of the licking by a dog, but it is not possible to rub it with earth in the usual manner due to the utensil's mouth being too narrow, etc., even then rubbing by earth in any way shall not be dropped, whether it is through wrapping a piece of cloth on the top of a stick and entering it into the utensil and shaking it hardly, So that washing it with the earth and water may be materialized. But if earth is put into the utensil and it is shaken heavily, there would be difficulty (in accepting it as sufficient) If there is doubt in obtaining the desired result, verdict shall be given in favour of its being unclean, in the same way as had it not been possible to clean the utensil in any way, it would have remained unclean.

The condition of rubbing with earth is not dropped even by washing the utensil with water in a large quantity or running or rain water.

Caution must also not be given up by washing the utensil several times if it is washed with water other than rain water. Therefore, if it is washed in rain, there shall be no need to wash it several times.

Problem #2: It is obligatory to wash the utensil seven times if a large rat dies in it or a pig drinks something kept in it, but it is not obligatory to rub it with earth. Of course, it is more cautious to do so in the latter case before the utensil is washed seven times.

A utensil must also be washed in case a mouse dies in it or wine or any kind of intoxicant is drunk in it, or a dog touches it, though it is not obligatory. But it is obligatory to wash the, utensil thrice, as in all other cases of uncleanness.

Problem #3: Cleaning of the big or small utensils with narrow or wide mouth with water in large quantity or running water is quite clear, so that the utensil is placed in the water till water reaches it in its entirety, and caution must not be given up by doing so thrice.

As regards washing the utensils with water in a small quantity, water is poured into it and it is shaken until water reaches it in its entirety in a way it may be called an act of washing. Then it is poured out. This act is repeated thrice. It is more cautious to shake the utensil immediately after pouring water into it, and as soon as the water reaches the utensil in its entirety, it may be poured out. This applies to all big and small utensils which can be shaken and from which water may subsequently be poured out.

As regards the big containers which are fixed, pools, or the like, their cleaning is carried out by pouring water in their entirety, and then the water for washing which has gathered in their middle is pulled out by scoops, etc., without there being any condition of immediacy as mentioned in the previous case. It is more cautious to wash the scoop every times it is thrown again to pour out the water, but there is no harm in the drops of water which fall during the process of pouring out the water, though the contrary would be more cautious.

Problem #4: If the oven becomes unclean, it is cleaned through throwing down water on the unclean portion from above, but it is not necessary to repeat this act thrice. The water is thrown on it twice in case it is rendered unclean by urine, while it is sufficient to throw water into it only once in other cases.

Problem #5: If the exterior of rice, lentils or the like is soiled, it is placed in some thing and dipped in Kur or running water and is thus cleaned. Likewise, it is cleaned by pouring water in a small quantity on it. If, however, the uncleanness has penetrated into it, then cleaning it with water in small quantity is not possible, and so is the case with Kur or running water.

It is not far from being likely to clean a jug made of unclean clay by placing it in a Kur or running water until water penetrates into all its pores, while it is not necessary to dry it up. If there is doubt about the penetration of water into it pores in a way that even its s may be considered to have been washed, verdict shall be given in favour of its being still unclean.

Problem #6: Meat cooked with unclean water may be cleaned in water in a large or small quantity if water is poured on it, and it penetrates into it in the same quantity as the unclean water had penetrated into it, provided that the water remains pure, and the cleaning water is also poured out. If it is doubted that the unclean water has penetrated into its interior, it is sufficient to clean its exterior.

Problem #7: If a person washes his unclean garment, and then watches on it some thing like saltwort or the like, then if he knows that it is not an obstacle in the water reaching the garment, there shall be no harm, but there is difficulty in accepting likelihood as sufficient; rather the verdict in favour of cleanness of the saltwort can be given indispensably if there is knowledge of its having been washed, and, according to the more cautious opinion, mere likelihood shall not be sufficient.

Problem #8: If a man eats an unclean food, whatever remains in his teeth shall be unclean, and it can be cleaned by rinsing by means of observing the conditions of cleanness.

If the food was clean, but blood has come out from between his teeth, and it has not reached the food, though after touching the blood the saliva has reached the food, the food shall still be clean. If, however, the blood has touched the food, it would be more cautious to declare the food unclean.

Second: The Land. It cleans that part of foot which touches it while walking on it, or by rubbing with it in a way that the actual uncleanness, if any, is removed.

The same rule applies to what protects the feet like shoes.

If suppose the uncleanness is removed before (touching or rubbing against the land), there is difficulty in accepting the uncleanness merely through touching the land. It is more cautious that the minimum what may be called rubbing or walking should take place, in the same way as, according to the more cautious opinion, at the time of cleaning the land, the rule is confined to that part of land which has been rendered unclean as a result of walking on unclean piece of land.

There is no difference whether the land is originally soil, sand or stone, or it is carpeted.

According to the stronger opinion, with this is affiliated a land paved with bricks and gypsum, contrary to the land coated with tar or covered with wood.

According to the stronger opinion, it is also a condition that the land must be dry and clean.

Third: The Sun. It cleans the land and every thing immobile, like buildings and things attached to them like wood, doors, lintels and pegs required in buildings and are fixed to them but, according to the more cautious opinion, not every thing which is there in a wall.

The sun also cleans the trees and other vegetation and fruits, vegetables and herbs, even if their reaping time has reached, as well as other things, including even fixed containers, and so also ships and boats. But as regards trees and other things mentioned after them, there is difficulty (in including them in the list of things cleaned by the sun), though the rule is not devoid of force, but caution should not be given up in case of means of transport and also vehicles, or the like.

According to the stronger opinion, the sun cleans the mats and gunny bags.

It is a condition for the cleanness by the sun of the things mentioned as well as other things after the removal of the actual uncleanness from them that they should contain so much moisture as can be felt by the hand, and then the sun should dry them up in a way that its rays should fall on them without any intermediary; rather it is not far from being a condition that they should be dried up in the same manner (i.e. by the sun rays falling directly on them).

According to the more cautious opinion, the interior of a thing is also cleaned when the sun rays fall on its exterior, and the interior is also dried up by sun rays falling on its interior, while its unclean interior is connected with its unclean exterior.

If only the interior of a thing is unclean, or there is some distance between its interior and exterior through a part of the exterior, the interior shall remain unclean. Rather this rule is not devoid of force.

If, however, there are several things stuck together, they shall not be cleaned by the sun in case its rays fall on some of them, and, as a result of it, the rest are also dried up, because only those things are cleaned by the sun on whom its rays fall without any intermediary.

Problem #9: If a piece of land or the like is dry and it is intended to be cleaned by the sun, clean or unclean water should be spilled on it which may make it wet, so that the sun may dry it up and, as a result, it may be rendered clean.

Problem #10: Pebbles, earth, clay or stones, as long as they are lying on the land and are usually considered part of the land, shall be governed by the rules relating to the land.

If some of them are taken away or cease to be part of the land, they shall be affiliated with the mobile articles (shall not be dried up by the sun).

The same rule applies to the articles which form part of a building like wooden planks and pegs which are governed by the rules relating to the building, but as soon as they are separated from the building they cease to be governed by its rules. If they are subsequently replaced in the building, they shall again be governed by the rules relating to the building. The same rule shall apply to every thing which is identical with them.

Fourth: Transformation. This is the change of a thing into another form. It is called Istihalalah. So if the fire changes some unclean or uncleaning substance into ashes, smoke or steam, the transformed thing shall become clean.

Likewise, the same rule shall apply if any thing other than fire changes it into steam, smoke or ashes. But if fire changes any thing into coal, porcelain, brick, gypsum or lime, it shall continue to be unclean.

Every animal becomes clean, regardless whether it is clean or uncleaning, like the insect produced in a carcass or feces.

So also wine (become clean), if it changes into vinegar by itself or by putting something into it, no matter whether the thing put into it disappears or not.

Of course, if wine connects with some external uncleanness, and then changes into vinegar, according to the more cautious opinion, it shall not become clean.

Fifth: 2/3 Evaporation. If 2/3 of grape juice evaporates by fire or sun when it is fermented by fire or sun, the remaining one-third becomes clean, if it is supposed that grape juice becomes unclean by fermentation, as reference to its cleanness, according to the stronger opinion, has been made earlier. The evaporation of two-third is effective merely in its lawfulness, but if it starts boiling by itself and it transpires that it has consequently turned intoxicant, it shall be unclean and shall not become clean by the evaporation of its 2/3 portion ; rather, it is an indispensable condition that it must become vinegar. If there is doubt about its being an intoxicant, it shall be declared clean.

Sixth: Transfer. It is a cause of cleanness of an unclean substance when transferred and added to another thing and is considered a part of it, as the blood of blood spurting animal is transferred to an animal not having a spurting blood, (when the blood of a human being is transferred into a mosquito).

The same rule shall apply if what is transferred is some thing other than blood and the object to which it is transferred is other than an animal, like a plant, etc.

If it is known that there has been no addition of the transferred thing being added, or there is doubt about it as it has not taken place in the stomach of the animal (whom it has been transferred), for example, in a way that it could be attributed to that animal, in such case the blood sucked by a leech shall continue to be unclean.

Seventh: Islam. It is a cause of cleaning all categories of infidels, including even a man who is a born Muslim apostatizes and then repents, not to speak of a (Muslim) woman (who apostatizes and then repents). All the things connected with the infidel also become clean along with the infidel like his hair, nails, saliva, and phlegm, mucus of the nose or pus, or the like.

Eighth: Dependency. If an infidel embraces Islam, his child also follows him in cleanness, whether the infidel is the child's father, grandfather or mother. There is, however, difficulty in a child following a Muslim who has made him his prisoner, if the child is not accompanied by his father or grandfather. Rather, its being otherwise is not devoid of force.

After a dead body has become clean (a result of ritual bath), all the things used in washing it like the piece of cloth put on it and his clothes in which he has been washed as also the hands of the washing person as well as the cloth wrapped around his hands during washing it also become clean, but there is difficulty in consequent cleanness of the rest of body and clothes of the washing person. According to the more cautious opinion, they are not clean. Rather it is preferable to observe caution in what concerns other than the hands of the washing person.

Ninth: Removal of the Actual Unclean Substance. Removal of the Actual Unclean Substance from the Dumb Animals and Interior of Human Beings. So as soon as the actual unclean substance is removed from the beak of a fowl and its moisture is dried up, the beak becomes clean.

The same rule applies to the body of a wounded animal, a cat's mouth soiled by blood etc, or the young of an animal sullied with blood at the time of its birth, so that as soon as the blood is removed, they become clean.

Similarly the mouth of a human being also becomes clean if he has eaten or drunk some unclean or uncleaning substance as soon as he swallows it.

Tenth: Disappearance. It cleans the body, clothes, carpets, containers, and other things connected with a man, so that along with him they are also treated as clean, except when there is knowledge of the subsistence of uncleanness. It is not far from being likely that there should be no other condition for their cleanness due to disappearance. This rule applies regardless of whether the person has knowledge about the uncleanness or not, believing in the uncleanness of the thing befallen or not, and whether he was slack in his religion or not. Anyhow, observance of caution is better.

Eleventh: Purification. (Istibrā') of a filth-eating animal in a way that it ceases to be called filth-eating. This renders the animal's urine and excrement clean. Caution must not be given up after the animal ceases to be called filth-eating in respect of the purification of a camel upto forty days, a cow upto twenty days, goats and sheep upto ten days, ducks upto five days and fowls upto three days. Rather, the rule is not devoid of force in respect of all of them, while in case of others, the removal of the name of filth-eater is enough for cleanness.

Chapter on Rules Concerning Containers

Problem #1: The utensils of the infidels like those belonging to non-infidels are clean as long as there is no knowledge about their having touched pervading moisture.

The same rule applies to every thing in possession of the infidels, like garments, carpets and the like.

Of course, in case there are some skins which are declared unclean, if they are known to belong to an animal having spurting blood, and it is not known that they have been cleaned, and they are also not known to have been in the possession of a Muslim, (they will be treated as unclean).

The same rule applies to the meat and fats in possession of the infidels. Rather, in their market, they are also declared unclean in the circumstances mentioned above.

Problem #2: It is forbidden to use utensils made of gold and silver for eating and drinking and other purposes like cleaning of major or minor pollution, etc. What is forbidden is eating and drinking in such utensils, and not taking up anything for eating and drinking with them or some thing itself for eating or drinking, so that if a person eats some lawful food with them during *Ramadan* days it would not be treated as breaking the fast with a forbidden thing, though he shall be considered to have committed an unlawful act due to drinking (or eating) in forbidden utensils. These rules relate to eating and drinking.

As regards other purposes, what is forbidden is their use, so that if a person performs ablution with such utensils, the act itself shall be unlawful, but the ablution shall be valid.

Is taking up anything which serves as preliminary to eating and drinking also forbidden due to the absolute prohibition of their use, there is hesitation and difficulty in application of the rule in such case, though the absence of prohibition in the latter case is not devoid of force.

To be more cautious, the prohibition of the use of such things includes putting them on shelves for decoration purpose, though the absence of prohibition is not devoid of force according to the opinion close to the traditional authority.

According to the more cautious opinion, it is preferable to give up decoration of the mosques and holy shrines with the utensils made of gold or silver. According to the stronger opinion, keeping them with oneself without using them is not prohibited.

According to the more cautious opinion, it is forbidden to use anything covered with any of them if they are used in a way that if they are separated, they shall be called separate utensils, except when it is not so, also with the exception of things plated or coated with gold or silver.

As regards things mixed with gold or silver, they are governed by the rules governing gold or silver, even if they are not called with the name of gold or silver, except things mixed with gold or silver without such condition provided that they are not such as can be named gold or silver.

Problem #3: Apparently utensils mean what are used for eating, drinking, cooking, washing or kneading, like a cup, a jug, large bowls, kettles, bowls, drinking cups, wash basins, samovars, tea pots and tea cups; rather even smoking jugs and saucers; rather, according to the more cautious opinion, even spoons and ladles, but the head of the hookah, hilt of the sword, cover of the sword, dagger, knife or box, an amulet cover, dial of a watch or a clock, a lamp, an anklet, even if it is hollow, are not included in utensils.

Likewise, there is hesitation and difficulty in including (in this category) a mortar, censers, fumigators, vessels for keeping precious articles, cream, opium and the like. So caution must not be given up.

To be more cautious, the prohibition of the use of such things includes putting them on shelves for decoration purpose, though the absence of prohibition is not devoid of force according to the opinion close to the traditional authority.

According to the more cautious opinion, it is preferable to give up decoration of the mosques and holy shrines with the utensils made of gold or silver. According to the stronger opinion, keeping them with oneself without using them is not prohibited.

According to the more cautious opinion, it is forbidden to use anything covered with any of them if they are used in a way that if they are separated, they shall be called separate utensils, except when it is not so, also with the exception of things plated or coated with gold or silver.

Likewise, there is hesitation and difficulty in including (in this category) a mortar, censers, fumigators, vessels for keeping precious articles, cream, opium and the like. So caution must not be given up.

Problem #4: As it is forbidden to use utensils of gold and silver for eating and drinking purposes by touching them with the mouth or, for example, taking a morsel from them, in same way it is also forbidden to pouring out their contents into another vessel with the intention of eating or drinking. But there is no objection if the contents (vessels made of gold or silver) are poured out into other vessels (not made of gold or silver) in order to escape from prohibition. Rather, there shall be no prohibition in eating or drinking that food from those vessels (made of gold or silver). Rather, it is not far from being likely that pouring the contents of the vessels made of gold or silver into other vessels (made of gold or silver) with the intention of eating or drinking the latter may be prohibited, but the very act of eating or drinking in those vessels shall not be forbidden. So if a person pours out the contents of the vessels made of gold or silver into other vessels (not made of gold or silver) for eating or drinking by another person, then the person pouring out the contents shall be

considered to have committed a forbidden act, but not the person eating or drinking (in the vessels not made of gold or silver).

Of course, if the act of pouring out the contents has been by the order or on the request (of the person eating or drinking the contents from the vessels not made of gold or silver), then both of them shall be considered to have committed a forbidden act, the person ordered for using the (forbidden) vessel as well as the person ordering for something forbidden, which will be applicable if it is accepted as something forbidden, which is not far from being the case.

Problem #5: Apparently an ablution, performed with a vessel of gold or silver, is treated as similar to an ablution performed with usurped vessel, and is invalid, if it is performed by means of dipping.

Likewise, the same rule shall apply if the ablution is performed by taking the water into one's hand when the water is confined to those vessels only.

If, however, the water is not confined to the vessels (made of gold or silver), the ablution performed shall be valid.

SECTION THREE - DEALING WITH PRAYER (SALAT)

Prayer prevents a person from vile deeds and detestable acts. It is a pillar of faith. If it is accepted (by Allah), all other deeds are accepted, and if it is rejected all other deeds are rejected.

Chapter on Preliminaries of Prayer

There are six preliminaries of Prayer.

First Preliminary of Prayer: Number of Obligatory Prayers, Fixed Times of Daily Prayers and Their Supererogatory Performances (Nawāfil)

Problem #1: There are two kinds of Prayer: Obligatory (Wājib) and Recommended (Mandūb)

There are five Daily Obligatory Prayers. The other Obligatory prayers are the Friday prayers, the compensatory (Qada') prayers of the father to be offered by the eldest son, prayer for A'yat, prayer for circumambulation, prayer for the dead and what is due to one duty-bound for vow or hire, etc. It is an error to include the last category of prayer under obligatory prayers because what is obligatory is the fulfillment of the vow, or the like, and not that it should come under the title of obligatory prayers.

The recommended prayers are innumerable. Among them are the daily supererogatory (Nafilah) prayers which are eight Rak'ats for Zuhr (noon), eight for Asr (after noon), four for Maghrib (Evening) and two Rak'ats for Ishā' prayers, which are offered while sitting and are, therefore, counted as one Rak'at, and are called Vatirah, and their due time is extended with the extension of their principal prayer (the Ishā' prayer), and two Rak'ats for the morning (Fajr) prayer before the obligatory one, their due time being early dawn and is extended upto when the due time of morning prayer lasts until the appearance of the redness (or twilight). It is permissible to offer them with the midnight prayer (Tahajjud) before dawn even at the middle of the night. Rather, it is not far from being better to offer them some time after offering the midnight prayer after mid-night, but it is more cautious to offer both of them before the early dawn except by inserting them in the night prayer.

There are eleven Rak'ats of supererogatory for the night, of which eight Rak'ats are called (mid) night (Tahajjud) then two Rak'ats are called Shaf' (or couple) and one Rak'at called Vitr (single) prayer which along with the Shaf' prayer is the preferable prayer, while the two Rak'ats of Morning Prayer are even more preferable than both. It is permissible to confine oneself to Shaf' and Vitr only; rather particularly to Vitr in case the time is too short, while in case otherwise, it may be offered with the hope (of being desirable to Allah).

The due time for the (mid) night (Tahajjud) prayer is from the mid-night to the actual dawn (Subh-I Sādiq), while morning (Sahar) is preferable than any other time, the last one-third of the night being entirely morning (Sahar), while its preferable time is one close to the dawn (Fajr), and even more preferable than that is the early morning (Tafriq) as was the practice of the holy Prophet, Allah's Blessing be on him and his Progeny.

Thus, the number of the supererogatory prayers (Nawāfil) after counting Vatrāh as one Rak'at comes to thirty four Rak'ats, double of the (daily) obligatory prayers. Of these supererogatory Rak'ats, eight Rak'ats are dropped for Zuhr during a journey causing Qasr (reducing the number of Rak'ats of prayers), eight for Asr and the rest remain intact, while it is more cautious to offer the Vatrāh with the intention of hope (of being desirable to Allah).

Problem #2: According to the stronger opinion, it is established that the Ghafilah prayer is recommended, though it is not among the daily supererogatory prayers. It has two Rak'ats which, according to the stronger opinion, is offered between the evening (Maghrib) prayers and the disappearance of the western twilight.

In the first Rak'at, after the Surah Al-Hamd (Chapter 1 of the Quran), one must recite (in Arabic): "When Dhu al-Nun went off in anger and deemed that We had no power over him, but he cried out in the darkness, saying: "There is no god but Thou. Be Thou glorified, and verily I was among the wrong-doers." Then We accepted his prayer and saved him from the anguish. Thus we save the believers." (Chapter 21, Verse 87)

In the second Rak'at, after the Surah Al-Hamd (Chapter 1 of the Qur'ān), one must recite (in Arabic): "And with Him are the keys of the Invisible. No one but He knows them. And He knows what is in the land and the sea. Not a leaf falls, but He knows it, there is not a grain in the darkness of the earth, nor anything fresh or dry except that it is (noted) in the true Book." (Chapter 6, Verse 59).

After having finished it, one must raise both his hands, and say (in Arabic): "O Allah, ask Thee by the keys of the Invisible which no one knows but Thou to send Blessing on Muhammad and the Progeny of Muhammad, and do for me such and such". (In the last sentence) must pray as one intends to do, and then must say, "O Allah, Thou art my benefactor and has power to grant my demand. Thou knowest my needs. So I ask in the name of Muhammad and the Progeny of Muhammad, Peace be upon him and them, (to grant me) what Thou hast decided for me." Then he must ask Allah whatever one wants. God willing, it shall be bestowed upon him by Allah, the Exalted and Glorified.

Problem #3: It is permissible to offer the supererogatory prayers etc. in a sitting posture even when he is able to offer them in a standing posture, but it is better to count every two Rak'ats as one Rak'at even in case of Vitr, so that one must offer it twice, each time one Rak'at.

Problem #4: The time for the supererogatory prayer for Zuhr is the beginning of midday to the time when the shadow of the sun-dial stake reaches one yard or $2/7$ of the stake, while that of Asr is the time when the shadow of the stake reaches two yards or $4/7$ part of the stake, when it reaches that limit the obligatory prayer is to precede (the supererogatory prayers).

Problem #5: There is no objection if on Friday the supererogatory prayer is offered prior to midday. Rather, on Friday, the number of the supererogatory prayer is raised by four Rak'ats,

bringing the total to twenty Rak'ats. But, on the days other than Friday, the absence of permissibility is not devoid of force.

If a person has knowledge about the inability of offering both of them at their due time, then it would be more cautious to offer both of them with the intention of hope (of being desirable to Allah).

It is permissible to offer the supererogatory prayer of the (Tahajjud) before mid night, if a person on journey or a young man fear that they would fail to offer it on its due time rather, every person having an excuse, like an old man or one afraid of cold or nocturnal pollution (Ihtilām). They should express intention (Niyyat) of urgency (Ta'jil) and not due observance.

Problem #6: The due time for offering the Zuhr and Asr prayers is from midday to Maghrib (sun-set) and the time for Zuhr prayer is reserved from its beginning to the extent required for offering it according to the circumstances of the person offering the prayer, and, like wise, Asr is reserved for the last, while the time between them is common to both.

The due time for the Maghrib and Ishā' prayers in ordinary circumstances is from Maghrib (evening) till midnight, out of which the time for Maghrib prayer is reserved from its beginning to the extent it is required for offering it, and the Ishā' prayer for the last according to the circumstances of the person offering the prayer, and the time between them is common to both.

If a person does not offer both the (Maghrib and Ishā') prayers until midnight in case of emergency due to sleep, forgetfulness, menstruation, etc., or deliberately, it is more cautious for him to offer both the prayers upto the beginning of the morning with the intention of what he owes.

In case the time left for beginning of the morning is not sufficient for offering both the prayers, he should, by way of precaution, offer the Ishā' prayers. It is more cautious to offer both the compensatory prayers in succession after the due time.

The due time for offering the morning (Fajr) prayers is from the early dawn to sun-rise. The preferred time for offering the Zuhr prayer is from midday to the time the shadow of the stake of the sun-dial equals the stake, while the last preferred time for offering the Asr prayer is when the shadow of the stake of the sun-dial becomes double of the stake, but the beginning of the preferred time for offering the Asr prayer is when, according to the more evident opinion, the shadow reaches four feet, or 4/8 of the stake, though it is not far from being likely that its beginning should be after the due limit for offering the Zuhr prayer.

The preferred time for offering Maghrib prayer is from the sun-set to the disappearance of the twilight, which is the redness in the western horizon. That is also the beginning of the preferred time for offering Ishā' prayers which lasts upto one-third of the night. Its time is divided into several parts: before the disappearance of the twilight and after the one-third to middle of the night

The preferred time for offering the Morning Prayer is from early dawn to the appearance of the eastern twilight. Perhaps its appearance is interrelated with the time of day break, aurora and lightening of the morning which has come in the religious texts.

Problem #7: The reservation of time (for a particular prayer) means that it would not be valid to offer another prayer at that time as due, but there is no hindrance in offering a prayer which is not a partner in that time as the compensatory prayer for that or any other day. Likewise, there is no hindrance in offering a prayer which is a partner in that time after one had fulfilled what was due in that time.

If a person offers Asr prayer before Zuhr prayer, but there is ample time left for offering four Rak'ats, it would be valid to offer Zuhr prayer during that time as within the due time.

Likewise, if a person offers Zuhr prayer before midday under the impression that its due time has arrived, and then the due time arrives before its completion, there shall be no hindrance in offering the Asr prayer after finishing the prayer and it is not obligatory to delay it until the passage of time required for offering four Rak'ats. Rather if the entire Asr prayer is offered during the time of Zuhr prayers, according to the strong opinion, it would be valid, in the same way as when a person believes that he has offered Zuhr prayer and so offers the Asr prayer, but later it transpires that he had not offered (Zuhr prayer), though the entire Asr prayer had taken place during the time reserved for the Zuhr prayer. But caution must not be given up in case he could not find a part of the common time (Zuhr and Asr prayers).

Problem #8: If a person offers Asr prayer before Zuhr prayer or Ishā' prayer before Maghrib prayer deliberately, whatever was offered earlier would be invalid, regardless whether they were offered during the reserved time or common time.

If, however, the person has offered them inadvertently, and comes to realize it after finishing them, whatever he had offered earlier shall be valid, and he must offer the first one subsequently.

If he comes to realize it during the performance of the prayer, he may return to his previous intention, except when there is no time left for such return, in the same way as when a person precedes Ishā' prayer inadvertently, and comes to realize it after starting the fourth Rak'at when he cannot return his intention (Niyyat). Rather its validity is not devoid of force, though it is more cautious to complete it, and then offer Maghrib prayer, and then Ishā' prayer.

Problem #9: If for a person living in his own place there remains time sufficient for five Rak'ats upto sun-set and for one who is on journey three Rak'ats, he shall offer Zuhr prayer first, even if part of the Asr prayer may be offered after the due time.

If, however, there remains time sufficient for four Rak'ats or less for a person living in his own place and two Rak'ats or less for one who is on a journey, he shall offer Asr prayer.

If, for a person living in his own place there remains until mid-night time sufficient for five Rak'ats or more, and for one who is on a journey four Rak'ats or more, he shall first offer Maghrib prayer, but if for one living in his own place and one who is on a journey, there remains lesser time than already mentioned, he shall offer Ishā' prayer, and shall hasten to offer Maghrib prayer subsequently, if there is still time left for one Rak'at or more, and apparently it would be within the due time, though it would be more cautious not to intend offering it within the due time or after the due time.

Problem #10: It is permissible to change the intention (Niyat) from the subsequent to the precedent prayer, but not otherwise. If a person starts Zuhr or Maghrib prayer, and in the meantime he comes to realize that he has offered both the prayers, it would not be permissible to change his intention to the subsequent prayers (i.e. to Asr and Ishā' prayers). On the contrary, if he starts the second prayer under the impression that he has already offered the first, but during the performance of the prayer he comes to realize that the fact is otherwise, he may change his intention to the first, if there is time left for such change.

Problem #11: If a person is on a journey, and there is time left for four Rak'ats, so he starts, for example, Zuhr prayer, and during offering the prayer he intends to stay in the place, his prayer shall be invalid and it shall not be permissible for him to change to the subsequent prayer. So he should discontinue it, and start the subsequent prayer, in the same way as, in the supposed example, if he intends to stay in the place, and then he starts the subsequent prayer, and then he changes his intention from staying in the place, then it would be difficult to return to the precedent prayer.

Problem #12: According to the more cautious opinion, it is obligatory on persons having due excuse to delay offering prayer from the beginning of the due time with the hope that the excuse shall be removed within the due time, except in Tayammum, when it is permissible to expedite it, except when he knows that the excuse shall be removed within the due time, as has already been mentioned under the Chapter on Tayammum.

Problem #13: According to the stronger opinion, it is permissible to offer the recommended prayer during the time of an obligatory prayer, provided the time is not too short.

Likewise, it is permissible for one who owes offering some obligatory prayer.

Problem #14: If a person is sure of the arrival of the due time of prayer, and so he offers prayers, or he relies upon some reliable indication like the testimony of two morally sound witnesses, (and offers prayers), then if the entire prayer has taken place before the due time, it shall be invalid, but if some of it, even if a little, has taken place in the due time, it shall be valid.

Problem #15: If some of the due time for offering prayer and fulfilling its preliminaries, like cleanness with water or earth etc., has passed according to the circumstances of the person offering prayer, then some excuse takes place like lunacy or menstruation, it shall be obligatory for him to compensate. In case otherwise, it would not be obligatory.

If the preliminaries for prayers have been fulfilled in the beginning of the due time, it would be sufficient for offering the prayer according to his circumstances and his actual duty.

If the excuse is removed at the last time, then if there is sufficient time for cleanness and offering both the prayers, it would be obligatory to offer both the prayers.

If, however, the time left is sufficient for cleanness and offering a single prayer, it would be obligatory to offer the prayer whose time is due.

The same shall be the rule if the time left is sufficient for offering a single Rak'at in the state of cleanness.

If the time left is sufficient for cleanness and offering a single Rak'at, the person shall perform the second.

If, however, there is extra time left after offering a complete prayer which is sufficient for offering a single Rak'at besides obtaining cleanness, it shall be obligatory to offer both.

Problem #16: It is a condition for a person having no excuse to obtain knowledge about the arrival of the due time at time of beginning the prayer. The testimony of two morally sound witnesses is treated equivalent to knowledge, if their testimony is based on sense, such as observation of the shadow (of the stake of sun-dial) becoming longer after having been smaller.

According to the more cautious opinion, the call to prayer (Adhān) is not sufficient, even if the person calling to prayers is morally sound and knows the due times of prayers.

As regards a person having some excuse like the presence of clouds, or such other usual excuses, it shall be permissible for him to rely on presumption about the due time.

As regards a person having some special excuse. Like a blind man or one detained, he should not give up caution by delaying the prayer until he gets knowledge about the arrival (of the due time of prayer).

Second Preliminary of Prayer: the Qiblah

Problem #1: As far as possible, it is obligatory to face the Qiblah, regardless whether the prayers are the daily obligatory prayers or others, including even the prayers for the dead, or the supererogatory prayers which are offered on the land in a state of composure and rest, but in the state of movement and riding or in a ship, this condition does not apply.

Problem #2: It is a condition that there should be knowledge about facing the Qiblah while offering prayer. According to the stronger opinion, the evidence (by two morally sound persons), based on the fundamental principles of sense takes the place of knowledge. If it is not possible to have

knowledge or evidence, the person offering prayer should take all possible efforts, and act according to his own belief or assumption.

In case it is also not possible and in his view all the four directions are equally possible, he must offer prayer towards all the four directions, if there is ample time; otherwise, he should offer prayer towards the directions as allowed by the time for prayer. If there is knowledge or the like about the absence of possibility of *Qiblah* being in some of the directions, he should offer prayers towards the other directions in which the *Qiblah* is possible.

One may rely on direction of the *Qiblah* the Muslims of the place face while offering their prayers or as ascertained by the direction of their graves and prayer arches (*Mihirabs*) in the mosques, if he does not already know them to be made on the wrong directions.

Problem #3: If a person having confusion (about the actual direction of *Qiblah*) on whom it is obligatory to offer prayer on more than one direction has to offer two prayers, (such as for *Zuhr* and *Asr*), it is more cautious for him to offer the second towards the directions of the first, in the same way as it is also more cautious to offer the first prayer towards the (possible) directions, and then start offering the second, though, according to the stronger opinion, it is permissible to offer the second prayer after the first in all the (possible) directions.

Problem #4: If a person offers prayer towards a direction according to some reliable evidence, and subsequently it transpires that it was wrong, then if his deviation from the direction of the *Qiblah* has been between his left and right, his prayer shall be valid. If he has come to realize the mistake during offering the prayer, let bygones be bygones, and face the right direction of the *Qiblah* during the rest of the prayer, regardless whether there is sufficient time left (for repetition of the prayer) or not.

If his deviation (from the direction of the *Qiblah*) has been more than mentioned above, he shall repeat the prayer, if there is still time left for it; otherwise not, even if later it transpires that he had his back towards the *Qiblah*.

In case he has ample time left, it is more cautious for him to repeat the prayer, if he had his back towards the *Qiblah*; rather in all cases.

In case during the prayer he comes to realize that his deviation is more than what lies between his right and left, then if there is ample time even for offering a single *Rak'at*, he must discontinue his prayer and repeat it while standing with his face towards the *Qiblah*.

If the time left is not sufficient even for a single *Rak'at*, he must face the *Qiblah* during the remaining portion of the prayer and, according to the stronger opinion, his prayer shall be valid, even if (the major part of it is) offered with his back towards the *Qiblah*, though it is more cautious to offer compensatory prayer even for it.

Third Preliminary of Prayer: Permissible Garment of the Person Offering Prayer

Problem #1: In case of ability, it is obligatory to cover the private parts in prayer and its appurtenances like the *Rak'at* offered by way of caution, and according to the stronger opinion, the compensatory prayer for the forgotten portions, and according to the more cautious opinion, the two prostrations due to inattention, as also in the supererogatory prayers excluding the prayer of the dead, though, according to the more cautious opinion, also including it, while caution must not be given up during the performance of the circumambulation.

Problem #2: If the private part of a person becomes visible due to wind or negligence, or it was visible from the beginning of the prayer without the knowledge of the person offering praying, the prayer shall be valid. However, the person should cover it immediately, if he comes to realize about it during the prayer. It is more cautious to finish it, and start it anew.

The same rule applies in case he forgets in both cases.

Problem #3: The private parts of a man which are required to be covered and are forbidden to look at during prayer are the anus, the penis and both the testicles. It is more cautious to cover the indistinct figure of the private parts visible from behind the clothes without distinction of the color.

As regards the parts of a woman which are required to be covered during prayer, they include her entire body including even her head and hair excluding the part of her face which is required to be washed for ablution and both her hands upto the forearms and both feet upto the ankles. It is obligatory to cover a little of the parts mentioned as excluded from being covered.

Problem #4: It is obligatory on a woman to cover her neck and the lower part of her chin including even that much of it as can be seen after wrapping the scarf (*khimār*).

Problem #5: A slave girl and small girl are treated at par with a free and adult woman, except that it is not obligatory on them to cover their head, hair or neck.

Problem #6: It is not obligatory to cover the private parts from below. Of course, if one is standing at the corner of the roof or net where a person may possibly pass and have a look at the private parts in case he looks up, then, according to the more cautious, rather stronger opinion, one should cover the private parts from below too, even if presently there is no person looking there.

In case, however, there is a net under which no person is expected to look from under as a net on a well, then, according to the stronger opinion, it is not obligatory (cover the private parts from below), except when there is a person looking in the net.

Problem #7: The hiding from sight may be obtained through any means which may hide a thing from sight, including even a hand, coating with mud or dipping in water. Even both the hips are sufficient to cover the anus.

The hiding of the (private parts) in prayer is not sufficient by means of the things mentioned above, even in case of an emergency.

As regards covering (the private parts) by means of leaves, grass, cotton, and unwoven wool, according to the stronger opinion, it is permissible generally, though caution must not be given up in case of the first two.

According to the stronger opinion, if a person finds nothing to (cover his private parts), even grass or leaves, it is permissible for him to offer prayer, though it is more cautious for a person who finds something to coat with to add to his own condition the condition of one who could find something (to cover his private parts).

Problem #8: There are a few conditions required in what covers the private parts of a person offering prayers, rather in the general garments of such person. They are:

Firstly, Cleanness, except in case of a single garment in which prayer cannot be offered, if it is the only thing he has (as handkerchief), as mentioned before.

Secondly, that it is not permissible to offer prayer if the garment is usurped, provided that he has knowledge about its being usurped, so that if he does not know about it, his prayer shall be valid.

The same rule shall apply in case he forgets about the garment being usurped, except when he is himself the usurper. Caution must not, therefore, be given up by offering the prayer again.

Problem #9: There is no difference whether the usurped object is an actual property, its usufruct or is related with the right belonging to another as something mortgaged, or the actual property which belongs to *Khums* or *Zakat* due to their non-payment even from some other property.

Problem #10: If a person has dyed his garment with usurped dye, and then in case the particles of the dye with which it has been dyed have not remained on the garment and what remains is the color only, then according to the stronger opinion, his prayer shall be valid.

If, however, the particles of the actual dye have remained on the garment, then, according to the stronger opinion, the prayer shall not be valid, in the same way as, according to the stronger opinion, it shall not be valid if the garment has been stitched with a usurped thread, though it is not possible to separate the thread by tearing it, what to say of the case when it is possible to do so.

Of course, there shall be no difficulty in accepting the prayer as valid in case the dyer or the tailor has been compelled to do his job, and he has not been paid his remuneration, provided that the dye and the thread belonged to the owner of the garment.

The same rule applies if the garment has been washed with usurped water, or its dirt has been removed by a usurped soap, provided that its actual particles have not remained on the garment, or when the person washing the garment had been compelled to do it and has not been paid his remuneration.

Thirdly, that (if the garment has been made with the parts of body of an animal), It should belong to an animal which has been one whose meat is allowed for eating and which has been lawfully slaughtered. So it is not permissible to offer the prayer while wearing the garment made of the skin of an animal not lawfully slaughtered, nor the garment made of other parts of its body having life, and, according to the more cautious opinion, even if it is clean due to not being one having spurting blood, like a fish. It is permissible to offer prayers in case the garment is made of the parts of the body of the animal having no life like wool, hair or fur, or the like.

As regards the animal whose meat is not allowed for eating, it is not permissible to offer prayer wearing anything made of the parts of its body, even if it was lawfully slaughtered, regardless whether it had life or not. Rather, it is obligatory to remove the clean surplus things like moisture or the hair sticking to the garment of the person offering prayer. Of course, if a person doubts whether his garment or anything covering his body is made of (the parts of body of) an animal whose meat is allowed for eating or not, or it is made an animal or some other thing, his prayer shall be valid if offered while wearing it, contrary to the case when he doubts about the parts of the body of an animal having life whether it was lawfully slaughtered or dead, so that it is not lawful to offer prayer while wearing a garment made of its part of body unless it is ascertained that it was lawfully slaughtered.

Of course, what is obtained from a Muslim or a market of the Muslims without the knowledge that it was formerly in the possession of an infidel, or when it was in the possession of an infidel with the likelihood that the Muslim in whose possession it is now has investigated about its actual position of having made the transaction on the condition that it was lawfully slaughtered, then, according to the more cautious opinion, it shall be considered to have been lawfully slaughtered, and so offering prayer while wearing it shall be permissible.

Problem #11: There is no objection in (the use of) a candle, honey or mixed silk or the part of body of the animal having no flesh like a mosquito, bug or a bee or the like, and so is the case of a mother-of-pearl.

Problem #12: From among the animals whose meat is not permitted for eating mongoose is an exception, and so is a squirrel, according to the stronger opinion, but caution must not be given up in case of the latter. What is now called “Khaz” (in Arabic) and not known that it belongs to that animal, and its position is doubtful, there is no objection in it, though it is more cautious to abstain from it.

Problem #13: There is no objection in the surplus things of a man like his hair, saliva or milk, whether it is originally of the person offering prayer or some one else. So there is no objection in hair tied with hair, regardless whether they are a woman’s or a man’s hair.

Fourthly, that while offering prayers, the cloth covering the private parts, rather the general garment of a man, should not contain anything made of gold, although meant for decoration, such as a ring or the like. Rather it is forbidden for men even when not offering prayer.

Problem #14: There is no objection while offering prayer, rather generally, in strengthening the teeth with gold, rather even in making a cover of gold for them or making artificial teeth of gold. Of course, in case of the front teeth, which are apparent, if made for the purpose of decoration, it is not free from objection. So it is more cautious to abstain (from it). Likewise, there is no objection in making the frame of gold for a watch, and keep it with oneself (while offering prayers). Of course, if the chain of a watch is made of gold and a person hangs it on his neck or on his garment, there shall be objection in offering prayer with it, contrary to the case when it is not hanging, though it may be in his pocket, there is no objection in it.

Fifthly, that the garment of men, while offering prayers, should not be made of pure silk, rather it is not lawful for men even when they are not offering prayers, although, according to the more cautious opinion, it is something which alone is not sufficient for offering prayer, as a waistband or a cap or the like. Pure silk also includes what is made of raw silk, such as a waistband or a cap or the like. Pure silk also includes what is made of raw silk, though it is permitted for women, even when offering prayers, and for men in the event of necessity or war.

Problem #15: What is forbidden for men is wearing garments made of silk, but there is no objection in making silken carpets or bed sheets and lie on them or blankets etc. and cover themselves with them when sleeping. So also there is no objection in stitching buttons of garments with silk, or decorate the garments with braids and laces made of silk, in the same way as there is no objection in making the covers for wounds, abscesses and preventives for those suffering from incontinence of urine.

Rather, there is no objection even in patching garments with silk or making the borders of the garments with silk, provided that they are not to the extent that they may be called silken, and in case of borders for garments, it is more cautious that they should not exceed four fingers when joined together in width. Rather it is more cautious to observe this measurement even in case of the patches of silk on the garments.

Problem #16: It is understood that it is forbidden to wear garments made of pure silk, that is pure silk which not mixed with anything else. So there is no objection in wearing garment made of mixed silk. The criterion for a garment made of mixed silk is that it should cease to be called one made of pure silk, although the mixture is only one-tenth. It is also a condition in the mixture that in respect of validity of the prayer, it should be of a material with which it is allowed to offer prayers, so that it is not sufficient to mix the silk with wool or fur of an animal whose meat is not allowed for eating, even if it is sufficient for removing the prohibition for wearing.

Of course, it is forbidden to wear a silken garment woven with golden threads, in the same way as it is forbidden to offer prayer while wearing such garment.

Problem #17: Wearing garment for fame, though it is forbidden according to the more cautious opinion, and, likewise, according to the more cautious opinion, wearing what is specially meant for

women by men and vice versa (is forbidden), but there is no harm in wearing them for offering prayers.

Problem #18: If a person doubts whether a garment or ring is made of gold or any thing else, it shall be permissible to wear them, and offer prayers wearing them.

The same rule applies in case a person doubts whether a garment is made of silk or any other material.

To the same category belongs the case of any garment called 'made of hair', but whose factual position is not known.

Likewise, if a man doubts about a garment whether it is made of pure or mixed silk, (he is allowed to offer prayers while wearing that garment), though it is more cautious to abstain from it.

Problem #19: There is no harm if a child wears garment made of silk. So it is not forbidden for a guardian to dress the child in the silken garment, and it is also not far from being likely that if the child offers prayers in silken clothes, it shall be valid.

Problem #20: If a person offering prayer does not find anything including grass or leaves to cover his private parts, he may offer prayers stark naked in a standing posture, according to the stronger opinion, if he is safe from being seen by one who is forbidden to look at him.

If, however, he is not safe from being seen by one who is forbidden to look at him, he may offer prayers while sitting. In both cases, he must make signs for kneeling and prostrating, and make the sign of prostrations as low as possible.

In case he offers the prayer in a standing posture, he must cover his front private with his hand, and if he offers it while sitting, he must cover them with his thighs.

Problem #21: According to the more cautious opinion, it is obligatory to delay offering prayers if a person has nothing to cover his private parts, and there is likelihood of getting something by the end of the due time. But its not being obligatory is not devoid of force.

Fourth Preliminary for Prayer: Its Place of Offering

Problem #1: A prayer can be offered at any place except the usurped one, regardless whether it is the land itself, or its usufruct, or it falls under the category of one whose right belongs to someone else as a mortgaged place, or its title belongs to a deceased person who has left a will for one-third of his property and it has not yet been partitioned, rather if it comes under someone's preferential right in a way that, for example, a man enters earlier in a part of the mosque etc. for offering prayers and, to be more cautious, has not left it.

The prayer in a usurped place shall be invalid if the person offering the prayer has knowledge about its being a usurped place, and the man has option, irrespective of the prayer being obligatory or supererogatory.

In case a person is ignorant of the place being a usurped one, or in case of emergency or one unlawfully confined in such circumstances, his prayers shall be valid.

The same rule shall apply to a person who has forgotten about the place being a usurped one, except when he himself is the usurper. It is more cautious to declare his prayer to be invalid.

As regards the prayer offered by a person in emergency, it shall be like one who is not in emergency in respect of standing, kneeling and prostration.

Problem #2: It is not permissible to offer prayer in a usurped place whose owner is not known, and its case is referred to the ruler.

Likewise, it is also not permissible to offer prayer in jointly owned place, except with the permission of all its owners.

Problem #3: If the place of offering prayers is lawful, the prayer offered under a usurped roof, usurped tent, top of a mountain or a house some of whose walls are usurped shall not be invalid, though it is more cautious to abstain from all such places.

Problem #4: If a person purchases a house from among the actual property on which the payment of Khums or Zakât is due, the prayer offered in it shall be invalid, except when the person in a lawful manner transfers its liability for payment of Khums and Zakât to himself through a negotiation with a Mujtahid.

Likewise, it is not permissible to make any changes in the property left by a deceased person on which the payment of Khums, Zakât or peoples rights are due like the Mazalim before the payment of their dues.

The same rule applies if the deceased person owes a debt which covers the entire property left by him. Rather, the same rule applies even if the debt does not cover the entire property, except with the consent of the creditors, or when the heirs of the deceased determined to pay the debt without negligence. It is more cautious also to obtain the consent of the guardian (or executor) of the deceased.

Problem #5: The criterion for permissibility of the change and prayer in the property of another is obtaining his permission and willingness, even if he has not given his permission expressly, so that it is known by indications and circumstantial evidence and outward signs which indicate his consent, supported by satisfactory indications in which no heed is paid to likelihood to the contrary, and that is the open door guest houses, public baths, caravanserais and the like.

Problem #6: It is permissible to offer prayer in extensive pieces of land like deserts, farmlands and gardens around which no walls have been built. Rather other ordinary utilization of such places according to the usual practice is also allowed as walking in them without any damage, or sitting or sleeping in them or the like. It is not obligatory to make investigations about their ownership, regardless of the owners being adults, minors or lunatics.

Of course, in case of expression of disapproval and ban on their use by their owners, though with placing some sign of stopping the entrance in them, there is difficulty in the permissibility of all that has been mentioned before as well as other similar actions in them, except in very extensive lands like deserts which are considered among the public utilities of villages and usually as their suburbs and the pastures for their cattle, so that such acts are not far from being permissible in such places even with the expression of disapproval and ban.

Problem #7: A place where prayer is rendered invalid due to its usurpation means where a person offering prayer stands even with several intermediaries in which there is objection. Likewise, it also applies to the space which is occupied by him for standing, kneeling and prostrating and the like (in prayers), so that both these categories sometimes become combined, as in case of prayer in a usurped land, and sometimes they part with each other as a lawful balcony in an unlawful space or a usurped carpet strewn in a lawful piece of land.

Problem #8: According to the stronger opinion if a man and woman offer prayer standing side by side, or the woman stands forward, their prayer shall be valid, but if both of them start their prayer at the same time, it would be disapproved for both, and if they do not start together, the prayer of the person started the prayer afterward shall be disapproved. It is more cautious to give it up. It makes no difference whether both of them are within the prohibited degrees (of marriage) or otherwise, or both of them adults or otherwise, or one of them is an adult and the other a minor. Rather the rule also applies to a husband and wife.

The disapprobation is removed if there is a curtain or a distance of ten cubits between the two parties. It is more cautious for the curtain to be such as nothing can be seen through it, as in case of the woman standing behind the man should be such that the place of the woman's prostration should be equal to the place of the man's feet, though it is sufficient even if the woman is standing a bit behind the man.

Problem #9: Apparently it is permissible to offer prayer on the side of the grave of a Masum (i.e. any prophet, Fatimah or any of the twelve Imams), Peace be upon them; rather, even forward than it, but it amounts to committing a dishonourary act, and so it is more cautious to abstain from it. The effect is removed where there is a long distance in a way that it may not be treated as being on the side of or forward than the grave and the objection of being in the same place is also removed.

Similarly, a curtain also removes the act from being dishonourary, but apparently the net, holy box or the cloth strewn upon it is not considered as the curtain.

Problem #10: It is not a condition that the place of offering the prayer must be clean, except that the uncleanness which cannot be forgiven should not pervade to the garment or body of the person offering prayer.

Of course, as mentioned before, the place of prostration must be clean, as it is also a condition in its being land, grass, or paper, the most preferable being the earth of Imam Husayn's grave which splits the seven barriers and illuminates the seven layers of the earth, according to what has been narrated in the Tradition.

It is not permissible to prostrate on what the word land is not applicable as minerals, such as gold, silver, glass, tar or the like.

Likewise, (it is not permissible to prostrate) on what the word vegetation (Nabat) is not applicable as ashes. According to the stronger opinion, it is permissible (to offer prayer) on pottery, brick, lime, gypsum even after being soaked.

Same is the case with (prostrating on) charcoal.

Also it is permissible (to offer prayer) on Armenian clay, the millstone and all kinds of marble, except the artificial one about which it is not known whether its material is one on which prostration is allowed.

It is a condition for the permissibility of prostration on vegetation that it should not be used for eating or clothing, so that it is not permissible (to prostrate) on what is used by the people for food or clothing, as something baked or cooked or the grains which are usually used as food like wheat, barley or the like, or fruits or edible vegetables and the edible fruits even they are ready (or ripe) for eating, though there is no objection in prostrating on their skins, peelings and shells separated from them except what are attached with them like the peels of apples or cucumbers which are either generally or sometimes eaten or eaten by a section of the people.

Similarly, there are the skins or husks of grains that are generally eaten with the grains, on which, according to the more cautious opinion, (it is not permissible to prostrate).

There is, however, no objection in prostrating on the shells of the stones of the fruits when they are separated from the pulps. In case the pulps of the stone are not used for eating, even for treatment, there is no objection in on them generally, as there is no objection in prostrating on things which are not used for eating like colocynth, carob beet or the like.

There is also no objection in prostrating on straw and chaff and stalks of grain. The smoking of tobacco does not make it unlawful for prostrating on it.

It is more cautious to give up prostrating on the bran of wheat and barley, and, similarly, on the skin of melon and the like.

It is not far from being permissible to prostrate on the husk of rice and pomegranate after sifting.

The case of things used for wearing is identical with that of things used for eating. So it is not permissible to prostrate on cotton and flax even before they are ready for spinning. Of course, there is no objection in prostrating on their wood etc. like their leaves and palm leaves or the like which are usually not used in preparation of wearing material.

Likewise, there is no objection in prostrating on wooden clogs and the cloth made of, for example, palm leaves, not to speak of the mats made of palm leaves, straw mats and fans made of palm leaves, and the like.

It is more cautious to avoid prostrating on hemp, in the same way as, according to the more cautious opinion, it is better to avoid prostrating on the paper made of non-vegetation material, as made of silk, though, according to the stronger opinion, it is permissible generally.

Problem #11: In case of ability, it is a condition for the thing on which prostration is performed that it should be a thing on which the forehead may be easily placed. So it is not permissible to prostrate on mud that is not stable, rather on the earth on which the forehead cannot be placed. But in case it is possible to place the forehead, there is no objection on prostrating on clay, even if it sticks to the forehead, but it is obligatory to remove it for the second prostration, if it is a hindrance (in the second prostration).

If a person has nothing but infirm clay, he shall prostrate on it by placing the forehead on it without its being intent on it.

Problem #12: If the land and mud is such that if the person offering prayer sits on it for prostration and Tashahhud, it would be smear his body and clothes, and he has no other place to offer prayers, he shall offer prayers in a standing posture and shall make signs for prostrations and Tashahhud, as according to the stronger opinion, it is more cautious.

Problem #13: If a person has nothing which is lawful to prostrate on, or has it but cannot prostrate on it due to Taqiyyah or the like, he may prostrate on cloth made of cotton or flax, and if it is not available, he may prostrate on his cloth made of material other than cotton or flax, and in its absence, he may prostrate on the back of his palm. If this also not possible, he may prostrate on minerals.

Problem #14: If during the performance of prayer a person loses the thing which it is lawful to prostrate on, he shall discontinue prayer if there is ample time (for offering prayer again), and if not he shall prostrate in order mentioned above.

Problem #15: It is a condition for the place for offering the obligatory prayers that it should be stable and not restless. In case of ability, if a person offers prayers in a ship, or on a beadstead or a (wheat or barley) threshing floor, then if there is no required stability there, his prayer shall be void. If the place becomes such that it may be said that it is satisfactorily firm, the prayer shall be valid, even if it is in a moving ship or something identical like an aeroplanes, train or the like, but it is

obligatory to observe the remaining conditions required to be observed in prayer like facing Qiblah, etc.

This is all when the person has a choice. Otherwise, in case of emergency, a person may offer prayers in a state of walking or while riding an animal or an infirm ship or the like, observing as far as possible the condition of facing the Qiblah and, if possible, turning towards the Qiblah whenever the thing on which he is riding turns against the Qiblah. If it is not possible to face the Qiblah except when reciting the Takbirat al-Ihràm, he may be content with it, and if it is not possible at all, the condition shall drop, but it is obligatory to try one's best to be closest to the direction of the Qiblah.

The same is the case with the observation of other conditions in prayers, so that he should observe whatever is possible from them or in their place, or to drop what he was compelled to drop due to necessity.

Problem #16: It is recommended to offer prayers in the mosque; rather, it is disapproved not to be present there without any due excuse like rain, particularly for one who lives in the neighborhood of a mosque, as it has been said in the Tradition: "No prayer is lawful for a neighbor of a mosque except in the mosque". The most preferred is the Masjid al Harâm (in Mecca), then the Masjid al-Nabi (in Madinah), Blessings of Allah be on him and his Progeny, then the Kufâ and al-Aqsa Mosques, then the Jâmi Mosque, then the tribal mosque, and then the mosque of the market.

It is most preferable for women to offer their prayers in their own houses, and there too the most preferable is a small room inside the bigger one.

Like wise, it is recommended to offer prayers in the shrines of the Imams, Peace be upon them, particularly in the tomb of Amir al-Mu'minin (Ali), Peace be upon him, and the Haram (enclosure of the mausoleum) of Abu Abdillâh al-Husayn, Peace be upon him.

Problem #17: It is disapproved to desert the mosques. It has been said (in the Tradition) that the mosques shall be one of the three things which will place their complaint before Allah, the Exalted and Glorious, on the Day of Judgement, the two others being a learned person among the ignorant and the *Mushaf* (i.e. the holy Quran) which is left hanging, covered with dust which is not read (by those having it with them). It has been related in the Tradition that "Whosoever goes to one of the mosques of Allah shall receive ten goods as reward for every step he takes until he returns to his house, ten of his evil deeds shall be waived off, and his rank shall be raised by ten degrees."

Problem #18: Construction of mosques is among the emphatically recommended acts, and it has a great recompense and immense reward. It has been related that the Messenger of Allah, Allah's Blessings be on him and his Progeny, has said: "Whosoever builds a mosque in the world, Allah shall bestow upon him for every foot", or he said, "for every cubit an area equal to the walking distance of forty thousand years a city of gold, silver, pearls, rubies, emeralds, chrysolite, pearls." (Tradition).

Problem #19: It has been related by well-known learned persons that it is a condition that at the time of endowing a piece of land for a mosque the formula for endowment should be recited by saying. “I have endowed this (piece of land) for a mosque for obtaining closeness to Allah, the Exalted”, but, according to the stronger opinion, it shall be sufficient to build the mosque with the intention of obtaining closeness to Allah, and the prayer of a single person in it, with the permission of the person building it, shall turn it into a mosque.

Problem #20: Following places are disapproved for offering prayers: Public baths, including their place of taking off clothes, dunghills, a slaughter-house, a place reserved for public lavatory, or a place on the roof-top turned into a urinal, a tavern, resting place of camels, stables of horses, mules and donkeys and sheep pens, folds of cows, public highways if not disturbing for the passers-by, otherwise it would be prohibited (to offer prayers there), abodes of ants (or ant-hills), waterways even if presently no water is expected to flow in it, a salt marshy land, any land afflicted with divine wrath, snow, fire-worshipping place, rather every house prepared for kindling fire in it, on or towards and between graves, the disapproval in the latter two being removed by placing a curtain or a distance of ten cubits.

There is no objection in offering prayer behind the graves of the Imams, Peace be upon them, or on their right or left sides, though it would be better if the prayer is offered beside the upper end in a way that the person offering prayers may not be on equal footing with that of the Imam's, Peace be upon him.

Likewise, it is disapproved to offer prayer while fire is burning in front of the person offering the prayer, or a lamp or the picture of a living being (is placed before him). The disapproval in such things is removed if these things are concealed.

Similarly, it is disapproved if there is *Mushaf* (i.e. the Quran) or an open book in front of the person offering prayers, or an open gate or a wall from which a sewer (water) is leaking in which people urinate, and the disapproval of it can be removed by concealing such wall. The disapproval in some of the above cases is such that there is hesitation in accepting it. The matter is not very important.

Fifth Preliminary to Prayer: *Adhan & Iqamat*

Problem #1: There is no difficulty in declaring *Adhan* (Call to Prayers) and *Iqamat* (Call to Stand for Prayer) as emphatically recommended for the five times (obligatory) prayers, (regardless whether offered) on their due time or as compensatory, in one's own place or while on journey, in healthy condition or in sickness, individually or in *Jama'at*, by men or women, to the extent that some jurists have called it obligatory, but, according to the stronger opinion, it is recommended absolutely, and giving them up amounts to deprivation from enormous reward.

Problem #2: The *Adhan* for *Asr* and *Isha'* prayers is dropped when they are offered in combination with *Zuhr* and *Maghrib* prayers respectively, without there being any difference in cases where combination is recommended as the *Asr* prayer on Friday and *Asr* prayer on the day of *Arafah*

(during *Hajj*) and *Isha'* prayer on the night of *Eid (al-Adha)* in *Muzdalifah* (in *Mash'ar al-Haram*), where in these three cases combination of two prayers is recommended and the other (where it is not). The separation as opposed to combination is materialised by the creation of long distance between two prayers and, according to the stronger opinion, by offering the daily supererogatory (*Nafilah*) prayers between them. So by offering the supererogatory prayers of *Asr* between the *Zuhr* and *Asr* and that of *Maghrib* between *Maghrib* and *Isha'* the separation leading to absence of dropping *Adhan* is materialised, and, according to the stronger opinion, the dropping of *Adhan* in combining the *Asr* prayer in *Arafah* and the *Isha'* prayer on the night of *Eid (al-Adha)* in *Muzdalifah* (in *Mash'ar al-Haram*) is “*Azimat*” in the sense that it is unlawful to exercise *Adhan* (on these occasions). So *Adhan* with the intention that it is lawful (on these occasions) is forbidden, and, therefore, it is more cautious to drop it in all cases when (two prayers) are combined.

Problem #3: In the following cases *Adhan* and *Iqamat* are dropped:

When a person joins the *Jama'at* for prayers for which *Adhan* and *Iqamat* have already been over, though he did not listen to them as he was not present at that time.

If a person is offering prayers in a mosque where prayers by *Jama'at* has already been offered, but the *Jama'at* has not yet dispersed, regardless whether the person has come to join the *Jama'at* or not, and whether he has offered the prayer in as the leader or the follower, or individually.

If the *Jama'at* has dispersed, or those offering prayers have finished the prayers and their subsequent formalities, though they are still in the mosque, the *Adhan* and *Iqamat* shall not drop for him, in the same way as they shall not drop if the previous *Jama'at* has offered the prayers without *Adhan* and *Iqamat*, if their dropping *Adhan* and *Iqamat* had been due to considering it sufficient to listening them from another.

Likewise, the *Adhan* and *Iqamat* shall not drop if the prayer is declared invalid due to the Imam being a profligate with those offering the prayer behind him knowing it or due to some other reason.

Similarly, (the *Adhan* and *Iqamat* shall not drop), if the place of the two prayers is not the same, so that one of them has been within the mosque and the other on its roof, or if one of them has been on a very long distance from the other.

Whether this rule is exclusively applicable to a mosque or it is applicable to other places too, is a question in which there is difficulty (in answering it). So caution must not be given up generally in the mosque as well as other places. Rather, it is not far from being likely that it is not exclusively applicable to a mosque.

Likewise, caution must not be given up in case a person's prayer and that of the *Jama'at* have not been both with the intention of being offered on the due time, as when in case of one or both have been offered after due time, regardless whether it is his own or on behalf of another voluntarily or against payment.

Similarly, if the time of both has not be the same, as when the previous *Jama'at* was for the *Asr*, while a person intends to offer *Maghrib* prayer.

In cases where there is some difficulty (in decision), there is no objection if one resorts to *Adhan* and *Iqamat* with the hope (of their being desirable to Allah).

Sixth Preliminary of Prayer: Complete Presence of Mind and Heart

A person offering prayer must have complete presence of mind and heart through-out his prayers, regardless of its words and actions. So nothing is counted as prayer from a devotee but what has been done in such condition. It means full attention towards the prayers and to what he utters and complete attention towards the Worshipped Being, whose Majesty is Glorified. He should be cognizant of His Greatness and the glory of His Dignity. He must sever himself from everything other than Him. He should find himself as if in the presence of the greatest of all the great kings of kings addressing Him and invoking His Favour. Once he is cognizant of all this, an immense awe shall enter his heart. Then he shall see himself responsible for negligence in the fulfillment of his duties and obligations, and shall be frightened. Then he shall realize the abundance of His Favour, and shall hope to receive His Reward. He shall find himself in a state of hope and fear, and this is the quality of the accomplished ones.

This quality has several degrees and innumerable ranks according to the statures of the worshippers. He must have humility and submission and peace of mind and heart and sobriety. He must have cheerful appearance and should apply perfume, brush his teeth and comb his hair before starting his prayers. He must offer his prayers like one bidding farewell, and should renew his penitence, invocation and asking forgiveness. He must stand like a humble slave in front of his Master. He should be sincere while uttering the words “We worship but Thee and ask help but from Thee”. He must not utter these words while he is still the adorer of his own desires and asking the help from others than his own Master.

He must also make all endeavors for removing the hindrances lying in the way of the acceptance (of his worship) like self-conceit, jealousy, pride, back-biting and avoidance of the payment of Zakāt and non-fulfillment of all due rights which are the real impediments in the way of acceptance (of the prayers).

Chapter Concerning Actions during Prayer

The actions during prayer are of two kinds: Obligatory (Wājib) and Recommended (Masnūnah).

The obligatory actions are eleven. They are: Intention (Niyyat), Takbirat al-Ihrām, Standing, Kneeling, Prostrations, Recitation, Dhikr, Tashahhud, Taslim, Order, and Uninterrupted Sequence (Muwālāt).

In the following lines it will be explained that in case what is mentioned as Pillars of Prayers cause invalidation of the prayer if exercised in excess or reduced deliberately or by error, but one cannot imagine of any excess in Intention (Niyyat) due to its mentioning the very purpose, and if it is not mentioned loudly but expressed in the heart, any excess in it shall not do any harm. Those actions that do not form the pillars of the prayer do not cause invalidation of the prayer if there occurs any excess or imperfection in them inadvertently but not deliberately.

Rules Concerning Intention (Niyyat)

Problem #1: Intention (Niyyat) consists of the purpose of an act, and there is a condition of wishing closeness to Allah, the Exalted and obedience to His Command. It is not obligatory to express it loudly, as it is something relating to the heart, as it is not obligatory to express it in the heart or speak in the imagination or present it in the mind, so that the person must only bring it into his thinking and the treasure of thought, for example, that I am offering such and such prayer in obedience to His command; rather, the mere purpose is sufficient, and that means the brief purpose effective in the implementation of an act, which should appear as a result of the aims within himself in a way that it may rid him from error and negligence, and his act must enter in the category of acts of one doing act with full authority like all his other acts done with intention and full authority, while the cause of his actions and the impulse behind them is obedience or the like.

Problem #2: Sincerity is a condition in intention, so that if it is mixed with something which negates sincerity, the act becomes void, particularly hypocrisy which spoils every thing in any way, regardless whether it is there at the beginning, during the performance of an act, and whether the portions of the act are obligatory or recommended.

The same is the case of hypocrisy in the qualities relating to an act like the prayer offered in a mosque, with Jama'at, or the like. The hypocrisy after the performance of an act is also forbidden, though it does not render the act void, as one should say that he has done an act for the sake of worldly interests like praise, admiration, rank or wealth. It has been related from the Prophet, Allah's Blessing be on him and his Progeny, about a hypocrite: 'A hypocrite shall be called with four names on the day of judgment: O profligate!, O infidel!, O rebel!, O loser! Your acts have been lost and your reward has been rendered null and void. You shall have no deliverance today. Ask your reward from one for whom you used to perform your acts.'

Problem #3: If the recommended or preferred actions are performed without hypocrisy and are meant as having secondary importance, while the principal purpose of the person has been to offer prayers in simple obedience to the command (of Allah), there is no objection. If the case is otherwise, his actions shall be rendered void.

Similar is the case when those secondary acts have been intended as part of the person's actual purpose in a way that if they are not connected with one another, there would be no cause or impulse.

According to the more cautious opinion, in all cases the act shall be nullified if the purpose is common or even subordinate adjunct, not to speak of it when both the acts are independent.

Problem #4: If a person raises his voice loudly at the time of Dhikr or recitation (of Surahs) in order to let the other learn it; it shall not be nullified when the basic purpose of both had been obedience (to Allah's command).

Similarly if his prayer is performed in a particular place or time for one of the approved purposes, in a way that the actual purpose has been obedience (to Allah's command) and the purposes of selecting the place or time due to cold or the like.

Problem #5: It is obligatory to fix, though briefly, the category of the prayer which he is offering purposely, as, for example, he must mention the intention of a single prayer if he owes a single one, or in case he owes several prayers, he must mention the intention of the first or the second.

Problem #6: It is not obligatory to express the Intention of offering the prayer on its due time or after the due time once a person has mentioned, though briefly, the intention of offering a prayer having the quality of being offered on its due time or after it, as, for example, the Zuhr or Asr prayer. So if he intends to offer the Zuhr prayer which he owes presently as obligatory and it has not been due after the lapse of its due time, it shall be sufficient (to mention the Zuhr prayer).

Of course, if he owes it also as one after its due time, it would be indispensable for him to clarify as to which one he intends to offer, and whether it is obligatory for today or otherwise. If he intends the obedience to (Allah's) command, and he assumed that there was sufficient time and so he offered with the intention of offering within the due time, but later it transpires that the time had lapsed, his prayer shall be valid and it shall be a prayer offered as Qadā' (i.e. after the lapse of its due time), in the same way as he mentions the intention of offering a prayer as after its due time, but later it transpires that its time had not lapsed, it shall be valid and shall be counted as one offered within its due time.

Problem #7: It is not a condition to mention the intention of offering a prayer as full or diminished (Qasr) in their respective places of obligation, nor where it is upto the person to offer either of them. If, for example, he starts the Zuhr prayer with hesitation whether after first Tashahhud he should recite Salām in the second Rak'at or should annex them with the next two Rak'ats, his prayer shall be valid. Rather if he determines to offer either of them, according to the more apparent opinion, it shall not be binding on him, or he can even decide against it in the last. Rather, according to the stronger opinion, they are not determined by determination, and there is no need to renounce the determination, and Qasr takes place by Tasleem after two Rak'ats, in the same way as full prayer takes place with the annexation of the first two Rak'ats with the last two Rak'ats without the prior intention having anything to do in it.

If a person intends to offer Qasr prayer, then after completing the two prostrations doubts between the second and third Rak'at, he shall decide in favour of third Rak'at and shall cure his prayer from invalidity without any intention of renunciation. Rather, it is not far from determining the action according to the verdict of doubt. He should, however, not give up caution with the intention of renunciation in such cases, then making cure and then repeat the act.

Problem #8: It is not obligatory to express intention of obligatory or recommended prayer. Rather it is sufficient to have a general intention of closeness (to Allah). It is, however, more cautious to have intention of both.

Problem #9: It is not obligatory to have detailed imagination of the prayer, rather brevity is sufficient.

Problem #10: If, during the prayer, a person intends to discontinue it, or intends to do something which nullifies prayer despite being aware that it is repugnant to prayer, then if he completes the prayer in such state, it shall be void. Similarly if he completes some of the portions of the prayer with the same intention, and then returns to the first intention and suffices with what he has already performed, (the prayer shall be invalid).

If, however, he returns to the first intention before doing anything, the prayer shall not be nullified, in the same way as, according to the stronger opinion, it shall not be nullified if he completes it, or performs some of the portions of the prayer in that state, in case he is not aware that it is repugnant to prayer as mentioned. It is more cautious in all such cases to complete the prayer and repeat it.

Problem #11: If he doubts during his prayer whether he has had the intention of offering Zuhr prayer or Asr prayer, and knows fully well that he has not offered the Zuhr prayer, he shall decide it to be the intention of Zuhr prayer in case the time is not exclusively meant for Asr prayer. The same shall be the rule if he doubts whether he is offering Zuhr prayer. If, however, at the time exclusively meant for Asr prayer, he knows that he has not offered the Asr prayer, he shall discontinue the prayer, and start the Asr prayer again, if there is time left for offering even a single Rak'at, and subsequently offer Zuhr prayer in the way it is after its due time.

In case there is no time left even for a single Rak'at, he shall nevertheless discontinue the prayer, and offer compensatory prayers for both Zuhr and Asr. It is more cautious not to leave the completion of the Asr prayer even if there is time left for a portion of a Rak'at, and then offer compensatory prayers for both Zuhr and Asr. If, however, he does not know to have offered Zuhr prayer, then it is not far from being permissible not to pay heed to his doubt, but, according to the more cautious opinion, he should offer compensatory prayer for Zuhr too. In case he knows that he has already offered Zuhr prayer, he shall discontinue the prayer and offer the Asr prayer again. Of course, if he is busy offering Asr prayer, and doubts whether at the beginning he has had the intention of offering Asr prayer or Zuhr prayer, he shall decide that from the beginning he has had the intention of offering Asr prayer.

Problem #12: It is permissible to shift the intention from one prayer to another in the following circumstances.

1. In case of two successive prayers, for example, Zuhr and Asr or Maghrib and Ishā', if a person starts the second before the first erroneously or out of forgetfulness, so that it is obligatory to shift to the first prayer if he comes to realize it during the performance of the second prayer, and has not surpassed the place from which he can shift, contrary to the case when he comes to realize after he has completed the second prayer or after he has surpassed the place from where he could shift, as in case he has started the kneeling of the fourth Rak'at of Ishā' prayer when he comes to realize that he has not offered the Maghrib prayer, in which case he cannot shift to Maghrib prayer, rather, in

such case the second prayer shall be valid, and the person shall offer the first prayer subsequently in case of first supposition when he comes to realize it after completion of the second prayer. Rather even in case of the second supposition, the rule is not devoid of force, though it is more cautious to complete the prayer, and then offer the Maghrib and Isha prayers in successive order.

The same rule shall apply in case of two successive compensatory prayers, as in case the Zuhr and Asr prayers or Maghrib and Ishā' prayers have been left unoffered in a single day, and a person starts offering the second compensatory prayer before the first, and then comes to realize it. Rather this is the rule generally in all compensatory prayers according to the more cautious, though not stronger, opinion.

2. If a person starts his presently due prayer, when he comes to realize that he owes a prayer. In such case it is recommended that he should shift over to the compensatory one in case there is sufficient time left, except when he is afraid of losing the preferential time for the one he is presently busy in offering, then there shall be hesitation in shifting from the present to the compensatory one, rather its being otherwise shall not be devoid of force

3. Shifting from the obligatory prayer to the supererogatory prayer. This takes place in the following two occasions. Firstly, in the noon on Friday when a person has forgotten reciting the Suratal-Jum'ah (Chapter 62 of the Quran) and recited some other Surah, and reached its half or more. Secondly, when a person was busy with prayer when the Jamā'at started, and he fears losing it, then it is permissible for him to shift to supererogatory prayer, and complete two Rak'ats of the prayer in order to join the Jamā'at.

Problem #13: It is not permissible to shift from supererogatory prayer neither to the obligatory one, nor from supererogatory to supererogatory, even in case like the obligatory prayer there is an exclusive time for it and the regular sequence.

Similarly, it is not permissible to shift from a lapsed prayer to the presently due one, so that if a person starts a lapsed prayer and then recollects during its performance that there is very short time left for offering the presently due prayer. So he discontinues it and starts the presently due one, but it is not permissible to do so.

Likewise, it is not permissible in case of two presently due prayers having regular sequence to shift from the previous to the subsequent one, contrary to vice versa. So if he starts the Zuhr prayer under the impression that he has not offered it, but during its performance he comes to realize that he has already offered it. In this case it is not permissible for him to shift to the 'Asr prayer.

If a person shifts from one prayer to another in a circumstance in which shifting was not permissible, it is not far from declaring the one from which shifting has been done to be valid. So if he comes to realize it before starting any pillar, he shall be bound to perform it again as one relating to the prayer before shifting.

Problem #14: If a person starts the two Rak'ats, for example, in the night (Tahajjud) prayer with the intention of offering the second two Rak'ats, then he realizes that he has not offered the first two Rak'ats, the prayer shall be valid, and they shall be considered to be the first two Rak'ats automatically in his account, and this shall not be a case of shifting, and there shall be no need for shifting to the second two Rak'ats, as it is not a condition for the intention to be for the first or second, but the basis is the actual position (of the prayer offered).

Rules Concerning Takbirat al-Ihram

It is also called Takbirat al-Iftitāh, and its form consists in the words: ‘Allāh-O Akbar’, and cannot be replaced by other words, nor with words of identical meanings in Arabic, nor by words translated into a language other than Arabic. It is a pillar of the prayer, so that the prayer becomes void due to failure in reciting it deliberately or inadvertently. Similarly, by its excess, so that if a person recited the Takbirat al-Iftitāh (Takbirat al-Ihrām), and then he adds another one too, his prayer shall be rendered void, so that he shall be bound to recite a third one. If he renders void by a fourth, he shall be bound to recite a fifth one, and so on.

It is obligatory to stand erect at the time of reciting it, so that if he fails to do so deliberately or inadvertently, the prayer shall be rendered void; rather it is indispensable to stand up erect before reciting the Takbir, there being no difference in it between a follower in the prayer who joins the Jamaal in the fourth Rak’at or otherwise, but he should rather wait for some time till he is sure of having recited the Takbir completely while standing erect.

According to the more cautious opinion continuing in a standing position for some time is like standing erect as regards the rule of prayer being rendered void in case of failure to do so deliberately or inadvertently, In case he fails to continue in a standing position for some time inadvertently, to be cautious, he should do something that is repugnant to prayer, and then recite the Takbir patiently. It is more cautious than that to finish the prayer and start it again by reciting the Takbir patiently.

Problem #1: It is more cautious to give up connecting it with what is there in the ‘Dua’ preceding it in order to omit the letter Hamzah in the word: “Allah”. Apparently it is permissible to connect it with what follows it from asking refuge (saying; I ask the refuge of Allah, in Arabic) and Bismillāh (saying: With the name of Allah, in Arabic), so that the movement on the letter “rā” in the word: “Akbar” is expressed, though it is more cautious to give it up too, in the same way as it is more cautious to pronounce emphatically the letters ‘lām’(in Allah) and ‘rā’ (in Akbar), though according to the stronger opinion, it is permissible to give it up.

Problem #2: It is recommended to add six Takbirs to Takbirat al-Ihrām before and after it or by apportioning them before or after it. It is more cautious to precede them and make Takbirat al Ihram the seventh. It is more preferable to recite the following (in Arabic) after three Takbirs one after another, saying

“O Allah Thou art the Manifest True King. There is no god but Thou. Be thou glorified. Verily I have oppressed myself. Forgive my sin. Verily no one forgives the sins but thou.”

Then after two Takbirs, one must recite (in Arabic):“Here I am! I am at thy service repeatedly! The Blessing is in thy hand and there is no evil (that takes one) towards thee. Guided is he whom thou guideth. There is no refuge from thee but to thee. Thou art Glorified! I ask for thy Mercy. Thou art Praiseworthy. Thou art Exalted. Thou art Glorified, the Lord of the House!”

Then after two Takbirs one must say (in Arabic): “I have turned my face towards Him who has created the Heavens and Earth, Knower of the Invisible and the Apparent, as a true believer and a Muslim, and I am not one of the Polytheists. Verily my prayer, my sacrifice, my life and my death are for the Lord of the Universe. He has no partner. I have been commanded for it, and I am one of the believers”.

Then he should start asking refuge (Istiàdhah) and recitation (of the Surahs from the Qurân).

Problem #3: It is recommended for the Imam to recite the *Takbirat al-Ihram* loudly, so that those who are behind him may hear it, and recite the remaining six *Takbirs* quietly.

Problem #4: It is recommended to raise both the hands to both the ears at the time of reciting the *Takbir* or to the side of the face while starting to recite the *Takbir*, and end with raising the hands upto the end. It is better that both the hands should not be raised higher than both the ears, and the fingers of both the hands be joined together and their palms be towards the *Qiblah*.

Problem #5: If a person recites the *Takbir*, and then doubts whether it was *Takbirat al-Ihram* or the *Takbir* for kneeling, he should decide in favour of the former.

Rules Concerning *Qiyam* (Standing Erect)

Qiyam (Standing erect) is a pillar in *Takbirat al-Ihram* that is close to intention (*Niyyat*), and in kneeling (*Ruku*) it means standing erect before going into the position of kneeling, so it means standing erect which is connected with kneeling. If a person fails to fulfill these two things deliberately or inadvertently, so that he recites the *Takbirat al-Ihram* while sitting, or offers a complete *Rak'at* while sitting, or while going to prostrate recollects that he has given up kneeling and stands in a bending position for kneeling, or when he recollects before going into the kneeling position and continues bending without standing erect even if he has not stood up inadvertently, his prayer shall be void.

Besides these two cases, *Qiyam* is obligatory and not a pillar with whose failure prayer may be rendered void, except when it is done deliberately, as is the case with reciting (the *Surahs* from the Quran), so that if a person forgets it, and recites (the *Surahs* from the Quran) while sitting, and then comes to realize the failure and stands erect, his prayer shall be valid.

Similar is the case with the excess of *Qiyam*, so that if a person stands erect in stead of sitting, (even then his prayer shall be valid).

Problem #2: It is obligatory to be moderate in standing erect. This depends on the special position of the person offering prayer, so that if he bends or inclines towards one of the two sides in a way that he ceases to be in a position of standing erect, his prayer shall be rendered void, rather according to the more cautious opinion, it is better to have the neck too in erect position, though, according to the stronger opinion, it is permissible to bend the head.

It is not permissible to lean against anything if possible. Of course, there is no objection in case of exigency, so that a person leans against a person or the like.

If a person can stand while leaning against something, it is not permissible for him to sit without leaning against something.

Problem #3: While standing erect, the distance between the two feet should not so much that it may cease to be called a standing position. Rather, according to the stronger opinion, the distance should not be more than the usual, even if it is still called a standing position.

Problem #4: It is not obligatory to bring equal weight on both the feet. Of course, it is obligatory to stand on both the feet, and not on a single foot, neither on the fingers nor on the heels of both the feet.

Problem #5: If a person is not able to stand up at all, even if leaning against some thing, in a bending position nor with widely open feet, in short, if he is not able to stand up in any type of standing position, even in exigency in its different forms, then he may offer prayer in a sitting posture, in which position too it is a condition to sit erect and without leaning anything. So it is not

permissible (while offering prayer in a sitting posture) to lean against some thing or incline to one side if sitting erect and without leaning against anything is possible for him, though it is permissible to do so in case of exigency.

If a person is not able even to sit at all (for offering prayer), he may offer prayer lying on the right side as a person buried (in the grave) position.

If he is not able even to do that, then he may lie on the left side contrary to the former position.

If this too is not possible, he may offer prayer while lying flat on the back like a person at the point of death.

Problem #6: If a person is able to stand erect but is not able to kneel down after standing erect, he shall offer prayer in a standing posture and then go into the sitting position and kneel down while sitting.

If, however, he is not able to kneel down or prostrate at all, even in some of the easy postures of sitting, he shall offer prayer in a standing position and make sign of kneeling and prostration.

In case a person is able to sit, it is more cautious for him to make signs of prostration in a sitting position; rather, if possible, it is more cautious to put the thing on which prostration is allowed on his forehead.

Problem #7: If a person is able to stand up in some of the Rak'ats, though not in all, it is obligatory for him to stand up until he becomes unable, and then sit down. Then if he is able to stand up again, he must stand up, and so on.

Problem #8: It is obligatory to be patient in standing and other obligatory actions like kneeling, prostration and sitting.

If a person is unable to be patient, and he can stand up perturbed, he may precede it to sitting patiently.

Similar is the case with kneeling, Dhikr and raising the head, so that he may fulfill all these actions in a state of perturbation, but should not shift to sitting, even if he able to sit patiently.

Rules Concerning Recitation (of Quranic Surahs) and *Dhikr*

Problem #1: It is obligatory to recite *Surat al-fatihah* (Chapter 1 of the Quran) and some other complete *Surah* after it in the first and second *Rak'ats* of the obligatory (daily) prayers. A person is allowed to give up the recitation of the second *Surah* in certain circumstances. Rather, it is obligatory in case of the time being short for the prayer, or there being fear or the like which are among the necessary cases. If a person recites the second *Surah* before the *Surat al-fatihah* deliberately, he shall have to offer the prayer again. If, however, he does so inadvertently, and recollects it before kneeling down (*Ruku*), then if he has not recited *Surat al-Fatihah* after the second *Surah*, he shall recite the second *Surah* again after reciting the *Surat al-Fatihah*. If he has recited *Surat al-fatihah* after the second *Surah*, he shall recite the second *Surah* again after reciting the *Surat al-Fatihah*.

Problem #2: It is obligatory to recite *Surat al-Hamd* in the supererogatory prayers like the obligatory (daily) prayers, in the sense that it is a condition for their validity. As regards the recitation of the second *Surah* (in supererogatory) prayers, it is not obligatory in any of them, except when a prayer has become obligatory due to some other reason such as a vow or the like. Of course, in case of some of the supererogatory prayers in which some particular *Surahs* have been mentioned, recitation of those particular *Surahs* shall be a condition for the fulfillment of the vow, but it must be known that their recitation is a condition for the fulfillment of the vow, but not as a religious obligation, or for their validity.

Problem #3: According to the stronger opinion, it is permissible to recite more than one *Surah* in a single *Rak'at* in an obligatory (daily) prayer, though with an amount of disapproval, contrary to a supererogatory prayer in which there is no disapproval (if more than one *Surah* is recited in a single *Rak'at*). It is more cautious to give up (reciting more than one *Surah* in a single *Rak'at*) in an obligatory (daily) prayer.

Problem #4: It is not permissible to read long *Surahs* (Chapters of the Quran) whose recitation may cause the loss of the due time of prayers. So if a person does it deliberately, his prayer shall be rendered void, though there is difficulty (in accepting this rule). If it was done inadvertently, he must shift over to some other *Surah*, provided that there is sufficient time for its recitation. If, however, he comes to recollect it after having finished the (long) *Surah* when the time has already elapsed, he shall complete the prayer. Likewise, it is also not permissible to recite in an obligatory prayer any of the *Surahs* containing obligatory *Sajdahs*. If a person recites any of such *Surahs* inadvertently until the verse containing the (obligatory) *Sajdah*, or listens to it (being recited by some one else) during the prayer, it is more cautious for him to make signs of *Sajdah*, while he is still busy offering the prayer, and then after finishing the prayer must perform *Sajdah*; though, according to the stronger opinion, it would be sufficient only to make the signs of *Sajdah* during the prayer, and it would be permissible to treat the recitation of the *Surah* containing *Sajdah* as sufficient.

Problem #5: *Bismillah* is a part of every *Surah* (Chapter of the Quran) except the *Surat al- Bara'at* (*al- Towbah*, Chapter 9 of the Quran)

Problem #6: *Surat al-Fil* (Chapter 105 of the Quran) and *Surat al-Ilaf* (Chapter 106 of the Quran) are treated as a single *Surah*, and so are *Surat al-Duha* (Chapter 93 of the Quran) and *Surat Alam Nashra* (or *al Inshira*, Chapter 94 of the Quran), and therefore it is not permissible to recite either of them singly. Rather it is indispensable to recite both of them together in succession with separate *Bismillah* which has come in their midst.

Problem #7: According to the stronger opinion, whenever a person starts reciting *Bismillah*, he must determine the *Surah* he intends to recite. If he determines to recite a *Surah* and then shifts to another it is obligatory to recite *Bismillah* again for the *Surah* to which he has shifted over.

If a person determines a *Surah* at the time of reciting *Bismillah* and then forgets it and does not know which *Surah* he had determined to recite he shall recite *Bismillah* again with the determination of the *Surah* he wants to recite.

If a person intended to recite a particular *Surah* from the beginning of the prayer and then forgets it and recites another one or he had the habit of reciting a particular *Surah* but he recites another one, it would be sufficient and it would not be obligatory to recite the *Surah* again.

Problem #8: It is permissible to shift from one *Surah* to another, if possible, provided that the person has not reached its half, except in case of *Surat al-Towhid* (Chapter 112 of the Quran) and *Surah al-Jahd* (or *al Kafirun* Chapter 109 of the Quran), as it is not permissible to shift from them over to some other *Surah*, nor from one of them to the other as soon as one begins reciting it. Of course according to the stronger opinion it is permissible to shift from either of them to *Surah al-Jumah* (Chapter 62 of the Quran) or *Surat al Munafiqun* (Chapter 63 of the Quran) on the noon of Friday or in the *Jumah* (Friday) prayer when a person has started reciting either of them inadvertently and has not reached its half.

Problem #9: It is obligatory to offer *Zuhr* and *Asr* prayers quietly except reciting *Bismillah*. It is obligatory for men to offer the morning, *Maghrib* and *Isha* prayers loudly so that if a person does the reverse of it deliberately his prayer shall be void. However a person who does so due to forgetfulness or rather generally a person who does so inadvertently or one who is ignorant of the rule at all and unaware of asking about it, is excused, and rather such person shall not be required to repeat the recitation (in its proper form, slowly or loudly) in case mean while the excuse is removed.

As regards one who knows the rule briefly but does not know its right place of application or one who forgets it or one who is ignorant of the rule at all but who is aware that he must ask about it would be more cautious for him to offer prayers gain although according to the stronger opinion their prayer shall be valid if they have had intention of closeness to Allah in such cases.

Women *are not* allowed to offer prayers loudly. Rather in case there is no stranger there they may adopt a course between quiet and loud recitation but it is obligatory on them to adopt silence where it is so in case of men and they are also excused where men have been excused.

Problem #10: It is recommended for men to recite *Bismillah* loudly with *Surat al Hamd* (Chapter 1 of the Quran) and the other Surah in Zuhr and Asr prayers in the same way as it is recommended for them to recite loudly in Zuhr prayer on Friday, but they should not give up caution by reciting it quietly.

Problem #11: The basis for reciting quietly or loudly is the expression of the voice of a person or otherwise, and not its hearing or otherwise by the person beside him.

It is not permissible to be inordinately loud while reciting loudly as shouting, in the same way as it is not permissible to be so quiet that he may not hear himself when there is no impediment.

Problem #12: It is obligatory for the recitation to be correct. If a person deliberately violates the rule in pronouncing a letter, movement, tashdid (doubling the sound of a consonant) or the like, his prayer shall be rendered void. If a person does not know how to recite *Surat al-Fatihah* (Chapter 1 of the Quran) and another *Surah* correctly, it is obligatory on him to learn it.

Problem #13: The criterion for the correct recitation is pronouncing the letters from their proper sources of sound in a way that the people whose native language is it (i.e., Arabic) may distinguish that such person has pronounced such and such letter and not any other letter, observing the basic movements and what relates to the form of the word, as well as the signs and movements of *I'rab* and *Mabni* according to the rules framed by the scholars of Arabic language, and, to be more cautious, omission of connecting *Hamzah* in a phrase like *Hamzah* in “a” or *Hamzah* in “*ihdina*”, and the retention of *Hamzat al-Qat'* as *Hamzah* in “*an'amta*”.

It is not necessary to observe the minute rules of the scholars of *Tajwid* in determining the sources of sound of letters, not to speak of things relating to their qualities like forcefulness, softness, emphasis, mildness and raising the sound, etc., nor the major amalgamation which means after making a letter marked with a vowel point quiescent amalgamating it with another letter of identical sound, both appearing in two words like “*ya'lamu ma bayna aydihim*” by amalgamating ‘*mim*’ with ‘*mim*’, or close by, although in a single word like “*yarzuqukum*” by amalgamating ‘*qaf*’ and ‘*kaf*’ or “*zahzaha 'anin nar*” by amalgamating ‘*qaf*’ and ‘*Kaf*’, and ‘*ha*’ and ‘*ayn*’.

Rather it is more cautious to give up such amalgamation particularly in letters close by. So also it is not necessary to observe some of the kinds of minor amalgamation of an original quiescent with a letter close by like ‘*min rabbik*’ by amalgamating ‘*nun*’ and ‘*ra*’. However it is more cautious to observe necessary “*Madd*”, and that is the *Madd* and its two *sababs*, i.e., *Hamzah* and quiescence in a single word, like “*Ja*”, “*Su*”, “*Ji*”, “*Dabbah*”, “*Qaf*”, “*Sad*”.

Similar is the case with the omission of stop from an in quiescent letter, connection with quiescence and amalgamation of 'tanwin' and quiescent 'nun' in the letters of "yarmalun", though outwardly it looks preferable not to declare as necessary anything from among what has been mentioned.

Problem #14: It is more cautious to adopt any of the seven (recognized) readings (*Qira'at*, of the Quran), in the same way as it is more cautious not to deviate from the extant copies of the holy Quran in possession of the Muslims, although the contravention in some of the words like 'malik-i yowmiddin' and 'kufuvan ahad' is not harmful, and it is not far from one of the seven readings (of the Quran) being permissible.

Problem #15: It is permissible to recite "*malik-i yowmiddin*" or "*malik-i yowmiddin*", and it is not far from the first reading being preferable.

Similarly, it is permissible to read '*al-sirat*' with '*sad*' or '*sin*'; though it is preferable to read it with '*sad*'.

In case of '*Kufuvan ahad*' there are four readings, namely, with *dammah* on *fa*', its being quiescent with *Hamzah* or '*vav*', though it is preferable to read it with *dammah* on '*fa*' with '*vav*'.

Problem #16: If a person cannot recite (the Quran) but with wrong pronunciation or changing the sound of some of the letters, and is not able to learn the details, (it is sufficient for him to recite it as he can), and it is not obligatory for him to offer prayers with *Jama'at*, though it is more cautious to do so. One who can rectify (the mistakes) or can learn the correct pronunciation, but has not learnt it, to be more cautious, it is obligatory for him to offer prayer with *Jama'at*, if possible.

Problem #17: A person offering prayer is at liberty to recite *Surat at-l-Hamd* (Chapter 1 of the Quran) and *Dhikr* in other *Rak'ats* too besides the first and second *Rak'ats* of obligatory prayers. It is not far from being preferable for the Imam to recite the *Surahs* and for the followers to recite *Dhikr*. For a person offering prayer individually, both are the same, and the form of *Dhikr* is: "*Subhanallah, val hamdu lillah, va la illaha illallahu vallahu akbar*" (in Arabic). It is obligatory to recite it in Arabic, and it is sufficient to recite it once, though according to the more cautious opinion it is preferable to recite it three times, and it is better to add *Istighfar* to it. It is obligatory (for the followers in a *Jama'at*) to recite *Dhikr* and *Surahs* of the Quran quietly, to be more cautious even *Bismillah*. It is not obligatory to recite *Surat at-l-Hamd* (Chapter 1 of the Quran) and *Dhikr* identically in the last two *Rak'ats*.

Problem #18: If a person intends to recite "*tasbih*", but he starts reciting *Surat al-Hamd* (Chapter 1 of the Quran) without materialising its intention even briefly, according to the stronger opinion, it is not sufficient, but in case of its materialisation, according to the stronger opinion, it is valid.

The same shall be the case if he does so due to negligence without intending to do either, so that in case otherwise though briefly, according to the stronger opinion, it shall not be valid; otherwise, according to the stronger opinion, it shall be valid.

Problem #19: If a person recites *Surat al-Fatihah* (Chapter 1 of the Quran) under the impression that it is one of the first two *Rakats*, but later realises that it is one of the last two *Rak'ats*, it would be sufficient for him to do so.

The same shall be the case if he recites the *Surat al-Fatihah* under the impression that it is one of the last two *Rak'ats*, but it transpires that it is one of the first two *Rak'ats*.

Problem #20: It is more cautious not to add to three *Tasbihat*, except with the intention of absolute *Dhikr*.

Problem #21: It is recommended to recite *Surats* 78, 76, 88, 75 or the like in the morning prayer, and *Surahs* 87 or 91 in *Zuhr* prayer, *Surahs* 110 and 102 in *Asr* and *Maghrib* prayers. It is better to select *Surat al-Jum'ah* (Chapter 62 of the Quran) in the first *Rak'at* of *Maghrib* and *Isha'* and *Surat al-A'la* (Chapter 87 of the Quran) in the second *Rak'at* in both the prayers on Friday night, recite *Surat al-Jum'ah* in the first *Rak'at* and *Surat al-Munafiqun* in the second *Rak'at* in the *Zuhr* and *Asr* prayers on Friday, and similarly in the morning prayer of Friday, or recite *Surat al-Jum'ah* in the first *Rak'at* and *Surat al-Towhid* (Chapter 112 of the Quran) in the second *Rak'at*. One may recite *Surat al-Jum'ah* in the first *Rak'at* in the *Maghrib* prayers on Friday night and *Surat al-Towhid* in the second, as it is recommended to recite *Surat al-Qadr* (Chapter 97 of the Quran) in the first *Rak'at* and *Surat al-Towhid* in the second *Rak'at* of every prayer.

Problem #22: It has already been understood that it is obligatory to stand erect while reciting a *Surat* of the Quran or *Dhikr*. If, during their recitation, a person leans forward or backward or leans for some purpose, it is obligatory to give up recitation while moving, but it is not harmful to move the hand or the fingers of the two feet, though it would be better to give them up. If a person moves involuntarily while reciting, it is more cautious to repeat what he has recited in that condition.

Problem #23: If a person doubts the correctness of reciting a verse or a word, it shall be obligatory on him to repeat it if he has not surpassed it and if he has surpassed it, it is permissible to repeat it with the intention of caution.

If a person doubts a second or third time (at the same place), there is no objection in repeating it in case it has not been due to (satanic) temptation; otherwise, he should not pay any heed to his doubt.

Rules Concerning *Ruku'* (Kneeling Down)

Problem #1: A single *Ruku'* (Kneeling down) is obligatory in every *Rak'at* of daily obligatory prayers. It is a pillar whose deliberate or inadvertent excess or deficiency invalidates the prayer except in *Jama'at* due to following the Imam, the details of which are mentioned below in its relevant place. It is indispensable to bend in the usual way, so that the person's hand should reach his knees, and it is more cautious that his palm of the hand should touch them, and so mere bending is not enough.

Problem #2: If a person is not able to bend to the extent mentioned, he may lean against something. If he is not able to bend even after leaning against something, he should bend as much as he can, but should not shift over to sitting, even if he is able to bend in a sitting posture.

Of course, if a person is not able to bend at all, he may sit (and bend). It is more cautious to offer the same prayer again in a standing posture and make signs of kneeling down. If he is not able to bend even while sitting, he may make signs of bending in that posture, so that he may make signs with his head being erect.

If he is not able to do so, he must close his eyes for (making signs of) *Ruku'* and should open them in order to sign for rising up from *Ruku'*.

The *Ruku'* of a person in sitting posture is performed by his bending in a way that his face may reach the level of his knees. According to the more cautious opinion, it is preferable to exceed it to the extent that his head may reach close to the thing on which he prostrates.

Problem #3: It is a condition in bending that it must be done with the intention of kneeling down (*Ruku*). If, therefore, he kneels down, for example, for raising something from the earth, it shall not be sufficient to make it a *Ruku'*; rather, it is indispensable to stand erect, and then kneel down for performing *Ruku'*.

Problem #4: If a person is like one kneeling down by birth or due to some illness, if he is able to stand erect even with the help of something for being in a standing position in order to perform the obligatory *Ruku'*, it shall be obligatory (for him to do so).

If he is not able to stand erect, it shall be indispensable for him to be in a position that is closer to standing posture (and then perform *Ruku*).

In case he is not able to bend at all, it shall be obligatory on him to bend more than the present extent if he does not exceed the limit of *Ruku'*.

If he is not able to do so, so that he is not able to bend more, or his bending reaches the farthest limits of *Ruku'* so that if he tries to bend further, he may exceed its limit, then he may have the intention of *Ruku'* by bending, and should not give up the caution by making sign (of bending) with his head too.

In case he is not able to make the sign, according to the more cautious opinion, he should make closing both eyes a *Ruku* and opening them a rising from *Ruku*'. It is even more cautious than that method that he should have the intention of *Ruku*' by bending accompanied by signs and closing the eyes together, if possible.

Problem #5: If a person forgets performing *Ruku*' and proceeds to prostrations, but recalls before putting his forehead on the earth (that he has not performed *Ruku*), he must return to standing position and then perform *Ruku*' but it is not sufficient to bend to the extent of *Ruku*' only.

If a person recollects (that he has not performed his *Ruku*') after having gone into the first prostration, or after raising his head from it, then it is more cautious to return to *Ruku*' as mentioned, complete the prayer, and then offer it again.

Problem #6: If a person kneels down without the intention of performing *Ruku* "but when he reaches its limit, he forgets and proceeds to performing prostration. If he recalls (that he has not performed the *Ruku*) before surpassing the limit of *Ruku*', he may remain in that position and recite *Dhikr*.

If, however, he recollects (that he has not performed the *Ruku*), after having surpassed the limit of *Ruku*' then if the forgetfulness has occurred after staying in the limit of *Ruku*' though for a moment, according to the stronger opinion, he shall perform the prostrations without standing erect. Otherwise, he should not give up caution by standing erect and go down to perform prostrations, complete the prayer and then offer it again.

Problem #7: It is obligatory to recite *Dhikr* in *Ruku*', and according to the stronger opinion, it is sufficient to recite any *Dhikr*. It is more cautious that it should be equal to either the minor *tasbih* three times or the major one once. It is more cautious to adopt reciting the minor *tasbih*, namely *subhanallah* three times or the major *tasbih*, namely, *subhana rabbiyal azim va bi Hamdihi*. According to the more cautious opinion, it is better to adopt the latter, and more cautious than that is to repeat it three times.

Problem #8: It is obligatory to be patient while reciting the obligatory *Dhikr*. If he gives it up deliberately, his prayer shall be void, though not in case otherwise when he gives it up inadvertently, though it is more cautious to offer the prayer again in the latter case too.

If a person starts reciting obligatory *Dhikr* deliberately before reaching the limit of *Ruku*, or after it before being patient, or while rising from *Ruku*' before surpassing the limit of *Ruku*' or after it, it shall not be sufficient at all, and, according to the stronger opinion, the prayer shall be void. It is more cautious to complete the prayer and offer it again. Rather it is more cautious to do so in case of a recommended *Dhikr* too, if a person recites the recommended *Dhikr* in the same way with the intention of speciality; otherwise, there shall be no objection.

If a person is not able to be patient due to some illness or the like, the condition shall drop, but it is obligatory on him to complete the obligatory *Dhikr* before leaving *Ruku'*.

It is also obligatory to raise one's head from *Ruku'* and stand erect peacefully. If a person performs prostration before that deliberately, his prayer shall be rendered void.

Problem #9: While a person is standing erect, reciting *Takbir* for *Ruku'* is recommended, and it is more cautious not to give it up. It is recommended to raise both hands (upto the ears) while reciting *Takbir*, and putting both the palms of the hands with open fingers on knees in a *Ruku'*. It is more cautious not to give it up, if possible.

It is also recommended to throw both the knees backward, straighten the back, stretch the neck and keep both the forearms like wings, and for women to keep both their hands on their thighs over their knees and take up reciting the major *tasbih* thrice, five times, seven times or even more, to raise both the hands for standing erect from *Ruku'*, and after standing erect to say (in Arabic): "*Samia' Allahu liman Hamidah*" (Allah, who has been praised, has heard), to recite *Takbir* for going down to perform prostrations and raise both the hands for it. At the time of performing *Ruku'*, it is disapproved to bend the head, put both the hands on both sides or bring one's both hands between the knees.

Rules Concerning *Sajdah* (Prostration)

Problem #1: Two prostrations are obligatory in every *Rak'at*, and together they form a pillar which invalidate the prayer by the excess of both of them in a single *Rak'at* and so also due to their deficiency, deliberate or inadvertent. If the condition is violated by a single prostration, whether by excess or deficiency, inadvertently, the prayer shall not thereby be rendered void.

(In prostration), it is indispensable to bend and put the forehead (on the earth) in a way that it may be called prostration. This is its criterion in being a pillar as well as in the deliberate or inadvertent excess.

There are also some other conditions required in prostration which have, however, nothing to do with its being a pillar. They are as follows.

1. Six parts of the body play a part in prostration, namely, both palms of the hands, both knees and both toes. It is a condition that the interior of the palms should play the part and that they should be expanded on the earth in the usual way. This is where the person is able to do so, but in case of inability, it is sufficient to put on earth what is called the interior of the palms. If a person is not able to put the palms on the earth, but can only join the fingers with the palm and prostrate in that condition, it would be sufficient.

If a person were not able to do all this, it would be sufficient for him to place the back of his hand on the earth.

If this is also not possible due to hand having been chopped off or the like, he shall shift over to the part closest to the palm.

As regards the two knees, it is obligatory to use their apparent part in prostration, even if they are not wholly placed on the earth.

As regards the two toes, it is more cautious to place the tips of the toes on the ground,

It is not obligatory to place the whole forehead on the ground, but it is sufficient to place it in a way that it may be called prostration, and it is materialised with placing the forehead equal to the extent of the tips of the fingers and it is more cautious that it must be to the extent of Dirham, as also it is more cautious that it must touch the ground in a single place and not in different places, though, according to the stronger opinion, there is no difference between the two.

It is permissible to perform the prostration on beads of a rosary, provided that the width of the place touched by the forehead is equal to the tip of the fingers.

It is indispensable to remove whatever impedes the forehead from touching the ground, like filth, etc., on the forehead or the ground. Even if some earth, dust or pebble or the like is stuck to the

forehead in the first prostration, it is obligatory to remove it for the performance of the second prostration, according to the more cautious, if not stronger, opinion.

Forehead here means what is between the place of growth of hair, the upper part of the nose and the middle part of both the brows and what lies between both the temples widthwise.

Problem #2: It is more cautious that all the seven parts of the body should be placed on the ground and it is sufficient for them to touch the ground. It is not obligatory for all the parts of the body involved in prostration) to be equally placed on the ground, as it is also not harmful if other parts of the body also share with them in the act of prostration such as the forearm with both the palms and the other fingers of the feet with both the toes.

2. It is obligatory to recite Dhikr in prostration as mentioned under Rukū', the major Tasbih here being: *Subhana rabbiyal a'lā va bi hamdihi*.

3. It is obligatory for the person offering prayer to be patient, in the same way as mentioned earlier under Rukū'.

4. It is obligatory that all the seven parts of the body (involved in prostration) must be in their respective positions. So if a person is not busy reciting the obligatory Dhikr, there is no objection in changing the positions of these parts of the body except that of the forehead. So if the person recites: *Subhānallāh*”, and then raises his hand for some necessity, etc., and then places it back and completes the rest of the act of prostration, there shall be no harm in it.

5. It is obligatory to place the forehead on something on which it is allowed to prostrate, as mentioned earlier in its place.

6. It is also obligatory to raise the head after the performance of the first prostration and sit peacefully and erect.

7. It is also obligatory to bend for performing prostration so that the place touching a person's forehead may be equal to that of his standing. If either of them is higher than the other, it shall not be valid except that the difference between them is equal to an ordinary brick the bigger surface of which is usually placed on the ground, or four fingers when joined together. It is not a condition that other parts of the body be equal to one another and not even with respect to the forehead. So there is nothing wrong if their place is raised or lowered as long as the act does not cease to be a prostration.

Problem #3: By place of standing, about which it has already been said that there should not be a distance between it and place of resting the forehead more than as mentioned, according to the more cautious opinion is meant the place lying between the place of resting both the knees and the toes. So if a person places his toes lower or higher than his forehead more than what is mentioned, his prayer shall be rendered void, even if the place of resting his knees is equal to the place of resting his forehead in height.

Problem #4: If a person rests his forehead on a place higher than the amount excused, so that the height is to the extent that it may not be usually called prostration, according to the more cautious opinion it is better that he should raise his forehead, and rest it on the place allowed. It is permissible for him to pull his forehead down.

If it is so high that in spite of pulling the forehead down, it may be usually called prostration, then it is more cautious to pull it to the lowest point. If it is not possible, it would be more cautious to raise the forehead and rest on the place allowed, complete the prayer, and offer it again.

Problem #5: If a person has rested his forehead inadvertently on a place on which it is forbidden to prostrate, it would be obligatory on him to pull his forehead to the place on which it is allowed to prostrate, and thereby render his prayer valid.

It is not permissible for him to raise his forehead from that place. If it is not possible, except to raise his forehead which would mean an additional prostration, then, it is more cautious for him to complete his prayer and offer the prayer again, regardless whether he has come to realize it before reciting the Dhikr or after it.

Of course, if he has come to realize it after raising his head from the prostrations, it would be sufficient for him just to complete the prayer.

Problem #6: If a person's forehead has some disease, like an abscess, then, if it has not spread over the whole forehead and it is possible for him to place its unaffected part on the ground, even if it is done by digging a small pit and placing the abscess in the pit, it would be obligatory on him to do so.

If it is spread over the whole forehead, or it is not possible for him to place the unaffected part of his forehead on the ground, he shall perform the prostration on one of the sides of the forehead. In doing so, it is better to prefer the right side to the left.

In case it is not possible for him to do that too, he shall use his chin for prostration.

If this also not possible, it shall be more cautious for him to place a part of his face or the front part of his head on the ground, and there by perform some form of prostration.

In case this is also not practicable for him, he shall perform what is closest to prostration in form.

Problem #7: If a person raises his forehead from the ground perforce, and returns to it perforce, it would not be far from being a return to the former prostration, and so it shall be treated as a single prostration, regardless whether raising the forehead has taken place before resting it on the ground or after it. He shall, therefore, recite the obligatory Dhikr.

If a person is able to hold his forehead after raising it, this placing on the ground again shall be counted as a single prostration under any circumstances, regardless whether raising the forehead has taken place before resting it on the ground or after it.

Problem #8: If a person is unable to perform prostration, then if it is possible for him to perform some of the possible portions of prostration, it shall be obligatory on him to observe all that has already been understood as obligatory like resting the parts involved in prostration in their respective positions, if possible, resting the parts on some support, recitation of the Dhikr, and having patience, and the like. If a person is able to bend, he shall do it to the extent he is able to do, and shall raise the object on which prostration is performed to his forehead, placing the forehead on it, and fulfilling what has already been mentioned as obligatory acts.

If a person is not able to bend at all, he shall make signs (of prostration) with his head. In case he is not able to do so, he shall make signs (of prostration) with his eyes. It is more cautious to raise the object on which prostration is performed along with it when he is able to place his forehead on it.

If a person is not able to perform prostration as far as possible, it shall not be obligatory to place the parts of the body involved in prostration in their respective positions, though it would be more cautious to do so.

Problem #9: It is recommended to recite Takbir while standing erect after the performance of Ruku' before going down to prostrate as well as after rising subsequent to the performance of the prostrations. It is also recommended that a person should place both his hands on the ground before performing prostrations, and place the whole forehead on what it is allowed to prostrate, and rest his nose on the thing on which it is allowed to prostrate in a way that it may be considered to have fulfilled the act, and it is more cautious not to give it up.

It is also recommended that the place of resting the forehead should be equal to the place of standing, rather to all the parts of the body involved in the act of prostration; both his palms (of his hands) should be flat, and all his fingers including the toes must be joined together, and they should be opposite both the ears and facing the Qiblah. He should perform the prostration with his stomach rising above the ground. He should raise his forearms above the ground, with a distance between both of his forearms and his sides, both his hands being far from his body, making both his hands like two wings. He should recite the Du'as mentioned in the Traditions before starting the Dhikr and after raising the head from the first prostration.

It is also recommended to prefer reciting the larger Tasbih (Subhāna rabbiyal ala va bi hamdihi) repeat it several times and finish it on an odd number; and pray during the prostrations or the last one, asking for what he demands from the worldly benefits as well as those of the Hereafter, particularly asking for lawful sustenance, by saying (in Arabic) 'O the One who is the Best among those whom people address in their demands, O the Best of those who bestow, Bless me and my Family with Thy Favour. Thou art a Great Benefactor.'

It is also recommended that between the two prostrations and after their performance, a person should sit on his left thigh with the back of his right foot on the sole of the left foot, and between the two prostrations should say (in Arabic): 'I ask pardon from Allah, my Lord, and turn to Him in repentance.' He should place both his hands on his thighs, the right hand on the right thigh and the

left hand on the left thigh, and should sit with patience after raising the head from the second prostration before standing up, and, when intending to rise for standing up, should say (in Arabic): “With the power of Allah and His strength I stand up and sit down.” He should lean on both his hands while rising without his fists being closed, i.e., without closing both the hands, rather placing them flatly on the ground.

Problem #10: It is specifically meant for a woman while offering prayers to decorate herself with ornaments, dye her hair, recite quietly, join her feet in the standing posture, join both her breasts with both her hands in that position, place both her hands on both her thighs while kneeling without pushing them behind herself, sit down before performing prostrations, place her parts of the body on the ground duly joined with one another while performing prostrations with out raising her stomach and to sit cross-legged in all circumstances.

The Two Prostrations of Recitation of the Quran & Expression of Thankfulness

Problem #1: It is obligatory to perform prostration for reciting four verses in four Sürats (Chapters of the Quran), namely, the last of the Sürat al-Najm (Chapter 53 of the Quran), Surah al-'Alaq (Chapter 96 of the Quran), Verse No. 15 of the Sürat Alif Lam Mim Tanzil (or Sürat al-Sajdah, Chapter 32 of the Quran), Verse No. 37 of the Surat Ha Mim al-Sajdah (Chapter 41 of the Quran). It is also obligatory if a person listens to their recitation attentively, but most obviously not in case he listens them recited inattentively, though in the latter case too caution must not be given up.

The prostration is obligatory only when a person recites or listens attentively to the whole of any of these four verses, but it is not rendered obligatory just by reciting a part of any of these verses, even the word "Sajdah" in them, though it is more cautious (to perform prostration in such case too). It is obligatory to perform the prostration immediately without any delay. If it is delayed, even though insubordinately, it shall be obligatory to perform the prostration, and its obligation shall not drop.

Problem #2: It is obligatory to perform the prostration repeatedly with the repetition of the cause one after the other in all circumstances, even if a person has performed prostration earlier. The prostration is to be performed one after another without any lapse of time, and this rule is not devoid of force. In case of absence of the cause being repeated one after another, it is not far from being not obligatory to perform the prostration one after another.

Problem #3: If a person recites or listens attentively any of the four verses while performing prostration, it shall be obligatory on him to raise the head and place it again on the ground, and it is not sufficient to prolong the same prostration with the intention of performing the obligatory prostration (for any of the four verses). It is also not sufficient to drag the forehead to another place. This is the rule when his forehead is placed on the ground without the intention of performing prostration, and the person happens to listen to or recite any of the verses entailing prostration.

Problem #4: Apparently it is a condition for the entailment of obligation on the listener that the verse in question should have been recited as actual recitation and as part of the Quran. So if a person recites any of the four verses without the actual iteration of reciting it, mere listening to it shall not entail the obligation.

The same rule shall apply if a person listens to any of the four verses recited by an indiscreet child, or from one who is asleep, or from a tape recorder, though it is more cautious (to perform the prostration when the verse is heard) when recited by a sleeping person.

Problem #5: It is also a condition for listening to (any of the four verses) that the letters and words should be clearly discerned, so that listening to merely an inarticulate utterance (or humming) is not sufficient (for the entailment of the obligation), though it is more cautious (to perform the prostration even in this case).

Problem #6: It is a condition in these prostrations after they have been materialized that the intention (Niyyat) and the place must be lawful. It is more cautious to place the seven parts of body (on the ground), and rest the forehead on something on which prostration is allowed, though according to the stronger opinion, it is not necessary.

Of course, it is more cautious to avoid prostration on edibles and clothing. Rather their being disallowed is not free from force.

It is not a condition that the following should be observed in the performance of this type of prostration

1. Facing the Qiblah.
2. Purification from the major and minor pollutions.
3. Purification of the place on which the forehead is to be placed.
4. Covering the private parts.

Problem #7: In this type of prostrations, there is no Tashahhud, no Taslim, and no Takbirat al Iftitāhiyyah. Of course, there is Takbir after rising from the prostration. It is also not obligatory in this type of prostrations to recite Dhikr, and it is sufficient to recite any Dhikr, but it is preferable to say (in Arabic): “There is no god but Allah who is the true Truth. There is no god but Allah by way of belief and confirmation. There is no god but Allah by way of bondage and servitude. I have performed prostration for Thee O Lord by way of bondage and servitude, and not by way of refrain, nor by way of haughtiness; rather I am a humble and fearing servant, seeking refuge.”

Problem #8: Prostration performed for Allah, the Exalted, is by itself among the supreme worships. It has been related about it that there is nothing like prostration for worshipping Allah, and the servant of Allah is nearest to Him when offering prostration. It is emphatically recommended to perform prostration for the expression of thankfulness whenever any blessing is bestowed (upon a person), a misfortune is averted, whenever a man recalls them, whenever a person is able to fulfil an obligatory or supererogatory act, rather any virtuous deed including even bringing conciliation between two parties.

It is permissible to confine to a single prostration. It is preferable to perform two prostrations bringing distance between them by placing both the cheeks and both the sides of the forehead on the ground. It is sufficient in this type of prostration merely to place the forehead on the ground with full intention.

It is more cautious in such prostration to place all the seven parts of the body (involved in it) on the ground, and the forehead on something on which it is allowed to prostrate. Rather in the prostration for reciting (any of the four verses of the Quran), the condition of the thing on which prostration is performed not being from among the edibles or clothing as mentioned earlier is not devoid of force.

It is recommended in this type of prostration to spread both the arms on the ground and place the breast, chest and the stomach on the ground. Reciting Dhikr is not a condition in this type of prostration. It is recommended to say (in Arabic): “Shukran lillāh” (Thanks to Allah) or “Shukran, shukran” (Thanks, thanks) a hundred times. It is sufficient to say it thrice, rather even once.

In this respect the best is what has come down from Imam (Musa) al-Kazim be upon him, that while in prostration you must say (in Arabic): “O Allah, verily I bear testimony by Thyself, I bear testimony by Thy Angels, Thy Prophets and Messengers and all Thy Creatures that Thou art Allah, my Lord. My faith is Islam, Muhammad (Peace be upon him) is my Prophet, and Ali, Hasan, Husayn (till the name of the last Imam) (Peace be upon them) are my Imams. I bear love for them and dissociate myself from their enemies. O Allah, I implore Thee by the blood of the oppressed (to be repeated thrice), I implore thee for Refuge against thy enemies to destroy them with our hands and the hands of the believers. O Allah, I implore Thee for Thy Shelter for Thy friends to make them triumphant over Thy enemy and their enemy, and to send Blessing on Muhammad and those asking safety from the Progeny of Muhammad (to be repeated thrice). O Allah, I ask Thee to bestow affluence after destitution (to be repeated thrice)”

Then place your right cheek on the ground and say (in Arabic): “O my Refuge when there is no way out for me, and what I considered wide becomes tight on the earth. O Creator of my existence have pity on me. Thou art free from wanting my existence, send Blessing on Muhammad and those who ask safety from the Progeny of Muhammad.”

Then place your left cheek on the ground and say (in Arabic): “O who degrades every tyrant. O who raises the honour of every debased person. Thy honour has been raised. My distress has become sharp.” (To be repeated thrice).

Then say (in Arabic): “O Hannan (Compassionate). O Mannan (Benefactor). O Reliever of big agonies.”

Then return to the prostration and say a hundred times (in Arabic): “Shukran. Shukran.” (Thanks. Thanks)

Then place before Allah what you demand. God willing, it will be fulfilled.

Chapter Concerning Tashahhud (Expression of Testimony)

Problem #1: It is obligatory to express testimony (Tashahhud) once in a prayer of two Rak'ats after raising the head from the last prostration, and twice in the prayers having three or four Rak'ats the first after raising the head from the last prostration in the second Rak'at, and the second after raising the head from prostration in the last Rak'at. It is compulsory but not a pillar, so that the prayer is rendered void when it is given up deliberately but not inadvertently until one kneels down, though it is obligatory to compensate it as mentioned under "The Things that Prayer"

In Tashahhud, it is compulsory to say (in Arabic) "Ashhadu an la ilāh illallāhu Vahdahū la sharika la. Va ashhadu anna Muhammadan abduhu va rasuluh. Allāhumma salli Muhammadin va Al-i Muhammad." (I bear testimony to that there is no god but Allah. He is One and none is His partner. And I bear testimony to that Muhammad is His Servant and His Messenger. O Allah send blessing to Muhammad and the Progeny of Muhammad).

It is recommended to begin by saying (in Arabic): "Allhamdu lillāh" (praise be to Allah). Or "Bismillāhi va billahi valhamdu lillāhi va khayrul asma'i lillāh," (in the name of Allah, by Allah and praise be to Allah, and Allah has the best Attributes) or "Al-asmā' ulhusnā kulluhā lillah" (All the best Attributes belong to Allah).

It is also recommended that one must say after Salutation on the Prophet and his Progeny (in Arabic): "Va taqabbal shifā'atahū if ummatihi varfa' darajatah" (and accept his intercession for his Ummah and raise his rank). It is more cautious that these words should be uttered not by way of obligation, and particularly in the second Tashahhud. It is obligatory to utter the words of Tashahhud according to the correct Arabic. If a person is unable to do so, he must learn how to do so.

Problem #2: It is obligatory to sit patiently while reciting Tashahhud, in whatever way one is able to sit. It is disapproved to sit on one's hams, and that is sitting with the front part of both the feet on the ground and throwing weight on the soles. It is more cautious to avoid it. It is also recommended that while reciting Tashahhud one must sit on one's thighs, as it is also to do so between and after the two prostrations, as mentioned earlier.

Chapter Concerning Taslim (Salutation)

Problem #1: Taslim (or Salutation) is obligatory in prayer, and apparently it is a part of the prayer. The permissibility of acts repugnant to prayer and exit from prayer depends on salutation.

It has two formulas, the first being (in Arabic): “Assalāmu alayna va alā ‘ibādillāhis salihin”, (Salutation be on us and the pious Servants), and the second “Assalamu ‘alaykum”. (Salutation be on you), with the addition of; “Va rahmatullāhi va barakātuh”, (and the Mercy of Allah and His Benediction), according to the more cautious opinion, though, according to the stronger opinion, it is recommended. If the first formula has been uttered, it is approved to utter the second as well. If, however, the first formula has not been uttered, then apparently it would be obligatory to utter the second. It is permissible to suffice with the second formula, rather with the first as well, though it is more cautious not to suffice with it.

As regards the formula “Assalāmu ‘Alaika ayyuhan nabiyyu va rahmatullāhi va barakātuh”, (Salutation be on you, O Prophet, and Allah’s Mercy and His Benediction). It is one of the addenda of Tashahhud, the utterance of which neither validate the acts which invalidate the prayer nor its deliberate or inadvertent omission renders the prayer void, though it is more cautious to utter it, as it is also more cautious to add both the formulas after it, the first being precedent and the second being subsequent to it.

Problem #2: While uttering the formulas of Salutation, it is obligatory to utter each of them in Arabic with correct sounds and movements (I’rāb).

In case one does not know how to pronounce these formulas, it is obligatory to learn how to pronounce (at least) one of them, as it is also obligatory to sit patiently while uttering these formulas and it is recommended to sit on one’s thighs while uttering them.

Chapter Concerning Sequence of the Acts of Prayers

Problem. It is obligatory to observe the order in the acts of prayers. So it is obligatory to make the Takbirat al-Ihràm precedent to the recitation (of the Surah from the Quràn), the Sūrat al- Fatihah (Chapter 1 of the Quran) precedent to the other Surah (from the Quran), and that Surah precedent to Ruku (Kneeling down), and that precedent to prostration, and so on. So if a person turns the precedent into subsequent and vice versa deliberately, his prayer shall be rendered void. Similarly, the same rule shall apply if a person turns any precedent pillar into a subsequent one. If, however, a person erroneously makes a pillar precedent to something which is not a pillar as, for example, he performs Ruku before the recitation of a Surah (of the Quran), there shall be no objection, and he may continue his prayer.

Likewise, if a person makes something which is not a pillar precedent to a pillar, as, for example, he recites Tashahhud before the two prostrations, there shall be no objection. But if possible he must return to the usual order, and his prayer shall be valid, in the same way as there shall be no objection if he turns some of the precedent acts which are not pillars of the prayer into subsequent. If possible, he must return to the usual order, and his prayer shall be valid.

Rules Concerning Uninterrupted Sequence of the Acts of Prayer

Problem #1: It is obligatory that there must be an uninterrupted sequence in the acts of prayer, in the sense that there should not be so much of distance between the acts that it may wipe off the very shape of the prayer in a way that it would be right to deprive it of the name of prayer. If a person fails deliberately or inadvertently to observe the succession in the sense mentioned, his prayer shall be rendered void.

As regards the sequence in the usual sense, according to the more cautious opinion that is also obligatory, so that the prayer is rendered void if a person fails to observe it deliberately but not inadvertently.

Problem #2: Just as it is obligatory to observe uninterrupted sequence in some of acts of the prayer in relation to the others, in the same way it is also obligatory to observe the sequence, in the recitation (of the Sūrahs of the Quran), Takbir, Dhikr and Tasbih in relation to the verses and words, rather even the letters, so that if a person deliberately fails to observe it in any of the acts mentioned in a way that it would entail the elimination of their names, the prayer shall thereby be rendered void, in case where if succession is to be achieved, it would mean addition which would render the prayer void, rather to be more cautious in all circumstances.

If, however, it has happened inadvertently, there would be no objection. He may return to the sequence if he has not passed the place from where it is possible to return, but this is where the failure to observe the sequence in any of the acts mentioned has not been a cause for the failure to observe the sequence in prayer in the sense mentioned; otherwise, the prayer shall be declared void even if it has happened inadvertently.

Chapter Concerning Qunüt (Expression of Humility before Allah)

Problem #1: It is recommended to recite Qunut in the daily obligatory prayers, and it is emphasized that it should be recited loudly; rather it is more cautious not to avoid it. Its place is before the Ruku' in the second Rak'at after having finished the recitation of the Sürahs (of the Quran). If a person forgets (to recite before kneeling down in the second Rak'at), he may recite it after raising the head from the Ruku', and then he may perform prostration.

If a person does not realize the omission of the Qunut even at that time, and comes to realize only after it, so that he does not remember to recite it until he has finished the prayer, he may recite it even at that time.

If, however, a person does not come to realize the omission of the Qunut until he has returned from the prayer, he may recite it whenever he comes to realize it, even if a lot of time has since passed.

If a person fails to recite it deliberately, then he shall not recite it after the lapse of its due time.

It is also recommended to recite the Qunut in all supererogatory prayers in the place mentioned, including even the Shaf' supererogatory prayers, according to the stronger opinion. It is better to recite Qunut in Shaf' supererogatory prayers with the intention of hope (that it shall be desirable to Allah).

It is emphatically recommended to recite the Qunüt in Vitr prayers, and its place, as already understood, is before the Ruku' and after the recitation of the Surahs (of the Quran).

Problem #2: There is no condition of reciting particular words in the Qunut, and it is sufficient to recite any Dhikr or Du'a within easy reach. Rather it is sufficient to recite Bismillāh once, or Subhanallah five or three times, as also it is sufficient to send Blessing to the Prophet and his Progeny. The best would be the Du'as which have come down from any Ma'sum, Peace be upon him, or rather the Du'as in the Quran.

It is recommended to recite the Qunüt loudly, regardless whether the prayer is to be offered loudly or by lowering the voice, whether he is leading the prayer or is offering it individually, or even if one is offering it behind an Imam provided that the Imam is not listening to his voice.

Problem #3: It is not a condition to raise the hands while reciting the *Qunut*, though there is difficulty in accepting this opinion, and it is more cautious not to avoid it.

Problem #4: It is allowed to recite the *Du'a* in *Qunut* with some errors from the point of view of the roots of the words or *l'rab* of the letters if these errors are not very serious or such that change the very meanings of the words. The same is the case with the recommended *Dhikrs*. It is more cautious to avoid the errors altogether.

As regards the obligatory *Dhikrs*, it is not allowed to recite them except in correct Arabic.

Rules Concerning Follow-up Recitations after the Prayers

Problem #1: It is recommended to follow up recitations after offering prayers, including even the supererogatory prayers. They are emphatically recommended after offering the obligatory daily prayers, particularly the morning prayers. By follow up recitations is meant the recitation of the *Du'as*, *Dhikrs*, verses from the Quran, and the like.

Problem #2: It is a condition in the follow-up recitations that they must be connected with the finishing of the prayers in a way that they should not include engagement in any other task which may alter their appearance in the eyes of the jurists such as handicrafts or the like. In follow up recitations, it is better to sit at the place where the person has offered the prayers, with his face towards the *Qiblah* and in a state of purification. There is no condition of any particular words to be recited, the most preferable being what has come down from (the *Ma'sums*), Peace be upon them, as contained in the books on *Du'as* and Traditions.

Perhaps the most recommended of them is the *Tasbih* of (the Prophet's daughter, Fatimah) Zahra Siddiqah, Allah's Peace be upon her. Its procedure is to recite *Takbir* (i.e., Allahu Akbar) thirty four times, then *Tahmid* (i.e., *Alhamdu lillah*) thirty three times and then *Tasbih* (i.e., *Subhanallah*) thirty three times.

If a person doubts about their number, he must rest with the minimum, if its place has not passed. If he erroneously exceeds the number of *Takbir*, etc., he must avoid the excess and should rest with thirty four or thirty three. It is better that in case of *Takbir* or *Tahmid* but not in *Tasbih* he must rest with minus one and then complete the number with it.

Some of the follow-up recitations are the following (to be recited in Arabic):

1. "There is no god but Allah. He is one. His promise is fulfilled. He supports His Servant. His troops are glorified. He overpowers the bands single-handed. To Him belongs the supreme authority. All praise is for Him. He gives life and death. He has control over all the things."
2. "O Allah, send Blessing on Muhammad and the Progeny of Muhammad. Save me from the Fire (i.e., the Hell), bestow upon me Paradise and marry me to a Hourie having big eyes."
3. "O Allah, bestow upon me from what Thou hast. Increase Thy favour on me, and expand Thy Mercy on me, and send down on me Thy Benediction."
4. "I seek protection in Thy Merciful Side, and Thy Honour which is in excellent order, and Thy Power which is not stopped by anything of the evils of the world and Hereafter, and from all pains. There is no Might, no Authority but by Allah, the exalted and Great."

5. “O Allah, I ask for every benevolence which is in Thy knowledge, and seek Thy shelter from every evil in Thy knowledge. O Allah I ask for Thy security in all my affairs, and seek Thy shelter from every ignominy of the world and the Torment of the Hereafter.”

6. “Dignified is Allah. Praise be to Allah. There is no god but Allah, and Allah is the Greatest.” To be recited a hundred or thirty times.

7. Recitation of the *Ayat al-Kursi* (Chapter 2, Verse # 255 of the Quran), the *Surat al-Fatihah* (Chapter I of the Quran) and the verse: “*Shahidallahu annaha la ilaha illa hu*” “(Allah witnessed that there is no god but He) (Chapter 3, Verse # 18) and the Verse: “*Qul Allahumma malikul mulk*” (Say, Allah is the possessor of supreme authority), (Chapter 3, Verse # 26).

8. Affirmation of the Prophet and the Imams, Peace be upon them.

9. Prostration of Thankfulness. Its procedure has been mentioned earlier.

Chapter on Things That Invalidate the Prayer

There are a number of things which invalidate the prayer. They are:

Firstly, the minor and major pollutions, (i.e., urine, feces, *Janabat*, etc.) They invalidate the prayer whenever they occur in the prayer, though at the time of reciting the letter "*mim*" which comes in the *Salam* (at the conclusion of the prayer), regardless whether it is done deliberately, erroneously or inadvertently, to the exclusion of one suffering from incontinence in urination, stool or a *Mustahadah* (a woman having undue menses), as has been mentioned earlier.

Secondly, Takfir, which means putting one hand over the other in the way it is done by others than ourselves (i.e. the non-Shi'ahs). It invalidates the prayers, according to the stronger opinion, if done deliberately, but not if done inadvertently, though it is more cautious to offer the prayer again. There is, however, no objection if it is done by way of Taqiyyah.

Thirdly, Turning the whole body backwards or towards the right or left or between them, in a way that the person offering the prayer would cease to be facing the Qiblah. If it is done deliberately, it would invalidate the prayer in all circumstances. Rather even if a person turns his body in a way that it ceases to be between the east and west, even if it is done inadvertently or forcibly or the like. Of course, the prayer would not be invalidated if a person turns to the right or left in a way that he continues facing the Qiblah as soon as he becomes easy; otherwise, it would be rendered disapproved. If, however, the turning is so serious that the face of the person offering prayers turns to the right or left of the Qiblah, then, according to the stronger opinion, the prayer shall be rendered void.

Fourthly, speaking deliberately, even if the word spoken contains two meaningless letters, i.e., the person offering the prayer uses a meaningless word consisting of two letters in its kind or type, which, according to the stronger opinion, would invalidate the prayer, and even in case otherwise it would invalidate the prayer, according to the more cautious opinion.

Same is the case when a person uses a single letter that is used to mean something, like the letter, which is used in the beginning of some nouns symbolically for the purpose of explaining it, in which it would not be far from being a cause of invalidation of the prayer. So any letter carrying some sense in all circumstances, even if it is not coined to carry any meanings, if it is used for narration, its being cause of invalidation of prayer shall not be devoid of force, in the same way that if a coined word is uttered without the intention of narration, consisting of a single letter, according to the stronger opinion, shall not render the prayer void. If, however, it consists of two letters or more, then, according to the more cautious opinion, it shall render the prayer void, if it has not reached the extent that the whole act would cease to be called prayer; other wise, there would be doubt in its being a cause of invalidation of the prayer, even if it is done inadvertently. If, however, one speaks not in such condition, then it would not invalidate the prayer when done inadvertently, in the same way as there is no objection in replying to greeting rather it is obligatory. If, however, a

person does not reply and keeps himself busy in recitation (of the Sūrah's of the Quran) or the like, the prayer shall not thereby be rendered void, not to speak of his silence to that extent, but he shall be considered to have sinned due to the failure to perform a particular compulsory act.

Problem #1: There is no objection in reciting Dhikr, Du'ā or recitation of the Quran except what entails the obligation of prostration in all conditions of the prayer. According to the stronger opinion, it would entail invalidation generally if some one other than Allah is addressed even during a Du'ā, by saying, for example, "Ghafarallāhu lak", (May Allah forgive thee), or Sabbahakallahu bil-khayr", (Good Morning, lit. May Allah grant you good morning), if a person intends to pray for that person, not to speak of when he intends to salute him. The same rule shall apply if a person initiates salutation.

Problem #2: It is obligatory to reply to greeting during the performance of prayers by preferring the reply to whatever part of the prayer one is busy in, though, according to the stronger opinion, the saluting person may have preferred the latter to greeting. It is more cautious to maintain similarity to the greeting in its reply as regards the nouns being common or proper, and the number being singular or plural, though, according to the stronger opinion, it is not necessary.

In case of other than the prayer, it is recommended to give a better reply, as in reply to Salāmun 'alaikum (Peace be on you), one must say: " 'Alaikumussalām va rahmatullāhi va barakātuh", (Peace be on you too, and Allāh's Mercy and His Benediction)

Problem #3: If a person uses incorrect language in greeting in a way that it does not cease to be greeting, it is obligatory to reply him in correct language. If (the language is so incorrect that) it ceases to be a greeting, then it is not permissible to reply during the performance of prayer.

Problem #4: If the person greeting is a discreet child, it is obligatory to reply to his/her greeting. According to the more cautious opinion, the intention should not be to follow the Quran; rather its non-permissibility is strong.

Problem #5: If a person greets a group of persons one of them being the person offering the prayer, then it is more cautious for him not to reply if a person other than himself has replied it. If a person is a member of a group, and a person greets them, and he doubts whether he intended to salute him or not, it would not be permissible for him to reply (during the performance of the prayer).

Problem #6: It is obligatory to make the addressee listen to one's reply to greeting given during the prayer, etc., in the sense that the person replying must raise his voice to the usual extent so much so that if there is no hindrance in listening the addressee would listen to it. If the person greeting is at such a distance that it is not possible for him to listen to the reply, then apparently it shall not be obligatory on the person greeted to reply. So it is not permissible for him to reply during the performance of the prayer. If a person is at a distance so that one is required to raise his voice in order to make him listen to it, it shall be obligatory on him to raise the voice, except when it is troublesome, in which case, according to the more cautious opinion, it would be sufficient for him

to make signs if it is possible to make the other party understand thereby. If it were during the performance of the prayer, then there is hesitation in its being obligatory to raise the voice and make the addressee listen to it, and it is more cautious to reply by means of signs, if possible.

In case the greeting person were deaf, then, if it is possible to make him understand the response even by means of signs, it would not be far from being obligatory to respond in the usual manner. Otherwise, if it is not possible, it would be sufficient to reply without the usual manner by means of something other than signs.

Problem #7: It is obligatory to respond to the greeting immediately in the usual manner, so that it is not permissible to delay the response in a way that it may no more be considered a response to the greeting. If a person delays the response to that extent out of insubordination or forgetfulness or some other excuse, it will be dropped (i.e. cease to be a response). So it is not permissible (to do so) while offering prayers, and it is also not obligatory in other cases.

If a person doubts whether the response has been delayed to the extent mentioned, even then it would not be permissible to respond during offering the prayer, as also it is not obligatory in other cases.

Problem #8: Taking initiative in greeting is recommended as a collective duty of all, as also responding to it is also a collective duty. If a group of persons enter a place where there is another group of persons, it is sufficient as a recommended duty for a single person from among the entering persons to greet and a single person from among those already present there to respond.

Problem #9: If a person greets one of two persons, and they do not know as to whom he meant to greet, it shall not be obligatory on both to respond, nor shall it be obligatory on them to investigate and ask as to whom the person greeting meant to greet, though it would be more cautious if both of them respond in case they are not offering prayer at that time.

Problem #10: If two persons greet each other simultaneously, it shall be obligatory on each of them to respond to the other, even if one of them happens to greet the other subsequent to the other. If the case is reverse, so that each of them should greet in response under the impression of that the other has greeted him, it shall not be obligatory on either of them to respond to the other. If a person greets another in response under the impression that the other person has greeted him, though the other person has not greeted him, and the person who has been greeted is cognizant of it, according to the stronger opinion, it would not be obligatory on him to respond, though it would be more cautious to respond; rather caution is better in all circumstances.

Fifthly. Laughter even if forcibly. Of course, there is no objection if done inadvertently, as there is no objection in smiling even if intentionally

Laughter means laughing loudly when the sound revolves in the throat. According to the more cautious opinion, to this is added as a rule laughing which consists of only sound, and even if it

consists of the sound as well as the sound revolving in the throat supposing the person to have controlled himself from laughing when, for example, his mouth becomes full of laughter and his face turns red and he start trembling. In such case his prayer is not rendered void except when its very appearance is changed.

Sixthly, weeping deliberately and loudly on some mundane loss, except when one starts weeping for an error in prayer, or some matter relating to Hereafter, or while asking for some mundane thing from Allah, the Exalted, particularly when the thing asked for is preferable from the point of view of Shari'at, in which the prayer shall not be rendered void. If, however, the weeping does not consist of sound, it is more cautious to offer the prayer again, though its not being rendered void is not devoid of force. If a person is overwhelmed with weeping causing invalidation of the prayer under compulsion, it is more cautious for him to offer the prayer again; rather its being obligatory is not devoid of force.

As regards permissibility of weeping on the leader of all martyrs (i.e. Imam Husayn), May our lives be sacrificed for him, there is hesitation and difficulty (in accepting it), and so caution must not be given up.

Seventhly, every act which changes the appearance of prayers in a way that it would deprive the prayer of its name as prayer, though a little, renders the prayer void deliberately or inadvertently.

As regards an act which does not change the appearance of the prayer, if it causes failure to observe uninterrupted succession in the prayer in the usual sense, according to the more cautious opinion, it would invalidate the prayer in case it were deliberate, but not when it were unintentional.

In case the act does not cause failure to observe the uninterrupted succession, then if it were deliberate, it would not render the prayer void, not to speak of the case when it was unintentional, even if it is a great deal like moving the fingers, sign by hand or the like to call some one, or killing a snake or scorpion, carrying a baby, placing it on the ground, taking it in one's lap, nursing it or the like which does not cause interruption in succession nor does it change the appearance of the prayer.

Eighthly, Eating and drinking, even if were in a small quantity, according to the more cautious opinion.

Of course, there is no objection in swallowing the particles of food which have remained in the mouth or between the teeth, though it is more cautious to refrain from it.

Caution must not be given up by avoiding to keep sugar in the mouth, even if in a small quantity, so that it may dissolve and may slip down the throat bit by bit, even if does not cause any change in the appearance of the prayer nor does it cause failure in the uninterrupted sequence.

There is no difference in the application of the rules mentioned whether the prayer is obligatory or supererogatory, except in turning the face from the Qiblah in offering a supererogatory prayer while

walking. In case it were a non-supererogatory prayer, according to the more cautious opinion, the prayer shall be rendered void.

This is to the exclusion of the case of a thirsty person who is busy in Du'ā in a Vitr prayer who intends to keep fast the same day, if he is afraid that the day may dawn, while the water is before him and requires to take only two or three steps, it would be permissible for him to walk and drink water to his fill, even if it takes a long time, provided that he has not done anything else invalidating the prayer, though when he intends to return to his former place, he must return backward so that his back may not be towards the Qiblah.

According to the stronger opinion, the person should confine himself to drinking water without eating or drinking other than water, even if those other acts may require a little time, as also it is more cautious to confine this act to the Vitr prayer and not other supererogatory prayers. It is not far from its not being confined to reciting Du'ā, but to this may be added other cases, though it is more cautious to confine it to reciting the Du'ā.

More cautious than it is to confine to the case even when one feels thirsty during offering the Vitr prayer. Rather, according to the stronger opinion, there is no exception if a person were thirsty and then he starts offering the Vitr prayer with the hope that he would drink water during the recitation of the Du'a before the day is dawned.

Ninthly, Uttering the word Ameen after completing the Sūrat al-Fatihah (Chapter 1 of the Quran) except by way of Taqiyyah (Dissimulation), in which case there is no objection, as is the case who does it inadvertently.

Tenthly, Doubting the number (of Rak'ats) in prayers other than those having four Rak'ats from among the daily obligatory prayers, and doubting in the first two Rak'ats (in prayers having four Rak'ats) due to the reasons to be explained, God willing, in their relevant place.

Eleventhly, Reducing or adding a part in all circumstances when it were a pillar (of the prayer), and doing so deliberately in case it were other than a pillar (of the prayer).

Problem #11: Following acts are disapproved in addition to what you have previously understood: Blowing the place of prostration provided that it would not produce two letters; otherwise, according to the more cautious opinion, one must abstain from it; heaving a sigh, bewailing, spitting with the condition mentioned earlier and the caution explained previously, vain talk, cracking the fingers, stretch one's body, yawning voluntarily, controlling urination or evacuation of bowels provided that it is not to the extent of being harmful in which case one must refrain from it, though nevertheless the prayer shall be valid.

Problem #12: It is permissible to discontinue the obligatory prayer voluntarily. A person may discontinue it for of losing his own life, or the life of one who is dear to him, his honour, or considerable property, or the like. Rather in some of these cases it is obligatory to discontinue the

prayer, but in case he fails to discontinue it out of insubordination, he shall be considered to have committed a sin, but his prayer shall be valid.

According to the more cautious opinion, it is also not permissible to discontinue voluntarily a supererogatory prayer, though, according to the stronger opinion, it is permissible.

Chapter on Salat al-Ayāt (Prayers for Eclipse or Frightening Acts of God)

Problem #1: Salāt al-Ayāt is offered for a solar or lunar eclipse, though partial, an earthquake, every incident which is frightening for the common people, regardless whether it is heavenly like an unusual black, red or yellow whirlwind, extra-ordinary darkness, an outcry, a loud sound, a fire appearing in the sky, or the like, or earthly, according to the more cautious opinion, like caving in or the like. It shall not be of any importance if the incidents are not frightening (to the people in general), nor in case of the events which are frightening to a few people.

The existence of fear is not a condition in the solar and lunar eclipses or an earthquake. The *Salat al-Ayat* is obligatory in these incidents in all circumstances.

Problem #2: Apparently the criterion for the solar and lunar eclipses is the applicability of the name to the eclipses, even if has not been caused by the usual cause of the earth and moon siding with each other, and it is sufficient for the eclipse to have occurred due to some other planets or other reasons.

Of course, if the eclipse is so minor that it cannot be observed through the ordinary ocular perceptions, though it may be observed by some having extraordinary ocular perception or it could be discerned through artificial equipments, then apparently no heed is to be paid to it, even if the eclipse has taken place due to one of the two usual causes.

Similarly, no heed shall be paid to it if it disappears quickly as when some of the atmospheric rocks happen to pass in front of the son or moon causing disappearance of their light and this condition may end quickly.

Problem #3: The time for offering the prayer for the eclipse is from the beginning of the eclipse to the beginning of its end. Caution must, however, not be given up by hastening to offer the prayer before its end, so that if a person delays it upto its end, he shall offer the prayer neither with the intention (*Niyyat*) of offering it on its due time nor as a compensatory one, but only with the intention of seeking closeness (to Allah) absolutely.

As regards an earthquake or the like in whose case mostly the time is not enough for offering prayers, as the thud or loud sound represents the causes and not the times. Their occurrence entails the obligation for offering prayer. If a person fails to offer the prayer due to insubordination, it would continue to be an obligation on him throughout his life. All these prayers are to be offered with the intention (*Niyyat*) of being offered on due time (*Ada*).

Problem #4: The obligation is meant exclusively for those who happen to be present in the place of the incident, so that the prayer for such incidents is not obligatory on others.

Of course, if a place is adjacent to the place of incident in a way that it is considered to be a single place, according to the stronger opinion, that place shall also be linked with the place of incident.

Problem #5: The incident, its time and its duration is determined by knowledge and the evidence of two morally sound persons, rather by the evidence of a single morally sound person, according to the more cautious opinion, or, according to the more cautious opinion, also by the information of an astronomer whose information is trustworthy, though it is not according to the stronger opinion.

Problem #6: This kind of prayer is obligatory on every *Mukallaf* (a sane, adult person bound to fulfil religious duties). According to the stronger opinion, the obligation drops in case of a menstruating woman or a woman having puerperal blood. In case of the prayers whose time is determined by *Shari'ah*, it is not obligatory on such women to offer compensatory prayers, nor are they obliged to offer other compensatory prayers. This rule applies to the women having abundant menstrual or puerperal blood. As regards others, there are detailed rules for them. Anyhow, caution is better.

Problem #7: If a person has no knowledge about the occurrence of an eclipse until its end, and the eclipse has also not been full, he shall not be required to offer a compensatory prayer.

In case, however, if a person has had knowledge about the occurrence of the eclipse, but he failed to offer the prayer, though out of forgetfulness, or the eclipse had been full, it shall be obligatory on him to offer a compensatory prayer.

In case of other incidents, if a person delays offering prayers deliberately or out of forgetfulness, it would be obligatory on him to offer compensatory prayer as long as he is alive.

If, however, a person does not attain knowledge about the eclipse until its time is over, it is more cautious for him to offer the required prayer, although its being non-obligatory is not devoid of force.

Problem #8: If a person receives the information about the eclipse though a group of persons who are not morally sound, and he has no knowledge about their being truthful, but after the time is over, it transpires that their information was true, apparently it shall be treated as if the person was ignorant of it, and so it shall not be obligatory for him to offer compensatory prayer, provided that the eclipse has not been full.

The same rule shall apply if a person is informed about the eclipse by two witnesses whose moral soundness is not known to him, but after the time is over, their information is confirmed, though, according to the more cautious opinion, the compensatory prayer is to be offered particularly in the latter case; rather caution must not be given up.

Problem #9: A *Salāt al-Ayāt* consists of two *Rak'ats*, each *Rak'at* having five *Ruku's*, the total being ten *Ruku's*.

Its details are that, as in a (daily) obligatory prayer, a person is required to recite *Takbirat al-Ihrām* along with the expression of intention (*Niyyat*), then recite *Surat al-Hamd* (Chapter 1 of the Quran) and some other *Surah* of the Quran, then should perform *Ruku'* (kneel down), then raise his head,

then again recite Surat al-Hamd and another Sureh of the Qur'ân, perform Ruku' and raise his head then again recite as before until he has repeated it five times in the same order, then he should perform prostration twice after raising his head from the fifth Ruku'. Then he should stand up and repeat again what he had done before, then recite Tashahhud and Salâm.

It makes no difference if the person recites the same Surah in all times or different Surahs each time. It is also permissible to divide a single complete Surah in each Rak'at of the five Rak'ats, so that after the Takbirat al-Ihram, he may recite the Surat al-Hamd and then after it recite one verse or more or less, and then perform Ruku', and then raise his head and then recite a part of the same Surah in continuance of what he had recited earlier, and then perform the Ruku' until he has finished the Surah and then perform the fifth Ruku', and then perform prostration, and then stand up and repeat what he had done in the first Rak'at, so that in each Rak'at he shall recite Surat al-Fatihah once and one complete different Surah.

It is permissible to recite in the second Rak'at the same Surah one had recited in the first Rak'at, or some other Surah. But is not permissible to recite a part of a Surah in the whole Rak'at, as also it is not permissible to recite the Surat al-Fâtihah more than once in the first Qiyâm, except when he has completed the Surah, for example, in the second or third Qiyâm, so that it is obligatory on him to recite Surat al-Fâtihah in the following Qiyâm after the Ruku', and then another Surah or a part thereof. In the same way, it is obligatory to recite Surat al-Fatihah in its Qiyâm every time he performs Ruku' after completing a Surah, contrary to the case when he performs the Ruku' after reciting a part of a Surah, so that he shall recite the Surah from where he had left it, without reciting Surat al-Hamd again, as already explained.

Of course, if a person performs the fifth Ruku reciting a part of a Surah, and then performs prostration and then stands up for the second Rak'at, then according to the stronger opinion, it shall be obligatory to recite Surat al-Fâtihah and then recite the Surah from where he had left it. However, caution must not be given up by performing the fifth Ruku the end of the Surah and start a second Surah after reciting Surat al-Hamd.

Problem #10: The conditions applicable in the Salat al-Ayât are the same as in the daily obligatory prayers, etc., and all that has already been understood or will be understood later in respect of what is obligatory or recommended in Qiyâm, Qu'ud (sitting) Ruku' and prostration, as well as the rules of omission and doubt about the excess or reduction of Rak'ats, etc.

If a person has doubt about the number of Rak'at in two Rak'ats of the prayer, the prayer shall be void as is the case in every obligatory prayer having two Rak'ats, because it also belongs to the same category, although each of its Rak'ats has five Ruku's.

If in such prayer, a Ruku' is reduced or added deliberately or inadvertently, the prayer shall be rendered void, as it is a pillar of the prayer.

The same rule applies to the Qiyam linked with the Ruku'.

If a person has doubt about its Ruku', the person should perform the Ruku', if its time has not passed. If it has passed, the person should continue his prayer. The prayer shall not be void unless he comes to realize about the reduction or excess of the Ruku' his doubt relates to the number of the Rak'ats. For example, he may not know it is the fifth Ruku' in which case it would be the last of the first Rak'at or the sixth Ruku' in which case it would be the first Ruku' of the second Rak'at.

Problem #11: It is recommended in a Salat al-Ayat to recite loudly regardless whether it is offered at night or in the day, including even the prayer offered for solar eclipse, as well as the Takbir every time the person kneels to perform the Ruku' or rises from it except when he rises from the fifth and tenth Ruku's, when he says "Sami' Allahu liman hamidah" (who has been praised has heard), and then performs prostration.

It is also recommended in this type of prayer to prolong it, particularly in the prayer for solar eclipse, and recite long Surahs like Surah' Yasin" (Chapter 36 of the Quran), al-Rum (Chapter 30 of the Quran), al-Kahf (chapter 18 of the Quran), or the like.

It is also recommended to complete the Surah in each Qiyam, and sit on the mat for offering prayer reciting Du'â and Dhikr until the end of the eclipse, or repeat the prayers if he has already finished it before the end of the eclipse.

It is also recommended to complete the *Surah* in each *Qiyam*, and sit on the mat for offering prayer reciting *Du'a* and *Dhikr* until the end of the eclipse, or repeat the prayers if he has already finished it before the end of the eclipse.

It is also recommended in *Salat al-Ayat* to recite *Qunut* in each second *Qiyam* after the recitation of a *Surah* of the Quran, so that in both the *Rakats* there would be a total of five *Qunuts*. It is also permissible to be content with two *Qunuts*, one before the fifth *Ruku'* but offered with the intention (*Niyyat*) of hope (that it would be desirable to Allah), and the other before the tenth *Ruku'*. It is also permissible to suffice with the last one.

Problem #12: It is recommended to offer the *Salat al-Ayat with Jama'at*, and the Imam is responsible particularly for the recitation of the *Surahs* for the followers as is the case with the daily obligatory prayers, but not for other acts and words.

It is more cautious for a person offering prayers with *Jama'at* to join the *Jama'at* before the first *Rukat* or in it in the first or second *Rakat* in order to maintain the order of his prayer.

Rules Concerning Failure to Perform Acts Required in Prayers

Problem #1: If a person fails to be clean of the major pollution, his prayer shall be rendered void, regardless whether done deliberately, erroneously or with the knowledge or out of ignorance, contrary to the case of a minor pollution the details of which have already been mentioned under its relevant section and the other sections relating to the conditions of time, facing *Qiblah*, covering the private parts, etc.

If a person fails to fulfil the essential elements of his prayer deliberately, including even a movement in the obligatory recitations or *Dhikrs* of the prayer, his prayer shall thereby be rendered void.

The same rule applies if he adds some part deliberately in words or action, without there being any difference in its being a pillar or otherwise; rather regardless of its being in conformity with or contrary to the other parts of the prayer, though the verdict about declaring the prayer void is in case the excessive part is contrary to the other parts. Rather if it is not a fundamental part of the prayer it is not free from hesitation and difficulty (in accepting the rule).

It is a condition in the excessive part in other than the pillars of prayer to perform something as if it is included in the prayer or is one of its parts. So it is not included in the causes for invalidation of the prayer in case a person adds some recitation (of a *Surah* of the *Quran*), *Dhikr* or *Du'a* during the prayer, if he has not added it as a part of the prayer. So there is no objection in such addition as long as it does not change the very appearance of the prayer, in the same way as there is no objection in the external actions which are allowed during prayers such as scratching the body (with nails) or the like, in case they do not interrupt succession of the acts of prayer or change its very appearance, as mentioned earlier.

As regards the unintentional additions in prayers, if a person adds a *Rak'at* or a pillar of *Ruku'* or the two prostrations in a *Rak'at* or *Takbirat al-Ihram* inadvertently, his prayer shall thereby be rendered void, though there is difficulty in accepting the rule particularly in case of the latter. As regards the addition of the *Qiyām* which is a pillar of the prayer, it does not take place except by the addition of *Ruku'* or *Takbirat al-Ihram*. With regard to the addition of intention (*Niyyat*) as it represents the expression of the very purpose of the prayer, one cannot consider it an addition, and when it is said to mean remembering in the heart, its addition is not harmful, as the addition of anything which is not a pillar of the prayer does not render the prayer void, even if it may entail the performance of two prostrations for error, according to the more cautious opinion, the details of which will follow.

Problem #2: If a person reduces something out of the essentials of his prayer inadvertently, and does not realize it till after the passage of its place, then, if it were a pillar, his prayer shall be rendered void, otherwise it would be valid, and he shall have to perform prostration for error to be mentioned in its proper place., or he shall be required to compensate for the parts forgotten if what

is forgotten is Tashahhud or one of the two prostrations. Nothing is compensated from among the forgotten portions other than these two. If a person realises the failure of performance of a portion during its proper place, he must perform it even if it is a pillar of the prayer, and repeat what he has done afterwards. By passage of the proper place is meant the entering in the pillar next to it, or when the place of performance of a forgotten portion is an act and its place has passed, such as the Dhikr in a Ruku' prostration which is forgotten, and the person recalls it after rising the head from it.

If person forgets the performance of a Ruku' until the performance of the second prostration or forgets the two prostrations until the performance of the Ruku in the next Rakat, his prayer shall be rendered void, contrary to the case when he forgets the performance of Ruku and recalls it before the performance of the first prostration, or he forgets the performance of the two prostrations, and comes to realize before the Ruku', so that he must come back and perform what is forgotten, and should repeat what he had done previously, though they are to be performed subsequently according to the order of succession.

If he happens to forget the Ruku and comes to realize it after starting the performance of the first prostration, then it is more cautious for him to return and perform what he has forgotten and what is to be subsequent to it according to the sequence and offer the prayers again after completing it. If a person forgets the recitation (of a Sūrah of the Quran), or Dhikr, or some part of them, or their order of succession, and comes to realize before performing the Ruku', he must compensate what he has forgotten and return to what is required according to the sequence. If a person forgets Qiyām, or patience in recitation (of the Sūrah of the Qurān) or the Dhikr, and comes to realize it before the Ruku, then it is more cautious to perform both of them again with the intention of seeking the closeness to Allah absolutely not as a part of the prayer. Of course, if a person forgets reciting the prayer loudly or slowly, then apparently it is not obligatory to compensate either of them, though it would be more cautious to compensate it, particularly when he comes to realize it during the prayer. He must, however, not give up caution by performing it with the intention of closeness to Allah in all circumstances. If a person forgets to stand erect after Ruku' or have patience while standing erect, and he comes to realize it before starting the performance of prostration, he must stand erect patiently, but with the intention of caution and hope (it would be desirable to Allah), in case he forgets patience while standing erect. He must, however, continue his prayer. If a person forgets *Dhikr* or patience or placing any of the seven parts of his body on the ground in prostration, and comes to realize it before getting out of what is called prostration, he must recite *Dhikr*. If, however, he fails to perform anything other than *Dhikr*, he must perform it with the intention of closeness to Allah in all circumstances, and not as a part of the prayer. If he comes to realize it after raising the head, and its place of compensation has also passed, then he must continue the performance of his prayer.

If a person forgets sitting straight after the performance of the first prostration or patience while sitting, and comes to realize it before starting what is called the second prostration, he must sit straight and patiently and continue his prayer. In case of forgetting to observe patience while sitting,

he must do it with the intention of hope (that it would be desirable to Allah), and by way of caution. If he comes to realize it after starting the performance of the second prostration, then the time for its compensation must have passed, and so he must continue his prayer.

If a person forgets a single prostration or *Tashahhud* or a part thereof, and comes to realize it before reaching the limit of *Ruku* or before reciting the salutation, then, if the forgotten prostration or *Tashahhud* is the last one, he must compensate it, and repeat the actions following it according to the proper sequence. If a person forgets a single prostration or *Tashahhud* in the last *Rak'at* and comes to realize it after the salutation, then if it were after the act which if performed deliberately or inadvertently renders the prayer void, such as the major pollution, then the time if compensation is already elapsed, and he shall be bound to compensate what has been forgotten and should perform two prostrations for error.

If it were before that, then, according to the more cautious opinion, in case he has forgotten prostration, he must perform it without determining it as one performed within the due time (*Adan*) or performed by way of compensation (*Qada*), and then by way of caution he must recite *Tashahhud* and *salam*, and then, by way of caution, he must perform two prostrations for error.

In case a person has forgotten *Tashahhud*, he must do likewise, and then recite *Tashahhud* and *Salam* by way of caution, and then perform two prostrations for error by way of caution, though in both the cases, according to the stronger opinion, the time for compensation for both of them has already elapsed absolutely, and he is bound to compensate for what he has forgotten and perform two prostrations for error. If a person forgets reciting *salam* (or Salutation), and comes to realize it before the occurrence of what renders the prayer void if done deliberately or inadvertently, he must compensate for it, so that if he fails to compensate, his prayer shall be rendered void. The same rule applies if he fails to compensate in case he has come to realize it within the time for its compensation, as mentioned earlier.

Problem #3: If a person forgets performance of the last *Rakat*, and, for example, he comes to realize it after the *Tashahhud* before reciting *Salām*, he must stand up and perform it. If, however, he comes to realize it after it, but before the occurrence of an act which if done inadvertently renders the prayer void, he must stand up and also complete the prayer. If, however, he comes to realize after it (i.e. occurrence of an act which if done inadvertently renders the prayer void), he must start the prayer from the beginning without there being any difference whether the prayer consists of four *Rak'ats* or otherwise. The same rule shall apply if a person forgets the performance of more than a *Rakat*. Similarly the person shall have to perform the prayer again if he happens to add a *Rakat* before reciting the *Salām* after *Tashahhud* or after it.

Problem #4: If a person has a brief knowledge about the failure to perform the two prostrations for the previous *Rakat* or recitation (of a *Surah* of the *Quran*) in the present *Rakat*, before being busy in reciting *Takbir* for *Rukū'* with the supposition of reciting *Takbir* for *Ruku'* and before kneeling for the performance of the *Ruku'* with the supposition otherwise, according to the stronger opinion, it

shall be sufficient for him to perform the recitation (of a Sūrah from the Quran). The same rule shall apply if it occurs after the start of the Takbir for the Qunūt, or before starting the Qunūt or after it, so that, according to the stronger opinion, it shall be sufficient for him to perform the recitation (of a Surah of the Quran), but he should not give up the caution by offering the prayer again.

Problem #5: If a person comes to know after having finished the prayer that he has not performed two prostrations, but does not know whether they belong to a single Rak'at or two Rak'ats, then it would be more cautious for him to perform two prostrations by way of compensation (Qadā') and then two prostrations for error twice, and then repeat the prayer. The same rule shall apply if it occurs during the prayer but after the start of Ruku'. If, however, it occurs before starting the Ruku', then it has several rules the details of which cannot be mentioned here.

Problem #6: If a person comes to know after Qiyām for the third Rak'at that he had given up Tashahhud, but does not know whether he has also given up prostration or not, then it would not be far from being permissible to suffice with the recitation of Tashahhud, but it would be more cautious also to repeat the prayer.

Chapter on Rules Concerning Doubts

A doubt may be about the prayer itself, its portions or about its Rak'ats.

A. Doubts about the Prayer itself

Problem #1: If a person doubts about the prayer itself, so that he doubts whether he has offered the prayer or not, then if it occurs after the lapse of its due time, he should not pay any heed to it and decide in favour of its having been offered. If it occurs before the lapse of its due time, he should offer it. The rule concerning the uncertainty about offering or not offering the prayer is the same as the rule for doubt.

Problem #2: If a man knows that he has offered the prayer for 'Asr but does not know whether he has also offered the prayer for Zuhr or not, then it is more cautious, rather according to the stronger opinion it is obligatory, to offer it even in case there is no time left for offering it, but only some time that is exclusively meant for 'Asr. Of course, if the time left is only this much, and he knows that he has not offered the 'Asr prayer, but doubts about offering the Zuhr prayer, he shall offer the 'Asr prayer, and shall not pay any heed to the doubt. If, however, he doubts about offering the obligatory prayer for 'Asr he shall offer it, and it shall be more cautious to let the Zuhr prayer be left due. The same rule mentioned here shall also apply to the Maghrib and Ishā' prayers.

Problem #3: If a person doubts about the due time for prayer whether it is left or not, he shall decide in favour of there being still time left.

Problem #4: If during offering the 'Asr prayer, a person doubts whether he has offered Zuhr prayer or not, then if the doubt occurs at the time exclusively meant for 'Asr prayer, he shall decide in favour of having offered Zuhr prayer. If, however, the doubt occurs at the time common to both Zuhr and 'Asr, he shall change his intention (Niyyat) to Zuhr prayer.

Problem #5: If he knows that he has offered one of the two prayers, for either Zuhr or Asr but does not know which particular prayer he has offered, then if the doubt occurs at the time exclusively meant for 'Asr he shall offer the 'Asr prayer, and it is more cautious to let Zuhr prayer be left as due. If, however, the doubt has occurred at the time common to both Zuhr and Asr prayers, he shall offer four Rak'ats with the intention (Niyyat) of offering the prayer which he owes. Like wise, if he knows that he has offered either of the Maghrib or Isha prayers at the time exclusively meant for Ishā' prayers, according to the more cautious opinion, he shall offer the Ishā' prayer and let Maghrib prayer be left as due. If, however, the doubt occurs at the time common to both Maghrib and Ishā' prayers, he shall offer both the prayers.

Problem #6: A person should not pay heed to a doubt about a prayer of its due time, and should decide in favour of having offered it, provided that the doubt has occurred after the lapse of its due time.

If a person doubts about a prayer within its due time, but forgets offering it until the lapse of its due time, it shall be obligatory on him to compensate it.

Problem #7: If a person doubts about offering a prayer, and believes that its due time has already lapsed, and later it transpires that it was within its due time, he shall be bound to offer its compensatory prayer.

On the contrary, if a person believes that the doubt about offering the prayer has been within its due time, but he gives up offering the prayer deliberately or inadvertently, and then it transpires that the doubt had occurred after the lapse of its due time, then he shall not be bound to offer compensatory prayer.

Problem #8: The rule for a person having doubt about prayer very often is the same as one having doubt about other things. However, the detail about the occurrence of the doubt within the due time of the prayer or after its lapse shall apply to him. But a person who is full of suspicions should not apparently pay heed to his doubt (about prayer) even if it occurs within the due time of the prayer.

B. Doubts Concerning the Acts in a Prayer

Problem #1: If a person doubts about anything relating to the acts in a prayer, then if were before starting another act according to the order of succession, it shall be obligatory on him to perform it, as, for example, he doubts reciting Takbirat al-Ihrām before starting recitation (of a Surah of the Quran) or even reciting Isti'adhah, or about reciting Surat al-Hamd (Chapter I of the Quran) before starting the recitation (of another Sūrah of the Quran), or about the recitation (the Surah of the Quran) before starting the performance of Ruku', or about the Ruku' before getting down to perform prostration, or about the prostration before Qiyām or starting Tashahhud.

If, however, it were after the start of another act according to the order of succession, even if it were of the category of the recommended one, he shall not pay any heed to it, and shall decide in favour of having performed it, regardless whether the doubt occurs between the first two Rak'ats or the last two Rak'ats.

So also, he shall pay no heed to the doubt about reciting the Sūrat al-Fatihah (Chapter I of the Quran) when he has started the recitation (of another Surah of the Quran), nor about the recitation (of the other Surah of the Quran) when he has started the recitation of the Qunūt, nor about the Ruku' or standing erect while he is getting down to perform prostration, nor about prostration while he is in Qiyām or reciting Tashahhud, nor about Tashahhud while he is standing up, rather, according to the stronger opinion, even when he is in the process of standing.

Of course, if he doubts about the performance of prostration when he is still in the process of standing, it shall be obligatory on him to compensate it.

Problem #2: According to the stronger opinion, decision should be in favour of performance, and no heed should be paid to the doubt after a person has started another act, irrespective of the fact whether the other act belongs to the category of independent acts as mentioned in the above examples or otherwise, as, for example, a person doubts about the beginning of a Sūrah (of the Quran) while he has reached its last, or about the beginning of a verse (of the Quran) while he has reached its last part, or its first word while he has reached its last word, though it is more cautious to fulfill about which he has doubted with the intention of closeness (to Allah) in all circumstances.

Problem #3: If a person doubts about the validity or invalidity of the act performed, and not about the performance itself, he should not pay heed to it, even if were within its due time, though in such case, it would be cautious to repeat the recitation (of the Sūrah of the Quran) or Dhikr with the intention (Niyyat) of closeness (to Allah) in all circumstances.

If, however, a person doubts about the performance of a pillar of the prayer, he should complete the prayer, and then repeat the prayer properly.

Problem #4: If a person doubts about the recitation of salutation, he should not pay any heed to it if he has already started what is done after having finished the prayer like the follow-up du'as or the like, or some of the acts repugnant to the prayer or the like, which is not done by a person offering prayer except after having finished the prayer, as a person offering prayer behind an Imam doubts about reciting *Takbir* while he is busy in act according to its order of succession, even if it were like quietness recommended when offering prayer with *Jama'at*, or the like, he shall not pay any heed to it.

Problem #5: If a person doubts about something within its due time, and fulfils it, and later realizes that he had already performed it, it shall not render his prayer void, except when it were a pillar of the prayer, in the same way as if he had not performed it while its due time has already elapsed, and then it transpires that he has not performed it, his prayer shall not thereby be rendered void, provided that it was not a pillar of the prayer, and it was not possible to compensate it, because he had already started another pillar; otherwise, he should compensate it in all circumstances.

Problem #6: If a person doubts while performing an act whether he had doubt or not about any of the acts preceding that act, he shall not pay any heed to it.

Likewise, if he doubts whether he has in the same way committed an error or not, (he shall not pay any heed to it).

Of course, if he doubts about the occurrence or non-occurrence of an error, and he happens to be able to fulfill what is doubted, he shall fulfill it.

C. Doubts about the Number of *Rak'ats* in Obligatory Prayers

Problem #1: There is no need of any rule for a doubt about the *Rak'ats* of the daily obligatory

prayers, if it has dispelled later automatically. But if it has persisted, then it would invalidate the prayers having two *Rak'ats* or three *Rak'ats* or the two *Rak'ats* of prayers having four *Rak'ats*.

In case of prayers having four *Rak'ats*, they are not invalidated, rather in some cases there is some solution after the ascertainment of the performance of the first two *Rak'ats* obtained after raising head from the last prostration. But if the doubt occurs after the completion of the obligatory *Dhikr* in it, then it is more cautious to consider it (the third *Rak'at*) and fulfill what has been rendered obligatory due to the doubt, and then repeat the prayer. According to the stronger opinion, it is necessary to repeat the prayer, as the doubt, (in this case), invalidates the prayers.

First Case: In case of a doubt about a *Rak'at* being the second or third after the completion of the two prostrations, the decision would be in favour of the third *Rakat* and the person shall offer the fourth *Rak'at* and complete the prayer, and then, by way of caution, offer a single *Rak'at* with *Qiyam* or two *Rakats* in a sitting posture. It is more cautious to add both by first offering a *Rakat* with *Qiyam* and then offering the prayer a new.

Second Case: In case of doubt about a *Rak'at* being the third or fourth at any stage whatsoever, it shall be decided in favour of the fourth *Rak'at*, and the same rule mentioned above shall apply even in case of caution, except as regards offering a single *Rak'at* consisting of *Qiyam*.

Third Case: In case of doubt about a *Rak'at* being the second or fourth after the completion of the two prostrations, the decision shall be in favour of the fourth and the person shall complete the prayer and then, by way of caution, offer two *Rak'ats* with *Qiyām*.

Fourth Case: In case of a doubt about a *Rak'at* being the second, third or fourth after the completion of the two prostrations, it shall be decided to be the fourth and the person shall complete the prayer, and then, by way of caution, offer two *Rak'ats* with *Qiyam* and two *Rak'ats* in a sitting posture. It is more cautious, rather according to the stronger opinion, to precede the two *Rak'ats* offered with *Qiyām*.

Fifth Case: In case of a doubt about a *Rak'at* being the fourth or the fifth, it may occur in two ways. Firstly, after raising the head from the last prostration, in which case the decision shall be in favour of the fourth, and the person shall recite the *Tashahhud* and *Salutation*, and then offer two prostrations for error. Secondly after *Qiyām*. This is the rule when there is a doubt in its being the third or the fourth *Rak'at* while in a state of *Qiyām*, and he does not know whether he has offered three *Rak'ats* or four, in which case he shall decide in favour of the fourth, and in such case he shall be bound to give up *Qiyām*, *Tashahhud* and *Salutation*, and offer two *Rak'ats* while sitting and one with *Qiyām*.

The same rule shall apply in all cases when a person discontinues some act (as a result of a doubt), because it does not bring any change in the doubt, rather the ascertainment of the doubt between the *Rak'ats* in a state of *Qiyām* is a prelude to *Salutation*.

Sixth Case: In case of a doubt about a Rak'at being the third, fourth or fifth while in a state of Qiyām, reference is to be made to the case of doubt about its being the second, third or fourth Rak'at, so that he shall sit down and complete the prayer, and fulfill what is required in such case of doubt.

Seventh Case: In case of a doubt about a Rak'at being the third, fourth or fifth while in a state of Qiyam, reference is to be made to the case of doubt in its being the second, third or fourth Rak'at, so that he shall sit down, complete the prayer and fulfill what is required in such a case of doubt.

Eighth Case: In case of a doubt about a Rak'at being the fifth or the sixth while in a state of Qiyām, reference is to be made to the case of a doubt in its being the fourth or the fifth Rak'at, so that he shall sit down and complete the prayer, and then perform two prostrations, one as an obligatory prostration for the said doubt, and another by way of caution for the excessive Qiyām, though its non-obligation for the excessive Qiyām is not devoid of force. In the latter fourth case, it would be more cautious to offer prayer anew along with what has been mentioned.

Problem #2: If a person doubts about a Rak'at being the third or fourth, or being third or fifth, or being third, fourth or fifth while in a state of Qiyām, and knows that he has given up one or two prostrations from the Rak'at after which he has stood up, his prayer shall be rendered void, as in this case reference is to be made to the case of doubt in its being the second or more than the second Rak'at arising before the completion of the two prostrations.

Problem #3: In case of doubts in which it is a condition to complete the two prostrations, if a person doubts about the completion of the prostrations or otherwise, if the doubt arises at its due time, i.e., in a sitting posture before Qiyām or in Tashahhud, the prayer shall be rendered void.

If, however, the doubt arises after having passed that stage, then there is difficulty in accepting the above rule, and so caution must not be given up by deciding (in favour of the larger number), and act what is required by the doubt and also repeat the prayer.

Problem #4: A doubt about the Rak'ats other than the cases mentioned above shall invalidate the prayer, even if prayer involved in the doubt is one having less than four Rak'ats, and the doubt may have arisen after the completion of the two prostrations, or when the doubt is about its being the fourth, or less or more than the fourth Rak'at after the completion of the two prostrations, such as a doubt about its being the third, fourth or the sixth Rak'at.

Problem #5: If a person doubts about a Rak'at being second or third and acted as required by the doubt, and after offering the prayer for caution doubts whether his previous doubt occurred before the completion of the two prostrations or after it, the decision shall be in favour of validity of the prayer, and he should not pay any heed to his doubt.

If, however, he doubts it during the prayer or after it and before offering the prayer for caution or during offering it, then it is more cautious to decide in favour of it, and act as required by the doubt, and then repeat the prayer.

Problem #6: If, after finishing the prayer, a person doubts whether his doubt would entail offering a single Rak'at or two, it would be cautious to offer both, and then repeat the prayer.

The same rule shall apply if he did not know as to which of his doubts is a valid doubt, he should repeat the prayer after acting as required by all of them. This shall be achieved by offering two Rak'ats with Qiyām and two Rak'ats by sitting, and performing the prostration for error.

Similarly, if the doubts are not likely to be confined to valid doubts, rather there is likelihood of some of them being invalid, and then it is more cautious to act as required by the valid doubts, and then repeat the prayer.

Problem #7: If a person has one of the doubts, but he does not know his obligation, then if he has not sufficient time, or he is not able to learn within the time, he shall be bound to act according to what is preferable from among the possibilities, in case there is one, or one of them if there is none, and should complete his prayer and repeat it, provided that there is sufficient time.

If after that it transpires that the act according to the doubt was contrary to the reality, he shall start the prayer anew, if he has not performed it on time.

If, however, there is sufficient time, and he is able to learn it within the due time, then he should discontinue the prayer and first learn it, though it is permissible for him to complete the act according to any of the possibilities, and then learn it.

If it were according to the actual position, he should suffice with it; otherwise, he should repeat it, though he should repeat the prayer even if it conformed to the actual position.

Problem #8: If, after finishing the prayer, his doubt changes into another, as, for example, he doubted the Rak'at to be the third or fourth, and after finishing the prayer it changed into doubting it to be the third or fourth Rak'at, or if he doubted it to be the second, third or fourth, and then changed into doubting it to be the third or fourth Rak'at, then it is not far from being the necessity of a continuous Rak'at in the first case or its similar cases, and the necessity of acting as required in the second doubt in cases similar to the second case, i.e., one having three sides, when one of the sides has dropped.

This is the case when the doubt does not change into something in whose existence he would know of a deficiency in his prayer, as is the case with the examples mentioned. But if his doubt changes into such a doubt, as, for example, if he doubts it to be the second or fourth, and then after reciting the Salutation, it changes into second or third, then no doubt it would be necessary for him to act according to the changed doubt as it has become clear that he is still busy in the prayer, and that the

Salutation has not been performed in its proper place. So two prostrations of error for reciting the Salutation in its wrong place shall be added to the act as per second doubt.

Problem #9: If a person doubts whether it is the second or third Rak'at, and the decision is made in favour of the third, and then he doubts it to be the decided third or fourth Rak'at, so it is clear that his doubt has changed into the doubt about its being the second, third or fourth Rak'at, and so action must be taken accordingly.

Problem #10: If a person has doubts about a Rak'at being the second or third, and decides in favour of the third, and then while offering the fourth Rak'at he becomes sure that at the time of the doubt he had not offered the third Rak'at, but doubts whether he has performed a single Rak'at or two, in his present doubt reference shall be made to the case of doubt between the second and third Rak'ats, and action shall be taken accordingly.

Problem #11: If a person is unable to stand and any of the valid doubts occurs to him, and then apparently his cautionary prayer to be offered with Qiyâm shall be changed into the prayer offered while sitting. And the prayer offered while sitting shall remain in its place. So also the prayer which he was free to offer with Qiyâm or while sitting shall also be changed into one offered while sitting.

Likewise, in case of doubt about the second and third, or about the third or fourth, such a person shall offer two Rak'ats of cautionary prayer while sitting, and in case of doubt about the second and third Rak'ats he shall offer two Rak'ats while sitting instead of two Rak'ats with Qiyâm, as also in case of a doubt about the second, third and fourth Rak'ats, he shall offer two Rak'ats while sitting instead of two Rak'ats with Qiyâm, and then another two Rak'ats while sitting being obligatory for him. The former shall be offered prior to the latter. It is more cautious in all these cases to repeat the prayer after the action mentioned.

Problem #12: In valid doubts, it is not permissible to discontinue the prayer and offer it anew. Rather it is obligatory to act according to what is required by the doubt.

Of course, if a person discontinues the prayer, it is obligatory for him to offer it anew, and his prayer shall be valid, though he has sinned due to the discontinuation of the prayer.

Problem #13: In invalid doubts, if the person forgets his doubt and completes his prayer, and then it transpires that his prayer was in accordance with the actual position, then there are two possibilities with regard to the validity of the prayer or otherwise, the most reasonable being in favour of the validity of the prayer, provided that he had no doubt about the first two Rak'ats of the prayer, so that if the doubt relates to the first two Rak'ats, then it is more cautious to repeat the prayer.

Problem #14: If a traveler happens to be in a place where he has the option to reduce his prayer, and so he expresses the intention of offering a Qasr prayer, but has doubt about the Rak'ats, then it is not far from being necessary to act according to the doubt and cure it without the need of altering

his intention. He should, however, not give up the caution by acting according to the doubt after having the intention of its alteration, and must repeat the prayer.

Problem #15: If, while sitting after the two prostrations, a person doubts whether the Rak'at is the second or third, and knows that he has not recited the Tashahhud for his present prayer, then, according to the stronger opinion, it would be obligatory on him to continue his prayer after deciding in favour of its being the third Rak'at, and perform the due Tashahhud after the prayer. The same rule applies if, while standing, he doubts whether the Rak'at is the third or fourth when he knows that he has not recited Tashahhud, so that he shall decide in favour of its being the fourth Rak'at, and continue the prayer, and perform the Tashahhud after the prayer.

Rules Concerning Doubts Which are not to be Heeded

There are some doubts which are not to be heeded. They are:

First, when a doubt occurs after its situation has passed. Its rule has been mentioned earlier.

Second, when a doubt occurs after its time has elapsed. Its rule has also been mentioned earlier.

Third, when a doubt occurs after a person has finished his prayer, except when it relates to its conditions, portions or Rak'ats, provided that one of the sides of the doubt happens to be in favour of validity. So if a person while offering a prayer having four Rak'ats doubts whether he has offered three, four or five Rak'ats, or in a prayer having three Rak'ats he doubts whether he has offered three, four or five Rak'ats, and in a prayer having two Rak'ats, he doubts whether he has offered two Rak'ats or more or less, decision shall be made in favour of the validity of the prayer, contrary to the case when in a prayer having four Rak'ats, he doubts whether it is his third or fifth Rak'at, or in a prayer having three Rak'ats, he doubts whether it is the second or fourth Rak'at, in which cases his prayer shall be void.

Fourth, in case of a doubt of a person who doubts too often whether it relates to Rak'ats, acts or conditions (of the prayer), decision shall be made in favour of the performance of what has been doubted, though it may have occurred in its due place, except when it entails the invalidation of the prayer, in which case the decision shall be made in favour of its reverse.

In case the doubt of a person having doubts too often relates to a particular thing or a particular prayer, the rule shall apply particularly to that thing or prayer. So if he has a doubt about other than that act, he shall act according to that doubt.

Problem #1: The criterion for too much doubt is the usual practice. It is not far from being likely when a person has doubts during three consecutive prayers. It is a condition for its truth that the doubt should not emerge due to some fear, or grief or the like which causes disturbance in a person's senses.

Problem #2: If a person has doubt whether he is in a state of having too frequent doubts or not, he should decide in its being otherwise. If a person already having too frequent doubts has doubt about the disappearance of that state, the decision must be in favour of its subsistence if his doubt relates to the external reasons, not due to suspicion in the sense; otherwise, he should act as required by the doubt.

Problem #3: A person having too frequent doubts should not pay any heed to his doubt. If he doubts about Ruku' and he is still in a position to perform Ruku', he should not perform Ruku', so that if he does perform the Ruku his prayer shall be rendered void. It is more cautious to give up recitation (of a Surah from the Quran) or Dhikr, even if it is with the intention of closeness (to

Allah) in observation of the actual position with the intention of hope (that it would be desirable to Allah); rather, the absence of permissibility is not devoid of force.

Fifth, in case an Imam (or a person leading the prayer) or the follower in a prayer has doubt about the Rak'ats while the other has certainty, the person having doubt must follow the other who has certainty. The application of this rule also to a doubt in acts (of prayer) is not free from force.

A person having uncertainty should not follow the person having certainty, but should act according to his assumption. According to the stronger opinion, however, a person having doubt shall follow the person having uncertainty. If the Imam has doubt and the followers in prayer hold different views, the former shall not follow the latter. Of course, if some of the followers have doubt, while others have certainty, he shall follow those who have certainty. Rather, those of the followers having doubt shall then follow the Imam if he has reached assumption. In case otherwise, according to the stronger opinion they shall not follow the Imam, but each of them shall act as required by his respective doubt.

Problem #4: If an Imam and his follower in the prayer have both doubts, their doubt being identical, they shall act as required by that doubt. If, however, they differ in their doubt, and there is no relation in their respective doubts, as, for example, when one of them has doubt about the Rak'at being the second or the third, while the other about its being fourth or fifth Rak'at, in that case the follower shall offer the prayer individually, and each of them shall act as required by his respective doubt.

If, however, there is some relation or a common factor between them, as, for example, one of them has doubt about the Rak'at being the second or the third, while the other has doubt about its being the third or fourth, then they shall decide in favour of the common factor, as the third Rak'at in the given example, as this is the tenor of the rule requiring the person having doubt to follow the other having certainty, as the person having doubt between the second and third believes in the absence of its being the fourth, while he doubts in its being the third Rak'at, and the one doubting between the third and the fourth supposes it to be the third and has doubt in its being the fourth Rak'at. So the former must follow the latter in favoring the third, while the latter must follow the former in negating the possibility of its being the fourth Rak'at, and, therefore, the net result is their decision in favour of its being the third Rak'at. It is, nevertheless, more cautious for the person to offer the prayer again. Of course, it is sufficient to have caution in the first case by deciding in favour of the third Rak'at, and offering the cautionary prayer in case the doubt has occurred after the performance of the two prostrations.

Sixth, in case of doubt occurring with regard to the Rak'ats in a supererogatory prayers, regard less whether it has a single Rak'at like a Vitr prayer or two Rak'ats, the person has the discretion to decide in favour of the lesser or the larger number, though the former is preferable. In a case, where decision is made in favour of the larger number, it would entail the invalidation of the prayer; the decision shall be in favour of the lesser number. As regards the doubt about the acts of the

supererogatory prayers, it is like the doubt about the acts of the (daily) obligatory prayers, so that if it occurs within its proper time, the person shall fulfill it; otherwise, he shall not pay heed to it after the lapse of its proper time. It is not obligatory to compensate the forgotten prostration, nor a forgotten Tashahhud. Similarly the prostration for error is also not obligatory even if required due to its causes.

Problem #5: If a supererogatory prayer has a special condition or a particular Surah, as the prayer for the night of burial (of the dead) or Ghafilah prayer, when a person forgets that condition in it, then if it is possible to go back and fulfill it, the person shall fulfill it, and in case it is not possible to do so, he shall offer the prayer again.

Of course, if a person forgets some of the Tasbihat in the Ja'far-i Tayyar prayer, then he should recite them in whatever position he happens to recall the omission. In case he recalls their omission after the prayer, he shall offer the prayer with the hope (that it would be desirable to Allah).

Rules Concerning Uncertainty in Acts of Prayer and its Rak'ats

Problem #1: The uncertainty about the number of Rak'ats generally even about what relates to the first two Rak'ats of prayers having four, two or three Rak'ats is like certainty, let alone what relates to the last of the prayer having four Rak'ats, so that it is obligatory to act what is required by it, though it may have been preceded by doubt. If a person first doubts and then subsequently he becomes uncertain about what he previously doubted, he shall act according to the uncertainty. The same rule shall apply if his uncertainty changes into a doubt, or his doubt changes into another doubt, even then action shall be taken according to the latest one. If a person, while in a standing posture, doubts about the Rak'at being the third or fourth, and so he decides in favour of its being the fourth, but when he raises his head from prostration, his doubt changes, for example, to whether it is the fourth or the fifth Rak'at, he shall act according to the second doubt, and so on. In case of uncertainty other than the last two Rak'ats in a prayer having four Rak'ats, it is more cautious to act as required by uncertainty, and then offer the prayer again.

As regards the uncertainty about the acts in a prayer, there is difficulty in paying heed to it. Anyhow, caution must not be given up where the uncertainty is different from what is required by doubt, as, for example, he is uncertain about the performance of an act, and it occurs in its due place, then the person should not give up caution by the performance of the act, as for example, reciting (a Surah from the Quran) with the intention of general closeness to Allah and performing, for example, Ruku', and then offer the prayer again. The same rule shall apply if he has uncertainty about the non-performance of an act after the passage of its due place, but when there is still the place to compensate, and even in case the place of compensation has passed, he shall complete the prayer and should repeat the act, for example, a Ruku' by offering the prayer again.

Problem #2: If a person hesitates about what has occurred to him is uncertainty or doubt, as sometimes it happens, then there is difficulty (in deciding the matter), and, therefore, caution must not be given up by finding a solution. If the hesitation concerns Rak'ats of the prayer, he may act as required by either, and repeat the prayer. It is more cautious to act as required by a doubt, and then offer the prayer again. If the hesitation relates to the acts in prayers, then he should act according to what has already been mentioned.

If a person has had uncertainty or doubt before and doubt in its change, then it is not far from likely to decide in favour of what occurred to him in the former position.

Rules Concerning the Rak'ats in cautionary Prayer

Problem #1: The Rak'ats of Cautionary Prayer are obligatory. So it is not permissible to give them up, and offer the prayer anew. It is obligatory to hasten to offer them as soon as the prayer is finished, in the same way, as it is also not permissible to bring distance between the prayer and these Rak'ats by any act repugnant to the prayer. If a person does so, it is more cautious to offer the cautionary prayer and then also offer the prayer again, If a person performs some act repugnant to the prayer before offering the cautionary prayer, and subsequently it transpires that his prayer was valid, it shall not be obligatory on him to offer the prayer again.

Problem #2: It is indispensable in a cautionary prayer to have intention (Niyyat), recite Takbirat al-Ihrām and Surat al-Fātihah (Chapter 1 of the Quran). It is more cautious to recite the cautionary prayer quietly and also begin with Bismillah, and perform Ruku', prostration, Tashahhud and Salām, but there is no Qunut in it, though it consists of two Rak'ats, as also there is no recitation of another Surah from the Quran in it.

Problem #3: If a person forgets to perform any pillar of the prayer in the Rak'ats of the cautionary prayer or makes any excess in their number, the cautionary prayer shall be rendered void. Caution must, therefore, not be given up by offering the cautionary prayer a new and then offer the prayer again.

Problem #4: Before offering the cautionary prayer, if it transpires that there is no need for offering it, it shall not be obligatory to offer it. If it occurs after finishing the prayer, the prayer shall be a supererogatory one. If it takes place during the performance of the prayer, the person offering the prayer shall complete it with the intention of a supererogatory one. If it is one Rak'at with Qiyām, it shall be more cautious for the person to add one more Rak'at.

If, after finishing the cautionary prayer, he comes to realize that his prayer was defective, then if the defect was to the extent of the cautionary prayer offered by him, as, for example, he doubts whether he has offered three or four Rak'ats, and he offered one Rak'at of cautionary prayer with Qiyām, and then it transpires that he had offered three Rak'ats, his prayer shall be considered to have been completed, though it is more cautious to offer the prayer again. But this is when what he has done was one of the sides of the doubt about the defect, as in the given example. In case what he has offered is to the extent of the defect there shall be difficulty in its being compensatory, as when he has doubt whether he has offered two or four Rak'ats, and he decides in favour of having offered four Rak'ats, and so he offers one Rak'at in stead of two cautionary Rak'ats (while sitting) erroneously, and then he comes to realize that there was a deficiency of a single Rak'at, it is more cautious in such case to repeat the same. If the deficiency was more than what he has already offered, as, for example, he doubts whether he has offered three or four Rak'ats, and decides in favour of four Rak'ats, and offers the cautionary prayer, and later it transpires that he had offered two Rak'ats, it is obligatory on him to offer the prayer again after offering one or two Rak'ats continuously. The same rule shall apply if the deficiency is less than the amount of cautionary

prayer offered by him, as, for example, he doubts whether he has offered two or four *Rak'ats*, and decides in favour of having offered four *Rak'ats*, and then offered two *Rak'ats* of cautionary prayer, and subsequently he comes to realize that he had offered three *Rak'ats*, he shall offer one *Rak'at* continuously, and then offer the prayer again. If, during the cautionary prayer, he comes to realize that there has been deficiency in his prayer, then, according to the stronger opinion, he shall suffice with what has been declared by the *Shari'* (Legislator, i.e., Allah) as compensatory, even if it were different in quantity and quality from the deficiency in his prayer, let alone where it agreed (in quantity and quality with the cautionary prayer he has offered).

If a person doubts whether he has offered three or four *Rak'ats*, and decides in favour of four *Rak'ats*, and starts offering two *Rak'ats* while sitting, and comes to realize that he had offered three *Rak'ats*, he shall complete the two *Rak'ats* (while sitting), and consider them sufficient. He should, however, not give up caution in all circumstances by offering the prayer again, particularly when the deficiency is different (in quantity and quality from the cautionary prayer offered by him). In the case where the Legislator (i.e., Allah) has not declared it to be sufficiently compensatory, as when a person doubts whether he has offered three or four *Rak'ats*, and he is busy in offering two *Rak'ats* while sitting, then he comes to realize that he has offered two *Rak'ats*, then, it is more cautious to discontinue the prayer and compensate it by offering two continuous *Rak'ats*, and then offer the prayer again. In case, the person comes to realize the deficiency before offering the cautionary prayer, then he shall be governed by the rule of a person who has had a deficiency in the prayer inadvertently and so he shall compensate it in the way already explained. So it is not sufficient for him to offer the cautionary prayer, but he should complete what deficiency is left by him and also perform two prostrations for error for reciting the Salutation in an improper place.

Problem #5: If a person doubts about offering the prayer. Then, if it were after the lapse of its due time, he shall not pay any heed to it. If, however, it occurs within its due time, then if he has not started another act, nor has done anything repugnant to the prayer, and no long distance has taken place, he shall decide in favour of not having performed it. If any of the three cases has taken place, then it is more reasonable to decide in favour of having performed the act, though it is more cautious to perform it, and then offer the prayer again.

Problem #6: If the person has doubt about any of the acts of the prayer, he shall perform it if it were within its due time. In case its due time has elapsed, he shall decide in favour of having performed it, as is the case with the prayer itself. If, however, he doubts about its *Rak'ats*, then, according to the stronger opinion, he shall decide in favour of the larger number, except when it would invalidate the prayer, in which case he shall decide in favour of a lesser number. But it is more cautious to perform it again and also offer the prayer again.

Problem #7: if a person forgets (offering cautionary prayer) and starts offering another prayer, obligatory or supererogatory, he shall discontinue it, and offer the cautionary prayer, particularly when the first prayer is precedent to the other in successive order. Nevertheless, it is more cautious to offer the actual prayer again. This is the rule when starting the other prayer is not harmful for

immediacy; otherwise, it is not far from being obligatory to revert to the actual prayer if it were required due to the successive order. It is more cautious to offer the prayer after it again. In case, it is not required by successive order, he shall give it up and repeat the actual prayer. It is, however, more cautious to offer the cautionary prayer, and then offer the (actual) prayer again.

Rules Concerning the Forgotten Portions in Prayer

Problem #1: The forgotten portions in a prayer are not compensated except prostration and Tashahhud, and compensation for Tashahhud is also according to the more cautious opinion. So a person offering the prayer must have the intention (Niyyat) that he is performing these two as forgotten ones and the intention must be close to their beginning, and he should observe what ever was obligatory in their performance during the prayer, as they are both similar to prayer in conditions and impediments. Rather, according to the more cautious opinion, it is not permissible to bring any distance between the two through anything repugnant to the prayer. If a distance is created between both of them, the person shall have to perform them according to the required conditions. In case the person has given them up deliberately, it shall be more cautious to offer the prayer again, though, according to the stronger opinion, it is not obligatory to do so. So also, according to the stronger opinion, it is not obligatory to perform some of the portions of Tashahhud, including even asking Allah to send Blessing on the Prophet and his Progeny.

Problem #2: If a person forgets the performance of prostration and Tashahhud more than once, he shall have to compensate them as many times as he forgets, but there is no condition of specification or observation of the order of succession.

Of course, if he forgets to perform the prostration and Tashahhud together, then it would be more cautious to compensate first what he forgot first. In case, however, he is ignorant of which of them was earlier, by way of caution he should repeat them both, so that at the time of performing them in compensation, he should also perform later what he had performed earlier in compensation.

Problem #3: While reciting Tashahhud by way of compensation, it is not obligatory to recite Salutation, as also it is not obligatory to recite Tashahhud and Salutation in a prostration performed by way of compensation. Of course, if it were the last Tashahhud, then it is more cautious to recite it with the intention of seeking closeness to Allah, and not with the intention of reciting it at its due time or as compensation, followed by Salutation, as it is also more cautious to perform two prostrations for error.

If the person has forgotten the prostration of the last Rak'at, then it would be more cautious for him to perform it in the same way together with Tashahhud and Salutation along with two prostrations for error, though, according to the stronger opinion, it should be done by way of compensation with the Tashahhud and Salutation being in their respective proper places, and it is not obligatory to repeat both of them.

Problem #4: If a person is sure of having forgotten the performance of prostration and Tashahhud after the lapse of the proper time for their compensation, and after finishing the prayer his certainty changes into doubt, then, according to the more cautious opinion, it is obligatory to make compensation for it, though, according to the stronger opinion, it is not obligatory to do so.

Problem #5: If a person doubts whether he has forgotten a single prostration or two prostrations, he shall decide in favour of the lesser number.

Problem #6: If a person forgets to compensate prostration or Tashahhud, and comes to realize it after having started another prayer, he shall discontinue it if it were a supererogatory one. If, however, it were an obligatory one, then there is difficulty in accepting the rule for discontinuing it, particularly when what had been forgotten was Tashahhud.

Problem #7: If a person owes the compensation for one of them (i.e. prostration and Tashahhud) during the Zuhr prayer, and there is a little time left for offering the 'Asr prayer, then if he is not able to offer even a single Rak'at of 'Asr prayer if he compensates it, he should first offer the 'Asr prayer and subsequently compensate the portion forgotten. In case he is able to perform even a single Rak'at of 'Asr prayer within its due time, even then it is not far from being obligatory to offer the 'Asr prayer first. If a person owes the cautionary prayer for Zuhr prayer, and there is a little time left for offering the 'Asr prayer, then if he can offer a single Rak'at within the due time, he should offer the cautionary prayer first; otherwise, he should offer the 'Asr prayer first, and, by way of caution, offer the cautionary prayer after it, and also repeat the Zuhr prayer.

Rules Concerning the Prostration for Error

Problem #1: A prostration for error becomes obligatory for speaking any thing erroneously, although under the impression that the person has finished the prayer, and for forgetting the performance of a single prostration if its time of compensation has elapsed, for Salutation recited in its undue place and for forgetting to recite Tashahhud if its time of compensation has elapsed, according to the more cautious opinion in both (latter) cases, and for doubt whether he has offered four or five Rak'ats, though it is more cautious to perform it for whatever is in excess or deficient in the prayer which is not mentioned in its relevant place. Though according to the stronger opinion, it is not obligatory in cases not mentioned (in their respective places), rather in case of Qiyām in place of sitting, or vice versa, it is not devoid of force, and nevertheless caution must not be given up. In case of speaking erroneously two prostrations are rendered obligatory, though the speech might be long, provided that it is counted as a single speech. In case, however, there have been several pieces of speech, as, for example, when he comes to realize (his error) during the speech, and then again forgets it, and then again speaks, he shall be liable to perform as many prostrations for error as he commits the error.

Problem #2: If a person recites Salutation in excess once entirely, he shall be liable to perform two prostrations for error at a time. In case he commits the error more than once, he shall be liable to perform the prostrations repeatedly, and it is more cautious to add to its number for every time the error is committed. The same rule applies to the four Kasbahs.

Problem #3: If a person owes the performance of prostration for error, compensation for forgot ten portions (the prayer) and cautionary Rak'ats, he shall perform the prostration subsequent to the other two, and it is more cautious to give precedence to the cautionary Rak'ats to the compensation for the forgotten portions (the prayer); rather its obligation is not devoid of preference.

Problem #4: It is obligatory to make haste in the performance of the prostration for error after finishing the prayer, so that if a person delays in its performance, he shall be considered to have sinned, though his prayer shall be considered valid, but the obligation to perform the prostration for error shall not drop by its non-performance nor its immediacy, so that he shall be required to make haste in its performance, as, for example, he happens to forget its performance, he should perform it immediately during the recitation of Dhikr. So if he delays its performance, he shall be considered to have sinned.

Problem #5: It is obligatory in the prostration mentioned above that the intention (Niyyat) must be linked with the first portion of what is called prostration, though it is not obligatory to mention the cause even if performed repeatedly, as also, according to the stronger opinion, it is not obligatory to observe the order according to the order of the causes. It is also not obligatory to recite Takbir in it, though it is more cautious to do so. It is also more cautious to observe all the things obligatory in prostration for the prayer, particularly placing the seven parts of the body (on the ground), though

the non-obligation of anything on which the act called prostration does not depend is not devoid of force of course, caution must not be given up by avoiding prostration on clothing or edibles.

It is also more cautious to recite its particular Dhikr in it, so that one must recite in each of the two prostrations: “Bismillāhi va billāhi va sallallahu ‘ala Muhammad va al-i Muhammad” or must say; “Bismillāhi va billahi Allahumma salli ‘ala Muhammad va al-i Muhammad”, or must say: “Bismillāhi va billāhi Asssallamu ‘alaika ayyuhannabiyyu va rahmatullahi va barakātuh.” It is more cautious to prefer the last one, but the non-obligation of reciting the Dhikr exclusively used for the prostration for error is not devoid of force.

After the performance of the last prostration, it is obligatory to recite Tashahhud and Salutation. The Tashahhud obligatory to be recited in it is the same as recited usually in the prayer, and the Salutation to be recited in it is: ‘Assalamu ‘alaikum’.

Problem #6: If a person doubts about the cause rendering the prostration for error obligatory, he shall decide in favour of its absence. If, however, a person doubts about the performance of the prostration for error after having knowledge about its obligation, it shall be obligatory on him to perform it. In case a person has knowledge about the cause, but has hesitation about its being the minimum or the maximum, he shall decide in favour of the minimum. If, however, a person doubts about any of its acts, then if there is still time for its performance, he shall perform it. In case it has elapsed, he should not pay any heed to it. In case he doubts whether he has performed a single prostration or two prostrations, he shall decide in favour of the minimum, except when his doubt has occurred after starting the recitation of the Tashahhud. In case a person has knowledge that he has performed a prostration in excess, or that he has performed a single prostration less than required, he shall perform it again.

Conclusion about Miscellaneous Problems

Problem #1: If a person has doubt whether the prayer being offered by him is that of Zuhr or 'Asr, then if he has already offered Zuhr prayer, his present prayer shall be rendered void.

If, however, he has not already offered the Zuhr prayer, or doubts whether he has already offered it or not, then if he has not offered the 'Asr prayer, and there is a common time for both the prayers, he shall revert his intention (Niyyat) to Zuhr prayer. The same rule shall apply if the time is exclusively meant for 'Asr, but it is sufficient for offering the rest of the Zuhr prayer and also a Rak'at of the 'Asr prayer.

In case the time is not sufficient, so that it is sufficient only for a single Rak'at of Asr prayer, he shall discontinue his present prayer, and offer Asr prayer and let the Zuhr prayer be due; otherwise, it would be more cautious for him to complete it as 'Asr prayer and offer compensatory prayers for Zuhr and 'Asr both after their due time, though the permissibility for giving it up is not devoid of force. In this case there are several solutions, which sometime reach thirty-six in numbers. What has been mentioned here also explains the rule in case he doubts whether the prayer being offered by him is that of Maghrib or Ishà'. Of course, the permissibility of the time for reverting to another prayer is when he has not already started the fourth Ruku'.

Problem #2: If a person is definite after the prayer that he has given up two prostrations in two Rak'ats, regardless whether they were in the first two or the last two, the prayer shall be valid, and he shall be liable to compensate them, and shall also perform the prostration for error twice. The same rule shall apply in case he does not know in which of the Rak'ats he has given up the prostration, though he is definite about giving them up in two Rak'at.

Likewise, the same rule shall apply if he comes to know about the omission during the prayer, but after the lapse of the time of its compensation.

Problem #3: If, for example, the person is offering the fourth Rak'at and doubts whether his previous doubt between the two or three Rak'ats had occurred before the completion of the two prostrations or after it, then it is more cautious to add both the solutions and act as required by the doubt and also offer the prayer again. The same rule shall apply if he doubts after finishing the prayer.

Problem #4: If a person doubts whether the Rak'at being offered by him is the last Rak'at of Zuhr or he has already offered Zuhr prayer and the present Rak'at is the first Rak'at of Asr prayer, then if it has occurred during the time common to both the (Zuhr and 'Asr) prayers, he shall consider it to be the last Rak'at of Zuhr. If it were at the time exclusively meant for the 'Asr then, according to the stronger opinion, he should decide that he has already offered the Zuhr prayer and give up the Rak'at being offered by him and offer the 'Asr prayer if there is still time left for offering a single Rakat of the 'Asr prayer. In case there is not sufficient time for offering a single Rak'at of the 'Asr

prayer, he shall complete the present prayer as ‘Asr prayer, and offer compensatory prayer for it after the lapse of its due time, though the permissibility of giving it up is not devoid of force.

Problem #5: If, during the Isha’ prayer, a person doubts whether it is the third or the fourth Rak’at, and realizes that he has not yet offered the Maghrib prayer, his prayer shall be rendered void, though it is more cautious for him to complete it as Isha’ prayer, and then offer cautionary prayer, and offer it again after offering the Maghrib prayer.

Problem #6: If, during ‘Asr prayer, a person realizes that he has given up a Rak’at from Zuhr prayer, then, according to the stronger opinion, he should give up the ‘Asr prayer and complete Zuhr prayer, and then offer the ‘Asr rather there is a guiding principle in completing the ‘Asr prayer and then offering Zuhr prayer, and it is more cautious to offer (Asr) prayer again after completing the Zuhr prayer, and even more cautious than it to offer both (Zuhr and ‘Asr) prayers again. This is the case when it occurs during the common time for both (the Zuhr and ‘Asr prayers). If, however, it happens during the exclusive time, there are detailed rules for it.

Problem #7: If a person offers both the prayers and then comes to know about the deficiency, for example, of a Rak’at in one of them without its specification, then if after each of them he has done some act repugnant to the prayer, and the prayers differ as regards number of Rak’ats, he shall offer both of them again; otherwise, (if the number of their Rakats is identical), he shall offer one of them with the intention (Niyyat) of whatever he owes. If, before doing anything repugnant to the prayer in the second prayer, he does something repugnant to the prayer in the first, then he should add to the second prayer whatever was likely to be deficient, and then offer the first prayer again. If he has not done anything repugnant to the prayer after both the prayers, sufficiency of offering a single Rak’at continuously with the intention (Ni of whatever he owes shall not be far from being permissible, but he should not give up caution by offering the prayer again. This is the case when it occurs during the time common to both the prayers. If, however, it occurs during the time exclusively meant for the ‘Asr prayer, then apparently it shall be permissible to consider a continuous Rak’at with the intention of the second one to be sufficient, and there would be no obligation for offering the first prayer again.

Problem #8: If a person doubts about three or two Rak’ats, or has any of the other valid doubts, and then doubts whether the Rak’at in which he is busy offering is the last one of his (principle) prayer or of the cautionary prayer, he shall complete the prayer with the intention of offering whatever he owes, and then offer the cautionary prayer, and it shall not be obligatory, on him to offer the (principle) prayer again.

This is the case when the cautionary prayer was supposed to have a single Rak’at. If, however, it had two Rak’ats, as is the case in a doubt between two and four Rak’ats, then it is more cautious to offer the prayer again.

Problem #9: If a person doubts whether his present Rak’at is the fourth Rak’at of Maghrib prayer, or he has already recited the Salutation and the present Rak’at is the first Rak’at of the Isha’ prayer,

then if it were after the Ruku', it shall be rendered void, and it shall be obligatory on him to offer the Maghrib prayer again.

If it occurs before (the Ruku'), he shall deem it to belong to Maghrib prayer and sit down and recite the Tashahhud and Salutation and he shall not be under any liability whatsoever.

Problem #10: If, while sitting after performing the two prostrations, a person doubts the present Rak'at being the second or the third, and he is definite about not having recited Tashahhud in the present prayer, he shall consider it to be the third Rak'at, and shall recite Tashahhud in compensation after finishing the prayer.

The same rule shall apply if he doubts while standing whether the present Rak'at is the third or the fourth, while he is definite of not having recited Tashahhud.

Problem #11: If a person doubts whether it is after the performance of the Ruku' of the third Rak'at or before the performance of the Ruku' the fourth Rak'at, then apparently the prayer shall be declared void.

If, however, the case is reverse, so that if he doubts whether it is before the Ruku' of the third Rak'at or after the fourth Rak'at, then it shall be deemed to be the fourth, and he shall perform the Ruku', and then perform what is required by the doubt, but it is more cautious also to offer the prayer again.

Problem #12: If a person is in a standing posture, and is offering the second Rak'at of the prayer, and is definite about having performed the two Rukus of the prayer, but is not sure whether he has performed both of them in the first Rak'at or has performed one in the first Rak'at and the second in the present Rak'at, then apparently his prayer shall be declared void.

Problem #13: If finishing the prayer, a person is definite of having omitted two prostrations, but does not know whether they belonged to a single Rak'at or two Rak'ats, then it is more cautious to perform the prostrations in compensation twice. So also he should perform two prostrations for error and also offer the prayer again.

The same rule shall apply if it occurred during the prayer when the time for making amends had elapsed.

If, however, the time for making amends is still there, then, according to the stronger opinion, he must perform both the prostrations, and he shall not be under any other liability.

Problem #14: If, after starting the second prostration, a person comes to know, for example, that he has omitted either the recitation (of the Surah from the Quran) or the Ruku', then apparently his prayer shall be valid.

The same rule shall apply if the doubt has occurred after finishing his prayer.

If, however, he doubts, in both the supposed cases, that he has omitted either a prostration in the previous Rak'at or the R the present Rak'at, then, by way of caution, it shall be obligatory on him to offer the prayer again after completing the prayer and performing the compensatory prostration and two prostrations for error.

Problem #15: If, before starting the Rukū', a person definitely knows that he has either omitted the two prostration's in the previous Rak'at or has omitted the recitation (of Surah of the Quran), then, in case of subsistence of the place of doubt, according to the stronger opinion, it shall be sufficient for him to recite (the Surah of the Quran). The same rule shall apply in case a person has a brief knowledge similar to the above.

In case the place of doubt has elapsed, then if the time for making amends is still there, it shall be obligatory to revert and make amends.

Problem #16: If, after Qiyām in the third Rak'at, a person comes to know that he has omitted Tashahhud, and doubts whether he has also omitted prostration or not, then, according to the stronger opinion, it is sufficient to recite the Tashahhud only.

Problem #17: If a person has brief knowledge about performing either prostration or Tashahhud without any specification, and also doubts about the performance of the latter, then if it occurs after starting Qiyām, he shall not pay any heed to his doubt.

If, however, it occurs at the place of doubt, then apparently it is permissible to suffice with Tashahhud, and the person shall be under no other obligation.

Problem #18: If a person knows that he has omitted either prostration in the previous Rak'at or Tashahhud in the present Rak'at, then if he were still in sitting posture, he shall recite the Tashahhud, and complete the prayer, and he shall be under no other liability.

If, however, while rising to stand up, or starting to do it, a person doubts (about the performance of the prostration), then, according to the stronger opinion, it is obligatory on him to return and recite Tashahhud, complete the prayer and perform compensatory prostration and prostration for error.

The same is the rule in cases similar to the above, as, for example, when he knows that he has omitted a prostration either in the previous Rak'at or the present Rak'at.

Problem #19: If, while performing prostration or after it in the second Rak'at, a person realizes, for example, that he has omitted a prostration or two from the first Rak'at, and has also omitted the Ruku' of the present Rak'at, he shall deem the prostration or two prostrations to be for the first Rak'at and stand up and recite (the Surah of the Quran) and Qunūt and complete the prayer and he shall be under no other liability whatsoever.

The same rule shall in similar case in respect of other Rakats as well.

Problem #20: *Zuhr* prayer, and whether the present *Rak'at* is the third one of the '*Asr* prayer, he shall deem to have offered the whole of *Zuhr* prayer, and in respect of the '*Asr*, he shall decide in favour of the maximum, complete the prayer and offer cautionary prayer. It is also likely to declare the sufficiency of a continuous *Rak'at* with the intention of whatever he owes as permissible. The same rule shall apply in case of *Maghrib* and *Isha'* prayers.

Problem #21: If a person offers eight *Rak'ats* of *Zuhr* and '*Asr*, and seven *Rak'ats* of *Maghrib* and *Isha*, but does not know whether he has offered them correctly, or there has been a deficiency of a single *Rak'at* in one of the two prayers, and has offered a *Rak'at* in excess in the adjacent prayer, his prayers shall be deemed valid, and he shall be under no liability whatsoever.

Problem #22: If a person is definite about having offered eight *Rak'ats* of *Zuhr* and '*Asr* prayers, but, before reciting the Salutation of the '*Asr* prayer, he doubts whether he has offered four *Rak'ats* of *Zuhr*, and whether the present one is the fourth *Rak'at* of '*Asr* prayer, or he has offered five *Rak'ats* and the present one is the third *Rak'at* of '*Asr* prayer, he shall deem his *Zuhr* prayer to be valid, and in respect of the '*Asr* (prayer, he shall deem it to be the fourth *Rak'at* and act as required by the doubt (in such case). The same rule shall apply in case of the *Maghrib* and *Isha'* prayers when, despite knowledge about offering seven *Rak'ats*, he doubt before reciting the Salutation for *Isha'* prayer whether he had recited the Salutation for *Maghrib* prayer after three *Rak'ats* or four *Rak'ats*.

Problem #23: If a person knows that he has offered nine *Rak'ats* for the *Zuhr* and '*Asr* prayers, but does not know whether he has offered a *Rak'at* in excess in *Zuhr* or '*Asr* prayer, then if it were after the Salutation for '*Asr* prayer, it shall be obligatory on him to offer four *Rak'ats* with the intention of what he owes.

If it were before the Salutation (for the '*Asr* prayer) then if it were before the completion of the two prostrations; then apparently the judgment should be in favour of invalidation of the second prayer and validation of the first prayer.

If it were after (the completion of the two prostrations), he should revert his intention (*Niyyat*) to the *Zuhr* prayer complete the prayer and he shall be under no obligation whatsoever.

Problem #24: If a person knows that he has offered eight *Rak'ats* for *Maghrib* and *Isha'* prayers, but does not know whether he has offered the one excessive *Rak'at* with *Maghrib* or *Isha* prayers, it shall be obligatory on him in any case to offer both *Maghrib* and *Isha'* prayers again, except when the doubt has occurred before the completion of the two prostrations, in which case the second prayer shall be declared void and the first prayer shall be declared valid.

Problem #25: If a person offers a prayer and then believes not to have offered it, and then starts offering it again, but before Salutation, he comes to realize that he has already offered it, but is definite that he has offered a *Rak'at* in excess either in the first or the second prayer, then he shall suffice with the first and give up the second.

Problem #26: If a person has doubt about *Tashahhud*, and he is in a place where it is obligatory to recite *Tashahhud*, and then he forgets it and stands up, as his doubt is not after the passage of its proper place, it is obligatory on him to sit down for reciting *Tashahhud*.

If it is *Ruku'* about what the person doubts, then he starts performing prostration, he must revert, and perform the *Ruku'* complete the prayer and, by way of caution, offer it again.

If, however, he comes to realize it after starting the second prostration, his prayer shall be declared void.

If a person doubts about something other than a pillar of the prayer, and comes to realize about it after starting another pillar of the prayer, his prayer shall be declared to be valid, and he shall be required to perform two prostrations for error, if it were something entailing obligation of prostration for error.

Problem #27: If a person comes to realize that he has forgotten something before the lapse of its time, and so it becomes obligatory on him to make amends for it, and then he forgets it until he starts a subsequent pillar, and then his knowledge about forgetfulness turns into a doubt, judgment shall be given in favour of the validity of the prayer, if it were not a pillar of the prayer, and he were not obliged to compensate it nor to perform the two prostrations for error where it were something that entails prostrations for error.

This is the case when the knowledge about forgetfulness has taken place after the lapse of the place of doubt.

If, however, it were at the place of doubt, then it would be difficult to accept (the rule), though it is not devoid of being close (to acceptance).

Problem #28: If, after the Salutation but before deliberately or inadvertently doing something repugnant (to the prayer), a person becomes certain of a deficiency in the prayer, but doubts whether the deficiency is for a single *Rak'at* or two *Rak'ats*, it shall be governed by the judgment relating to doubt about a *Rak'at* being the second or third, and so it shall be deemed to be the maximum and the person shall be required to offer a *Rak'at* and cautionary prayer and, by way of caution, perform two prostrations for error due to reciting the Salutation in excess. The same rule shall apply if the person is sure about the deficiency of a *Rak'at* and, after starting it, he doubts about another *Rak'at*. Therefore, if it were in *Maghrib* prayer, judgment shall be given in favour of its being void.

Problem #29: If, after the Salutation but before doing something repugnant to the prayer, a person comes to be certain of the deficiency of a *Rak'at*, and then doubts whether he has offered it or not. It shall be obligatory on him to offer a continuous *Rak'at*.

If the doubt occurs before the Salutation, then apparently the rule for doubt shall apply to it, and the person shall decide in favour of the maximum in case the prayer has four *Rak'ats*, and it shall be declared void in case of a prayer other than having four *Rak'ats*.

Problem #30: If a person is definite that the present Rak'at being offered by him is the fourth, but does not know whether it is the actual fourth Rak'at or the fourth he has assumed, and that previously he had doubted whether it was the second or third and so he had decided in favour of the third, and now it is the fourth Rak'at, so it is obligatory on him to offer cautionary prayer.

Problem #31: If, after standing up for the next Rak'at, a person is certain that he has omitted one or two prostrations or Tashahhud, and then doubts whether he had reverted and performed them and then stood up, or this is the first Qiyām, then apparently it is obligatory on him to revert and perform what has been omitted by him.

If a person doubts about the performance of a pillar of the prayer after having passed from its place of compensation, and then he performs it out of forgetfulness, then apparently his prayer shall be declared void.

If a person doubts about something whose omission entails the obligation of performance of two prostrations for error after having passed its due place, and then performs it out of forgetfulness, then, according to the more cautious opinion, it shall be obligatory on him to perform two prostrations for error.

Problem #32: If a person is busy reciting Tashahhud when he recalls that he has forgotten to perform Rukū' and, along with it, he also doubts about the performance of two prostrations, then apparently he must revert to compensate what he has omitted and then perform two prostrations irrespective of whether he had first recalled about forgetting the performance of the Ruku' or the doubt about the performance of the two prostrations, though it is more cautious to offer the prayer again.

Problem #33: If a person doubts, for example, about the Rak'at being the third or the fourth, and knows that if it is supposed to be the third Rakat then it would mean the omission of a pillar of the prayer or an act which entails the invalidation of his prayer, then apparently his prayer shall be declared void.

The same rule shall apply if he knows so if he supposes it to be the fourth Rak'at.

If he knows that he has done something that if he supposes it to be the third or the fourth Rak'at it would entail the obligation of performing two prostrations for error or has given up what entails the obligation for compensation, then he shall be under no liability whatsoever.

Problem #34: If, after Qiyām or starting Tashahhud, a person is definite about forgetting the performance of one of the two prostrations and doubts about the second one, it is closer to the traditional authority that he must revert to perform what had been forgotten. As regards the

prostration about what he doubts, the rule of passing the place of compensation shall apply to it. The same rule shall apply to cases of similar nature.

Problem #35: If a person starts the prostrations of the second Rak'at, and then doubts about the performance of the Rukū' of the present Rak'at and the two prostrations of the first Rak'at, he shall decide to have performed them.

If, therefore, after completing the two prostrations, he doubts whether the Rak'at is the second or the third, and also doubts about the performance of the Rukū' of the present Rak'at and the two prostrations of the previous Rak'at, so his doubt relates to the second and third Rak'at after the completion of the prayer, he shall act as required by the doubt (in such case) while his prayer shall be valid. If, despite the said doubt, he is definite about the omission of both, his prayer shall be declared void.

Problem #36: The rule of a person having doubts too often is not applied to the case of brief knowledge. So if a person knows briefly that he has given up one of the two things, it shall be obligatory to observe the relevant rule, even if he has doubt in respect of the whole of the two.

Problem #37: If a person is definite that he has either omitted a prostration in the first Rak'at or has performed a prostration in excess in the second Rak'at, and then he shall be under no obligation. If, however, he knows that he has omitted either a prostration or a Tashahhud, it shall be obligatory on him to perform both of them along with two prostrations for error once.

Problem #38: If a person is busy in reciting Tashahhud or has finished it, and then doubts whether he has offered two Rak'ats while he has recited the Tashahhud in its proper place or has offered three Rak'ats and recited Tashahhud but not in its proper place, he shall be governed by, the rule relating to the doubt about the second or third Rak'at, and he shall be under no obligation to perform the two prostrations for error, though it would be more cautious to perform them.

Problem #39: If a person who is required to offer his prayer in all the four directions, has offered it accordingly, then after the last Salutation, he comes to know that one his prayers was void, he shall consider his prayer to be valid, and shall be under no liability whatsoever.

Problem #40: If a person intends to stay at a place (for ten days) and offers the complete (unabated) prayers, and then changes his intention and offers a prayer shortened by way of forgetfulness or ignorance, and then comes to know about the invalidity of one of the prayers, he shall deem his unabated prayer to be valid, and shall be required to offer the future prayers unabated.

Rules Concerning Compensatory Prayers

It is obligatory to compensate for the daily prayers left unoffered in their due time deliberately, inadvertently, ignorantly or due to being overwhelmed by sleep, etc., except the Friday prayer. Likewise, it is obligatory to compensate for the prayer rendered void due to the non-fulfillment of a condition or a portion of the prayer the non-fulfillment of which entails invalidation of the prayer. It is not obligatory on a child to compensate for what he failed to perform during his childhood, or a lunatic during his lunacy, or one in a state of unconsciousness provided that the unconsciousness has not been the result of his own act; otherwise, it shall be obligatory on him to compensate for what he has failed to perform during his unconsciousness.

(It is also not obligatory) on a born infidel to compensate for what he has failed to perform during his disbelief, to the exclusion of an apostate, as it is obligatory on him after his repentance to compensate for what he has failed to perform during his apostasy, and his prayer shall be valid even if he were a born apostate, according to the more valid opinion. So also (it is not obligatory on) a woman having menstrual or puerperal blood throughout the period she has had the blood.

Problem #1: It is obligatory on a non-Shi'ah after professing the Shiah religion to make up for the prayers he has failed to offer before accepting the Shi'ah religion, or has performed it in a way repugnant to his own religion, contrary to what he had offered in a way in accordance with his own religion for which he is not required to compensate, though it were invalid according to the Shi'ah religion. Of course, it shall be obligatory to offer the prayer according to the Shi'ah religion if he converts to Shi'ah religion when there is still time (due for offering prayer), so that if he fails to offer it, or offers it in a way considered invalid according to the true (Shia) religion, it shall be obligatory on him to make up for it.

Problem #2: If a child becomes of age or a lunatic recovers from his lunacy or an unconscious person from unconsciousness at the proper time of prayer, it shall be obligatory on him to offer the prayer, though they may have time for only a single Rak'at after becoming clean, even if the cleanness is obtained (by Tayammum) on dust. In case any of them fails to offer the prayer, it shall be obligatory on him to make up for it. The same rule shall apply to a woman having menstrual or puerperal blood when her excuse discontinues, as is the case when lunacy, unconsciousness, or menstrual or puerperal blood starts after the passage of some time when even a person capable of offering his prayer at the beginning of the due time for the prayer according to his position as regards being on a journey, or at his hometown, or one having performed ablution or Tayammum fails to offer prayer, it shall be obligatory on him to make up for it.

Problem #3: If a person is not clean, it shall be obligatory on him to make up for (the prayer not offered during his uncleanness), and the obligation for offering the prayer in its due time shall drop in his case, though he should not give up caution by offering the prayer within its due time as well.

Problem #4: It is obligatory to make up for the obligatory prayers other than the daily obligatory prayers, excluding the prayers for Eid al-Fitr and Eid al-Adhà, and in some cases the Ayât prayers (offered at the time of solar or lunar eclipse, etc.). So also, according to the more cautious opinion, it is obligatory to make up for the prayer vowed by a person to offer it within a prescribed time.

Problem #5: It is permissible to offer the obligatory prayers at any time at night or during the day or a journey or while at one's home town. A person shall be required to offer altogether what has been left unoffered in his hometown, in the same way, as he shall offer all the shortened prayers left unoffered during his journey. If a person is still in his hometown at the beginning of the due time for prayer, but at the end of the time he is on journey or vice versa, then due consideration shall be made for lapse of the time, according to the more valid opinion, so that in the former case he shall offer the shortened prayer as compensatory prayer, while in the latter case he shall offer full (i.e. unabated) prayer. Anyhow, he should not give up the caution by adding both the shortened and full prayers. If he has failed to offer what was obligatory on him to offer by way of caution by adding both the shortened and full prayers, he shall make up for them by way of caution (by offering the shortened as well as the full prayers).

Problem #6: If a person fails to offer a prayer at a place where he has the option to offer it in the shortened or full form, and then apparently he shall also have the same option at the time of making up for it when he offers the compensatory prayer in such a place. If, however, he offers the compensatory prayer in a place other than mentioned above, he shall offer it in the shortened form.

Problem #7: It is approved to offer the compensatory prayers for the daily supererogatory prayers and it is extremely disapproved to give them up for the sake of hoarding mundane wealth. In case of inability to make up for such prayers, one must give alms according his pecuniary condition, the minimum being a *Mudd* for each two Rak'ats. In case of inability to do so, it may be a *Mudd* for each four Rak'ats. In case of inability even to do so, let it be a *Mudd* for the night prayers and a *Mudd* for the day prayers.

Problem #8: If a person has failed to offer several prayers, then if he knows which of them he has failed to offer, which of them are precedent and which of them are subsequent, then it is more cautious to offer the compensatory prayers first for the precedent and later for the subsequent ones. As regards the prayers which are required to be offered in a prescribed order according to Shari'ah, like Zuhr and 'Asr and Maghrib and Isha' in a single day, then, according to the stronger opinion, it is obligatory to follow the necessary order in the compensatory prayers as well.

Even in case of ignorance about the sequence of the prayers, it is obligatory to follow their necessary order, though its absence shall not be devoid of force. Rather the absence of obligation of following the order in all circumstances except the prayers in which it is obligatory to follow the order when offering them is not devoid of force.

Problem #9: If a person is definite that he owes one of the five daily prayers, but does not know which one, it shall be sufficient for him to offer the morning and Maghrib prayers and four Rak'ats

with the intention (Niyyat) of whatever he owes hesitantly from the Zuhr, 'Asr and Isha' prayers, and he shall have the discretion to offer the four Rak'ats loudly or quietly. In case, the person was on journey, it shall be sufficient for him to offer Maghrib prayer and two Rak'ats for hesitation between the prayers having four Rak'ats. If the person is not definite whether he was in his hometown or on journey, he shall offer the Maghrib prayer, two Rak'ats for hesitation between the prayers having four Rak'ats and four Rak'ats for hesitation for the prayers having three Rak'ats.

If the person is definite that he owes two prayers out of the five daily prayers, he shall offer the morning prayer, four Rak'ats for hesitation between Zuhr and 'Asr and then Maghrib prayer followed by four Rak'ats for hesitation between 'Asr and Ishā'. He may even offer morning prayer, four Rak'ats for hesitation between Zuhr, 'Asr, and Ishā' and then Maghrib prayer followed by four Rak'ats for hesitation between Asr and Ishā'. If the person knows that he failed to offer both the prayers while on journey, he shall offer two Rak'ats for hesitation between the prayers having four Rak'ats, then Maghrib prayer and then two Rak'ats for the hesitation for the prayers having three Rak'ats excluding the first prayer. He may even offer two Rak'ats for hesitation between the morning, Zuhr, 'A and Maghrib prayers and two Rak'ats for hesitation between the Zuhr, 'Asr and Ishā' prayers.

In case, however, he does not know whether he was in his home town or on journey, he shall offer two Rak'ats for hesitation between the prayers having four Rak'ats, Maghrib prayer, two Rak'ats for hesitation for prayer having three Rak'ats except the first one, four Rak'ats for hesitation between Zuhr, 'Asr, and Isha and four Rak'ats for hesitation between 'Asr and Ishā', the person knows that he owes three prayers from among the daily five prayers, then if he knows that it was when he was in his home town, he shall offer the five prayers.

If he knows that it was during the time he was on journey, he shall offer two Rak'ats for hesitation between the morning, Zuhr and 'Asr prayers, two Rak'ats for hesitation between Zuhr, Asr and Isha prayers, Maghrib prayer and two Rak'ats for hesitation between 'Asr and Isha' prayers. There are other ways too for exoneration. The criterion is that a person must know that he has dealt with all the possibilities.

Problem #10: If a person knows about the failure of offering prayer of a particular time, for example, the morning prayer, several times, but does not know the exact number, according to the stronger opinion, it is permissible to suffice with the probable number, It is more cautious to repeat offering the prayer till at last he assumes that he has completed the number. It is more cautious and even better than that to repeat offering the prayer until he obtains the knowledge about finishing the number, particularly when in the past he knew the number but later forgot it. The same rule shall apply if he has failed to offer the prayers for several days but does not know their exact number.

Problem #11: It is not obligatory to observe immediacy in compensation (for the (prayers left unoffered). It is extended to the whole life, as long as it is not considered to be due to negligence and laxity.

Problem #12: A person having some excuse may delay compensation upto the time of the removal of the excuse, except when he knows that it will continue till the end of his life, or when he is afraid of sudden death due to the appearance of its signs.

Of course, if a person is not able to perform cleanness with water, then it is reasonable to resort to compensation by obtaining cleanness by dust (i.e. by performing Tayammum), even in case he hopes about the removal of the excuse, but it is not free from difficulty. It is, therefore, more cautious to delay it until he finds water.

Problem #13: It is not obligatory to give preference to the precedent over the prayer due presently, and so it is permissible for a person who owes some compensatory prayer to offer the one presently due, though it is more cautious to prefer the compensatory one particularly when there is apprehension of the lapse of the day; rather, if he has already started the prayer presently due, it is approved to revert to the compensatory one if the time for reversion (of the intention, or Niyyat) has not already passed. Rather he should not give up the caution to observe the precedent one by not avoiding giving up reversion to the prayer left unoffered.

Problem #14: According to the stronger opinion, it is permissible for a person who owes some compensatory prayer to offer the supererogatory prayers, in the same way as it is permissible for a person to offer the supererogatory before the obligatory prayer after the beginning of the due time for the obligatory prayer.

Problem #15: It is permissible to offer the compensatory prayer with the Jamā'at irrespective of whether the Imam is offering a compensatory prayer or otherwise. Rather it is approved to do so. It is not obligatory that the prayer of the Imam and his follower should be of the same category.

Problem #16: It is obligatory on the *Wali*, i.e., the eldest son (of the deceased) to offer the prayers left unoffered by his father due to sleep, forgetfulness or the like. In this respect, the mother is not governed by the same rule as the father, though it would be more cautious to do so. According to the stronger opinion, it makes no difference whether the failure to offer the prayer (by the father) was deliberate or otherwise. Of course, it is not far from not including the prayers the father has not offered due to insubordination to his Lord (i.e. Allah.), though it would be more cautious to include them too. Rather this caution must not be given up.

Apparently it is also obligatory on the eldest son to compensate for the invalid prayers offered by his father due to non-observance of their conditions. It is obligatory on the eldest son to compensate for his father's own prayers left unoffered by him, but they do not include the prayers he was hired to offer, or those he owed as the *Wali*, or the eldest son of his own father. It is not obligatory on the daughters or on any one other than the eldest son from among the male descendants (to compensate for prayers owed by their deceased) father, nor is it obligatory on other close relatives including the mate relatives like the father, brother, paternal or maternal uncle, though according to the more cautious opinion, it would be obligatory on the males from among them to do so. In the event of the death of the eldest son, the obligation does not lie on his brothers younger to him in age. It is not a

condition for the Wali (or the eldest son) to be adult and sane at the time of the death (of his father), so that it is obligatory on the minor eldest son after he attains puberty, and on the insane eldest son when he recovers from insanity. It is also not a condition that the eldest son should be a legal heir, so that it is obligatory on one who is legally restricted due to committing murder (of his own father), or infidelity (Kufr) or the like. If there are two eldest sons equal in age, they shall share the obligation equally. If a portion of the obligation is left, it shall be fulfilled as a collective liability.

It is not obligatory (on the eldest son) to fulfill the obligation personally. Rather, it is permissible for him to hire some one else for the purpose, and the person so hired shall have the intention (Niyyat) of offering the prayer on behalf of the deceased, and not the Wali (i.e. the eldest son). If the wali (of the eldest son) or someone else offers the prayer personally, he shall observe his own duties of Ijtihād or Taqlid in respect of the rules concerning doubts and errors, rather even in respect of the portions of the prayer and its conditions, and not the duties of the deceased as required by Ijtihād and Taqlid, in the same way as he shall observe his own duties relating to the obligation of compensation itself when there is difference in their rules from the point of view of the Ijtihād and Taqlid of himself and the deceased.

Rules Concerning Hiring for Offering Prayers

As is the case with other types of worships, it is permissible to hire some one to offer prayers owed by the deceased with the intention of offering them on behalf of the deceased in the same way as it is permissible to offer the prayers owed by others voluntarily. The person offering the prayer on behalf of another, whether against payment or voluntarily, shall do so with the intention of doing it on behalf of the other person and in place of the act of the other in order to absolve him of its liability, seeking closeness to Allah and a reward to be bestowed on the other person.

It is also a condition that the person offering the prayer on behalf of another should have the intention (Niyyat) of seeking closeness of the other person to Allah and not his own closeness to Allāh. He shall not obtain closeness to Allah (by offering prayer on behalf of an other), except when he intends by seeking closeness of the deceased to Allah to have done a noble deed and thereby obtain closeness to Allah, the Exalted (as a reward for his noble deed). So also a person may obtain closeness to Allah, as one offering prayer on behalf of another voluntarily, if his intention were such. As regards the receipt of reward by a person hired to offer prayer on behalf of another, as mentioned in some Traditions, it is merely with the beneficence of Allah. It is also obligatory to specify in his intention (Niyyat) the deceased on behalf of whom a person is offering the prayer, even if specified briefly, as saying: “on behalf of the owner of the remuneration paid”, or the like.

Problem #1: It is obligatory on the person who owes some prayers or fasts to make a will for hiring some one, except when he has already a Wali, or eldest son, on whom it is obligatory to compensate for what his father owes and about whom he is sure of its performance. It is obligatory on the executor, in case of a will, to defray the relevant expenditure from one-third of the legacy, and with the permission of the heirs from the principal legacy. This is contrary to the expenditure on Hajj or the financial liabilities (of the deceased), like Zakāt, Khums, Mazālim, Expiations (Kaffarāt), or the like, which are to be deducted from the principal legacy, whether the deceased has left a will for them or not, except when he has made a will that they are to be deducted from one-third of his property, in which case they shall be deducted from one-third of his property, and if it is not sufficient the deficiency shall be met from the principal legacy. If a person has willed that compensation should be made for the prayers and fasts owed by him, but has left no legacy, it shall not be obligatory on the executor to fulfill it personally or hire someone else out of his property. It is more cautious for his son or daughter to fulfill it personally if the deceased has left a will to that effect and in case it is not troublesome for the son or daughter. Of course, it is obligatory on the Wali, or eldest son, of the deceased to compensate for what his father has failed to perform either personally or by hiring some one else and pay it from his property, even if the deceased has left no will to that effect, as mentioned above.

Problem #2: If a person has been hired for offering prayer, keeping fast or performing *Hajj* on behalf of another, and he dies before honoring his commitment, then in case he had stipulated to

perform all those acts personally, his contract shall be considered null and void to the extent what has remained undone, and his liability shall fall on the property he has obtained against the commitment if it has already been paid to him, and it shall be deducted from his legacy. But in case he has not stipulated to perform the acts personally, another person shall be hired for the performance of the acts against payment in case he has left some legacy. In case he has left no legacy, then, like his other debts, this would also not be a liability of his heirs.

Problem #3: It is a condition for the person hired that he must know all the portions of the prayer and its conditions as well as the acts repugnant to it and the rules relating to its damage etc. through the genuine Ijtihād or Taqlid. Of course, it is permissible to hire a person who has given up Ijtihād and Taqlid by being cognizant of the nature of caution and is himself cautious in his practice.

Problem #4: It is not a condition for the person hired to be of a morally sound character; rather it is sufficient for him to be honest, so that he could be trusted in performing his commitment in the correct manner. As regards the condition of his being an adult, so that it is not valid to hire a discreet child to perform all the acts on behalf of another even if he is able to perform them in the correct manner, it is not far from being no such condition, though the condition to this effect would be more cautious.

Problem #5: It is not permissible to hire disabled persons like a person unable to stand in case of availability of another sound person. If a person is rendered disabled after having been hired, he should wait until the removal of the disability. If the time for the performance of the commitment is short, the contract for hire shall be cancelled, According to the more cautious opinion it is not permissible to hire a person having a splint and one who is bound to perform Tayammum.

Problem #6: If a hired person commits error or has a doubt, he shall act according to his own Ijtihād or Taqlid, though it may be contrary to that of the deceased, in the same way as it is obligatory on him to offer prayer as required by his own duties and belief according to the Ijtihād or Taqlid if he has been hired to act according to the valid practice. If a particular procedure has been assigned to the person who according to his own belief is void, then it is more cautious for him not to accept the contract of hiring himself.

Problem #7: It is permissible to hire any man or woman for another man or woman and to observe the conditions of offering the prayer loudly or quietly, concealing his private parts and conditions relating to the garments according to the position of the person hired and not according to that of the hiring person. So a man shall offer loudly the prayer, which a man is required to offer loudly and not conceal his private parts like a woman even if he is hired to offer the prayer on behalf of a woman, while a woman has the discretion to offer the prayer loudly or otherwise, and cover herself as required by a woman, even if she has been hired to offer prayer on behalf of a man.

Problem #8: It has already been understood that the absence of the condition of observing the order of succession in all circumstances at the time of compensating what is owed by a person in case the person is ignorant of the actual position of what is owed by him is not devoid of force. So it

is permissible to hire a group of persons for offering compensatory prayers for a single individual, and it is not obligatory to specify the time for them. It is permissible for them to offer the prayers at the time in case the deceased was ignorant of their time or they are ignorant of the position of the deceased.

Problem #9: It is not permissible for the hired person to hire another person for the performance of his commitment without the permission of the person hiring him.

Of course, if a person has accepted the liability without being hired for it, it shall be permissible for him to hire another person for its performance. Nevertheless, it is not permissible for him to hire another person against remuneration less than the usual one, according to the more cautious opinion, except when he has himself performed part of the act, though a little.

Problem #10: If a time and period has been specified for the performance by the person hired, but he fails to perform it within that specified time and period, he shall not perform it afterwards except with the permission of the person hiring him. In case he performs it, he shall be like a person performing it voluntarily without being entitled to receive any remuneration for it. Of course, if it was agreed to perform the commitment in a specified time as a stipulation, he shall be entitled to his specified remuneration in case of its violation, and the person hiring him shall have the option to rescind the agreement for violation of the stipulation, and if he opts to cancel the agreement, he shall be entitled to receive the specified remuneration from the person hired, while the latter shall be entitled to receive his proper remuneration.

Problem #11: If, after the performance of the act, it transpires that the agreement was void, the person hired shall be entitled to his proper remuneration for his act. The same rule shall apply if the agreement is cancelled due to some fraud, etc.

Problem #12: If the procedure of performing the act is not specified as to the performance of the approved acts nor is it clear by referring to the agreement, it shall be obligatory to perform the usually approved acts like Qunut, Takbir for the Ruku 'and the like.

Rules Concerning Friday Prayer

Problem #1: Nowadays it is discretionary to offer the Friday prayer or the Zuhr prayer, the Friday prayer being preferable, and the Zuhr prayer being more cautious, and it is even more cautious to offer both (the Friday as well as the Zuhr prayers). So, if a person offers Friday prayer, according to the stronger opinion, his obligation to offer the Zuhr prayer is dropped, though it is more cautious to offer the Zuhr prayer after the Friday prayer, the Zuhr prayer (at that time) having two Rak'ats like the Morning prayer.

Problem #2: If a person has offered Friday prayer behind an Imam, he may also offer his 'Asr prayer behind the same Imam. If, however, the person intends to be cautious, he must offer Zuhr and 'Asr prayers both after having performed them in Jamā'at, except when, by way of caution, the Imam has offered the Zuhr prayer before the 'Asr prayer, and so has the person following the Imam, so that it shall be permissible for him to offer the 'Asr prayer behind the same Imam. Rather he shall offer the Zuhr prayer again, by way of caution.

Problem #3: It is permissible to offer prayer for the cautionary Zuhr prayer behind the Imam. When those offering Jumah prayer have finished it, it is permissible for them to offer Zuhr prayer in Jamā'at as a precaution. If a person who has not offered Jum'ah prayer offers prayer behind one who is offering a cautionary prayer, it shall not be sufficient for him to do so. Rather, it would be obligatory on him to offer the prayer again.

Rules concerning the Conditions of Friday Prayer

There are a number of conditions for Friday prayer. They are as follows:

1. The Number of the persons offering Friday prayer. The minimum number of persons offering Friday prayer is five, one of them being the Imam himself. It is neither obligatory nor is it valid in case the number is less than five. According to another opinion, the minimum number required for Friday prayer is seven persons, though the more reliable is what we have mentioned before. If, however, seven or more persons assemble to offer the Friday prayer, it becomes emphatically preferable.
2. Two Sermons (Khutbas). They are obligatory like the Friday prayer itself, as the Friday prayer is not valid without the two Sermons.
3. Jama'at. So Friday prayer is not offered individually.
4. Within the distance of three miles no other congregation of Friday prayer is to be held, so that if there is a distance of three miles between the places where Friday prayer is offered, all of them would be valid, the criterion being the distance between the places where Friday prayer is offered, and not the distance between two towns where Friday prayer is offered, so that it is permissible to hold several Friday prayers in a single big town having an area of several miles.

Problem #1: If five persons have assembled to offer Friday prayer, and they disperse during the Sermon or after it but before offering the prayer and do not return, and the number required for the Friday prayer is not there, it shall be obligatory on each of them to offer Zuhr prayer only.

Problem #2: If the persons dispersed during the Sermon but returned, so if their return takes place after what is called obligatory, then apparently it would not be obligatory to repeat the Sermon even if the time of their absence has been quite long, as is the case when they disperse after the Sermon and then return.

If, however, they disperse before the fulfillment of what is obligatory in the Sermon, then if their dispersal has been for avoiding attending the Sermon, then in all circumstances, it would be more cautious to repeat the Sermon.

If, however, it were due to some reasonable excuse, for example, rain, then if the time of their absence has been long to the extent of being harmful for the usual consistency of the Sermon, then apparently it would be obligatory to repeat the Sermon. Otherwise, it would be sufficient and it would be valid.

Problem #3: If some of the persons leave the place before Sermon reaching the stage to be called Sermon and return before it may be called a long absence, then if the Imâm has been silent during their absence, he shall start the Sermon from where he had left. In case the Imam continued with his Sermon during their absence, so that they could not listen to it, and they did not return till the

passage of a long time harmful for the usual consistency of the Sermon, the Imam shall repeat the Sermon. In case those who have left do not return, and instead of them some other persons enter the place, in all circumstances, the Imam shall repeat the Sermon.

Problem #4: If the number of the persons present in the congregation for Friday prayer exceeds the required number, then it would not be harmful if some of them leave the congregation in all circumstances, provided that the number of those remaining present is upto the required number.

Problem #5: If the Imâm starts the prayer and all of the rest disperse before reciting the Takbir, and no one remains there except the Imam himself, then apparently there shall be no Friday prayer. Then whether the Imam may shift to the Zuhr prayer, or it is permissible for him to complete it as Zuhr prayer without the intention (Niyyat) of shifting to Zuhr prayer, rather it shall automatically become Zuhr prayer in absence of its being Friday prayer, and so he shall complete four Rak'ats, there is difficulty in accepting it, and it is more cautious to have the intention of Zuhr and complete it as such and then offer the Zuhr prayer (again). It would be even more cautious for him to complete it as Friday prayer, and then offer Zuhr prayer, though, according to the opinion closer to the traditional authority, it should be declared void, and it shall be permissible for him to give it up and offer Zuhr prayer.

Problem #6: If the required number, i.e., four persons join the Imam in the Friday prayer even when the Imam recites the Takbir, then it shall be obligatory on him to complete the prayer, even if there is left only a single person, according to the prevalent opinion, though it would be according to the traditional authority to declare it void, regardless whether there remains only the Imam and the rest of them have dispersed, or some of them have dispersed, or the Imam has left and there remain the rest, or some of them remain behind, and whether they have offered a single Rak'at or less than that, but caution should not be given up by completing the Friday prayer, and then offering Zuhr prayer. Of course, it is not far from being declared valid if some of the persons disperse in the end of the second Rak'at, rather after its Ruku'. It is cautious to offer Zuhr prayer despite it after the Friday prayer, and it should not be given up.

Problem #7: It is obligatory to praise Allah in each of the two Sermons to be followed, according to the more cautious opinion, by eulogising Allah, the Exalted. It is more cautious that the praise should be by using the word Jalālah (Majesty), though, according to the stronger opinion, it is permissible to express the praise which may be considered praise for Allah, the Exalted, and asking Him to send Blessing to the Prophet, Allah's Blessing be on him and his Progeny, according to the more cautious opinion in the first Sermon, and, according to the stronger opinion in the second Sermon, and, according to the stronger opinion, there should recommendation for fear of Allah, the Exalted, in the first Sermon, and, according to the more cautious opinion, in the second Sermon.

According to the stronger opinion, a small Sūrah must be recited in the first Sermon, and, according to the more cautious opinion, it is preferable in the second Sermon to seek Allah's Blessing on the

Imams of the Muslims, Peace be upon them, after asking for Allah's Blessing on the Prophet, Peace be upon him, and forgiveness for the Muslim men and women.

It is better to select some of the Sermons attributed to Amir al-Mu'minin (Ali), Allah's Peace be upon him, or the Sermons, which have come down from Ahl-i Bayt, the Infallible.

Problem #8: It is more cautious to praise (Allah) and seek (Allah's) Blessing in the Sermon in Arabic language, even if the person giving the Sermon and the people listening to it are non-Arab.

However, as regards the admonition and recommendation to fear Allah, the Exalted, according to the stronger opinion, it is permissible to use any language besides Arabic for expressing them. Rather it is more cautious that the admonition and the other things in the interest of the Muslims must be expressed in the language of the audience, and in case they are mixed, in several languages. If, however, the number of those present exceeds the required number, it is permissible to suffice with the language permitted, but it is more cautious to admonish them in the language of the audience

Problem #9: The Imam giving the Sermon must add to his Sermon what is required in the interest of the Muslims in their faith as well as their world, and inform them about the events taking place in the Muslim countries etc. and the matters which are harmful or beneficial for them, and what the Muslims need for the life hereafter, as well as the political and economic affairs pertaining to their independence and existence and the position of their business with other nations, and warn them against allowing the tyrant, imperialist states to interfere in their affairs, particularly political and economic, which may result in their exploitation and domination. In short the Friday prayer and its two Sermons are among the great occasions of the Muslims like all the other great occasions such as the Hajj and the congregations on that occasion as well as the Eid al-Fitr and Eid al-Adhā, etc.

Unfortunately the Muslims have not realized their important political duties on such occasions and their other political situations. Islam is a political faith, which manifests for those having the least wisdom and thinking in its various mysteries the laws in the fields of statecraft and political, social and economic affairs. Therefore, those who deem faith to be separate from politics know nothing about the actual Islam and the realm of politics.

Problem #10: It is permissible to deliver the two Sermons before the noon in a way that when the Imam has finished them it should be afternoon, though it is more cautious to deliver the Sermons around noon.

Problem #11: It is obligatory to deliver the two Sermons before the Friday prayer, so that if one offers the Friday prayer (before the Sermons), it would be void, and it would be obligatory to offer the Friday prayer after the two Sermons if there is still time left for it, though apparently it is not obligatory to offer it again if it has been offered inadvertently or out of ignorance. One must offer the Friday prayer after the two Sermons even though it is also said that it is not obligatory to offer it

again if it has been offered before the two Sermons inadvertently and without knowledge, as there is the guiding principle in it.

Problem #12: It is obligatory for the Imam to keep standing while delivering the Sermon, and it is also obligatory that the Imam and the person delivering the Sermon be the same. If, however, the person delivering the Sermon is unable to stand, let another person deliver the sermon, and let him also lead the Friday prayer. If there is no one else but one who is unable to keep standing, then apparently it is better to shift to Zuhr prayer. Of course, if the Friday prayer is specifically obligatory, a person who is unable to keep standing shall deliver the Sermon while sitting, and it is more cautious to offer the Zuhr prayer after the Friday prayer. It is also obligatory to keep some distance between the two Sermons by sitting for some time.

Problem #13: According to the more cautious if not stronger, opinion, it is obligatory to raise the voice while delivering the Sermon in a way that it may be heard by a number of people, rather apparently it is not permissible to deliver the Sermon quietly, but there is no difficulty in the absence of permissibility for keeping the voice low when giving admonition and recommendation, and the Imam should raise his voice so that those present may hear it. Rather it is more cautious, or he must use loud speakers while delivering the Sermon if there are a large number of attendants in order that his admonition, persuasion (to do good deeds), frightening (from Allah's wrath in case of commission of bad deeds) and other important subjects may reach them through them.

Problem #14: According to the more cautious opinion, rather according to more traditional authority, it is obligatory for those present to listen to the Sermons, rather it is more cautious for them to keep silence and avoid talking during the deliverance of the Sermons, though, according to the stronger opinion, it is disapproved. Of course, if the talk causes a hindrance in listening by others and the loss of the advantage of the Sermon, it would be necessary to avoid it.

According to the more cautious opinion, it is preferable for those present to sit with their faces towards the Imam, and not to turn their faces more than it is allowed even during offering the prayer. It is also preferable according to the more cautious opinion that the Imam must be clean of the minor and major pollution as also the audience. According to the more cautious opinion, it is also preferable for the Imam while delivering the Sermon not to speak anything other than what relates to the subject of Sermon. However, there is no objection if the Imam speaks after delivering the Sermon before starting the prayer.

The Imam should be a good speaker and able to keep in consideration the requirements of the circumstances and use a lucid language free from confusion, fully conversant with what is happening to the Muslims in the various countries, particularly his own country, cognizant of the interests of Islam and Muslims, bold enough not to be impressed by the reproach of the censorer, unequivocal in telling the truth and condemning the falsehood according to the requirements and conditions of the day, considerate in using a language which may influence the people as regards the advice for being punctual and regular in their prayers and dress like the pious and the saints, and

that his acts must correspond with his admonitions, persuasions and frightening, and he must abstain from what may lower him in the eyes of the people or bring down his speech even by unnecessary and excessive talk and jokes and nonsense. The Imam must do all this sincerely and purely for the sake of Allah, the Exalted and abstinence from love for the worldly power and pelf, as they are the centre of all wrong doings, so that his speech may influence the people

It is approved for the Imam to wear a turban in both summer and winter and wrap the shawl of Yemen or Aden, be presentable and put on garments as clean as possible, eliciting honour and grace. He must greet the people while ascending the pulpit and keep his face towards the people, and they should have their faces towards him, and that he must lean against a bow, scepter or mace or a sword, and keep sitting on the pulpit until the *Mu'adhdhin* (person calling to prayer) finishes his Adhān (call to prayer).

Problem #15: It has already been mentioned that there should be a distance of three miles between the congregations for Friday prayer. If two congregations are held simultaneously for offering Friday prayer within a limit lesser than the required distance, they shall both be void. If, however, one of them is held earlier than the other even if by a Takbirat al-Ihrām, the subsequent one shall be declared void, regardless whether those offering the prayer have the knowledge about another Friday prayer having been held earlier or not, while the prayer held earlier shall be declared valid, whether those offering it have the knowledge about another Friday prayer having been held subsequently or not. The criterion for deciding about the validity of the prayer is the precedence of the prayer and not that of the Sermon, so that if one of the Friday prayers has precedence in Sermon and the other in the prayer itself, the prayer begun subsequently shall be declared invalid.

Problem #16: It is more cautious that while intending to offer Friday prayer it may first be made sure that no other Friday prayer is being offered simultaneously or earlier within the prescribed area (of three miles) there, though according to the opinion more in conformity with the principles of law, it would be permissible to do so, and the Friday prayer shall also be valid unless it is established that another Friday prayer was offered simultaneously, or earlier than that (within the prescribed area). Rather it is permissible to offer it with the knowledge of another Friday prayer when there is doubt about its being simultaneous or earlier.

Problem #17: If, after finishing the Friday prayer, the people come to know of another Friday prayer which is likely to be simultaneous or subsequent, then apparently it is not obligatory for both the Friday and Zuhr prayers to be repeated, though it would be more cautious to repeat them. It is obligatory on the group who was not present in both the Friday prayers and intends to offer a third Friday prayer that they should first make sure that the first two Friday prayers were invalid, and if there is likelihood of either of them being valid, it shall not be permissible to offer another Friday prayer.

Persons on Whom Friday Prayers is Obligatory

Problem #1: There are certain conditions for the obligation of Friday prayer. They are as follows. The person must be *Mukallaf*, a male, (and not a female). He must be a free man, (and not a slave). He must be in his own town, (and not on a journey). He must not be blind. He must not be sick. He must not be very old, and, the distance between his place and the place of congregation must not be more than two Farsakhs.

It is not obligatory on the above mentioned persons to try to attend the Friday prayer, although we have said that offering Friday prayer is a specific obligation (i.e. the duty of every individual, as against the collective obligation), and it is not obligatory on them even if attending the Friday prayer may not be troublesome or painful for them.

Problem #2: If the persons mentioned above happen to attend the Friday prayer or give themselves trouble to attend it, their prayer shall be valid, and it would be sufficient in place of Zuhr prayer. The same rule shall apply to those who have been permitted to give it up due to some hindrance like rain or severe cold or the like, so that it would be troublesome for them to attend the Friday prayer.

Of course, the Friday prayer of a lunatic is not valid, though it is valid if offered by a minor, but it is not permitted to count a minor in the required number of those without whose presence Friday prayer is not considered valid. So also, a Friday prayer is not valid with the attendance of the minors only.

Problem #3: It is permissible for a person on journey to attend the Friday prayer, and it is valid when offered by him and is considered to be in lieu of Zuhr prayer, but if only persons on journey intend to arrange the congregation for the Friday prayer without the participation of those living in that town, it shall not be valid, (and it shall not be counted in lieu of Zuhr prayer), and it shall be obligatory on them to offer the Zuhr prayer. If the persons on journey intend to stay (further so that they may not be required to offer shortened prayers), it shall be permissible for them to do so.

It is also not permissible for a person on journey to be counted to complete the number required for holding the Friday prayer.

Problem #4: It is permissible for a woman to attend the Friday prayer, and it is valid if offered by her, and it shall be counted in lieu of her Zuhr prayer, provided that the number required for holding the Friday prayer, i.e. five men, is complete.

It is not permissible for the women alone to hold Friday prayer, nor are they counted among the number required for holding Friday prayer, nor is the Friday prayer held validly without the presence (of the required number) of men.

Problem #5: Friday prayer is obligatory on the people living in small hamlets and suburbs of cities in the same way as it is obligatory on those living in big towns and cities, provided that the

conditions required for holding it are fulfilled. Likewise, Friday prayer is obligatory on those living in tents and valleys, provided that they reside there.

Problem #6: It is difficult to accept the validity of Friday prayer offered by a hermaphrodite, nor is it permissible to appoint him leader of the prayer or one for the completion of the number required for holding a Friday prayer. In case the number required for holding Friday prayer is not completed without a hermaphrodite, the Friday prayer shall not be held, and it shall be obligatory to offer the Zuhr prayer.

The Due Time for Offering Friday Prayer

Problem #1: The due time for offering Friday prayer starts from noon, and as soon as it is past meridian, it becomes obligatory. If the Imam finishes both the Sermons around noon and starts the prayer, it shall be valid.

As regards the last time for offering Friday prayer after which it is considered to be unfulfilled, there is difference and difficulty in declaring it, though it is more cautious not to delay it more than the usual time around noon, so that if it is delayed inordinately than the usual time, it is more cautious to opt to offer Zuhr prayer, though it is not far from extending the usual shadow of people farther than two feet.

Problem #2: It is not permissible to prolong the Sermon to an extent that the due time for offering Friday prayer may elapse, when its obligation is accepted to be the duty of every individual, so that if the Imam does so, he shall be considered to have sinned, and it shall be obligatory to offer Zuhr prayer, as it shall become obligatory even in case it is considered to be optionally obligatory. A Friday prayer is not to be compensated in case of failure to offer it at its due time.

Problem #3: If the due time of the Friday prayer elapses after it has started, then if even a single Rak'at has been offered within the due time, it shall be valid; otherwise, it shall be declared invalid, according to the principles of law. It is more cautious to complete the Friday prayer and then offer the Zuhr prayer. If those offering the Friday prayer have deliberately delayed it till only the time for offering a single Rak'at within the due time is left, then if we consider Friday prayer to be obligatory for every individual, they shall be considered to have sinned, but their prayer shall be valid. If, however, we consider it to be optional, as it is so according to the stronger opinion, then it would be more cautious to resort to Zuhr prayer. Rather caution must not be given up by offering the Zuhr prayer even in case of the first supposition, provided that Friday prayer is considered optional.

Problem #4: If a person is certain that the time left is sufficient at least for the obligatory two Sermons and two small Rak'ats, he may opt for the Friday prayer or Zuhr prayer. In case he is certain that the time left is not sufficient for all that, then he must take up Zuhr prayer. If the person doubts about the sufficiency of the time, his Friday prayer shall be valid. If later he comes to realize that the time left is sufficient for offering even a single Rak'at, he shall offer the Zuhr prayer. If the person knows how much time is left, but doubts whether it would be sufficient for offering the Friday prayer, it shall be permissible for him to start his prayer, so that if it was sufficient, the prayer shall be valid; otherwise, he shall offer the Zuhr prayer, though it is more cautious to take up Zuhr prayer. Rather caution must not be given up in case of the second supposition when the time is sufficient for a single Rak'at.

Problem #5: If the Imam offers Friday prayer with the required number of persons following him within its due time, and a follower who is not included in the required number does not attend the

Sermon and the first Rak'at, but succeeds in offering a single Rak'at of the Friday prayer behind the Imam, and offers another Rak'at individually, his prayer shall be valid, but the last permissible time for him is to join the Imam when he is performing the Ruku' so that if he also kneels for the Ruku' while the Imam has not yet risen for Qiyām, his prayer shall be valid.

It is more preferable for a person who has not joined the Imam until the Takbir for Ruku' to offer four Rak'ats for Zuhr prayer.

If, however, he recites Takbir and kneels for Ruku', and doubts whether the Imam was also performing Ruku', and whether he has joined him at the Imam's performing the Ruku' or not, he shall not be considered to have offered the Friday prayer. Now, whether his prayer shall be invalid or valid and he shall be required to complete it as a Zuhr prayer, there is difficulty in deciding about it, but it is more cautious for him to complete prayer as Zuhr prayer, and then offer it again.

Firstly, the conditions for Friday prayers are the same as required in prayers other than the Friday prayer as regards the absence of any hurdle, the place of Imam not being higher, nor too far from the followers, etc. Likewise, the conditions for the Imam in Friday prayers are also similar to those required in Imam of Jamā'at as regards sanity, faith, legitimate birth and sound character.

Of course, in a Friday prayer it is not permissible for a minor or a woman to lead the prayer, even if it is considered permissible in other types of prayers.

Secondly, Call to prayer (Adhān) a second time on Friday is considered an innovation (Bid'at) and prohibited (Haram), and it is the call of prayer prevalent among the non-Shi'ahs after the one for the obligatory, and sometimes it is applied as the third call for prayer or call for standing for prayer (Iqāmat), or (may be) the third call for prayer is meant for announcement and call for prayer, or the third call for prayer is made as the call for prayer for the morning and Zuhr prayer, but apparently it is other than the call for 'Asr prayer.

Thirdly in our own times (during the Disappearance of the Twelfth Imam), it is not forbidden to indulge in trade and other transactions on Friday after the call for prayer, if the Friday prayer is not considered a specific (or individual) obligation for every believer.

Fourthly, if, due to extraordinary crowd or the like, a follower in a Friday prayer is not able to perform prostration with the Imam in the first Rak'at which he has joined in its Ruku' the Imam, then, if it is possible for him to perform the prostration and join him before the Ruku' (in the second Rak'at), it would be valid, and his Friday prayer shall also be valid. In case, however, he is not able to do so, he shall not follow the Imam in the Ruku'; rather he shall suffice to follow him in the two prostrations, and shall have the intention (Niyyat) of performing both the prostrations for the first Rak'at. Thus, he shall be able to complete one Rak'at' with the Imam, and shall offer the second Rak'at himself individually and complete his prayer. In case he intends to offer the second Rak'at with those two prostrations, it is said that he shall not count them, and perform the prostration for the first Rak'at, and then offer the second Rak'at, and this is also found in the relevant Tradition, It

is said that his prayer shall be invalid, while it is possible to deem the two prostrations for the first Rak'at when he intended to perform them for the second Rak'at due to forgetfulness or ignorance, and then offers the second Rak'at according to the first supposition. The problem, however, is not free from difficulty, and, therefore, it is more cautious for him to complete the prayer by not counting the two prostrations, and perform prostration for the first Rak'at, and then offer the Zuhr prayer. The same rule shall apply in case he has intended to follow the Imam in performing the two prostrations.

Fifthly, the Friday prayer consists of two Rak'ats like the Morning prayer, and it is approved to perform it loudly, and recite the Surat al-Jum'ah (Chapter 62 of the Quran) in the first Rak'at and Surat al-Munāfiqūn (Chapter 63 of the Quran) in the second Rak'at. There are two Qunuts in it, one recited before the Ruku' of the first Rak'at and the other after the Ruku' of the second Rak'at. Some of the Rules concerning the Friday prayer have already been mentioned under the Rules concerning the Recitation of the Surah of the Quran, etc. As regards the rules relating to the conditions, impediments, causes of its invalidation, deficiency or excess, doubts, errors, etc., they have already been mentioned under the Chapters on Cleanness and Prayer.

Rules Concerning Eid al-Fitr and Eid al-Adhã Prayers

The Prayers for Eid al-Fitr and Eid al-Adha are obligatory during the presence of the Imam, Peace be upon him, and when he has complete freedom of action as well as the fulfillment of other required conditions, but they are approved during the Occultation (Ghaibat) of the Imam, and it is more cautious to offer them individually during the Period of Occultation of the Imam. There is, however, no objection in offering them with Jamã'at with the hope (that it shall be desirable to Allah), and not with intention that it has come down in the Shari'at. The time for offering these two prayers is from the rising of the sun to noon. It does not become due if not offered.

They consist of two Rak'ats, in each of the Rak'ats one must recite the *Sūrat al-Hamd* (Chapter 1 of the Quran) and some other Surah of the Quran. It is, however, preferable to recite *Surat al-Shams* (Chapter 91 of the Quran) in the first Rak'at and *Surat al-Ghāshiyah* (Chapter 88 of the Quran) in the second Rak'at, or *Surat al-A'la* (Chapter 87 of the Quran) in the first Rak'at and *Surat al-Shams* in the second Rakat. After the recitation of the Surah from the Quran in the first Rak'at, one must recite five Takbirs and five Qunuts, one Qunut being after each Takbir, and in the second Rak'at four Takbirs and four Qunuts, one Qunut being after each Takbir.

In the Qunūt, it is permissible to recite any Dhikr or Du'ā' like other prayers, and if one recites what is usual, there is no harm; rather, it would be approved, and that is as follows (in Arabic):
“Allāhum mā ahlal kibriyā'i val 'azamati va ahlal judi val jabarut va ahlal 'afwi var rahmah va ahlal taqwā val maghfirah As'aluka bihaqqi hadhal yowmi ladhi ja 'altahu lil Musilmeena Eidā va lil Muhammadin sallallāhu alaihi va ālihee dhukhran vasharafan va karāmatan va mazeeda an tusalli 'alā Muhammadin va Al-i Muhammad va an tudkhillani fi kulli khairin adkhalta feehi Muhammadan va Al-a Muhammad va an tukhrijani min kulli su'in akhrajta minhu Muhammadan va Al-a Muhammad Salawātuka 'alaihi va 'alaihim Allāhum mā as'aluka khaira ma sa'laka bihi 'ibādukas Salihun va 'audhu bika mimmasta'ādha minhu 'ibādikal mukhlisun”.

Its English translation is as follows: “O Allah, Possessor of Majesty and Greatness, Possessor of Generosity and Almightyness, Possessor of Forgiveness and Mercy, Possessor of Protection and Pardon, I ask Thee, for the sake of this Day which Thou hast set for Muslims a Day of Rejoicing, and for Muhammad, Blessing be on him and his Progeny, (a source of) treasure, honour, dignity and even more, to send Blessing to Muhammad and his Progeny, and to enter me (or my name) in every good deed, Thou hast entered in it (the names of) Muhammad and Muhammad's Progeny, and remove me (or my name) from every evil, Thou hast removed from it (the names of) Muhammad and Muhammad's Progeny, Thy Blessing be on him and them. O Allah, I ask Thee for every good thing asked for by Thy pious Devotees, and seek of Thee for the refuge sought for by Thy pure Devotees.”

If a group of people offers these two prayers with Jamã'at with the intention of hope (that it would be desirable to Allah), the Imam shall deliver two Sermons after offering them with the intention of hope (that it would be desirable to Allah). It is permissible to give up both these prayers during the

Period of Occultation (of the Twelfth Imam). (When these prayers are offered), it is permissible to recite the words loudly by the Imam (when offered with Jamāat), or by the individual (when offered individually). It is also approved to raise the hands at the time of reciting the Takbirs, and offer it in large open spaces excepting Mecca. It is disapproved to offer these prayers under a roof.

Problem #1: Like all other Jama'ats, the Imam is not responsible in these prayers for any thing except recitation.

Problem #2: If a person doubts about the number of the Takbirs or Qunuts (in these prayers), and the doubt occurs in its proper place (of compensation), he shall decide in favour of the minimum.

Problem #3: If a person does some thing entailing the performance of the prostration for error, it is more cautious to perform the prostration for error with the intention of hope (that it would be desirable to Allah), though its non-obligation, when the prayer be considered to be approved, (and not obligatory), is not devoid of force. The same is the case with the compensation for a forgotten Tashahhud or prostration

Problem #4: In the prayers for Eid al-Fitr and Eid al-Adhà, there is neither a call for prayer (Adhān), nor a call for standing for prayer (Iqamah). Of course, it is approved for the *Muadhdhin* (one who calls for prayer) to call (loudly) three times: 'Assalat' (i.e., The prayer is ready).

Some of the Recommended Prayers

1. Ja'far-i Tayyār Prayer

One of the recommended prayers is the Prayer of Ja'far b. Abi Talib, Peace be upon him. It is one of the emphatically recommended prayers, and is well known among the Shi'ahs and the non-Shi'ahs. It is one of the things awarded as a mark of affection and favour by the Prophet, Allah's Blessing be upon him and his Progeny, to his uncle's son when he came back from a journey. It has been reported from (Imam Ja'far) Al-Sadiq, Peace be upon him: "The Prophet (PBUH) said to Ja'far when he came back from Ethiopia on the day of the Conquest of Khaibar: 'Should I not bestow a favour on you? Should I not grant you a favour? Should I not award you something?' "Yes, please, O Messenger of Allāh,(PBUH) replied Ja'far. The people thought that the Prophet (PBUH) would award him some gold or silver. So they came close for that (in order to see what he bestows upon Ja'far). The Prophet (PBUH) said to Ja'far: "I give you something that if you perform it every day, it would be better for you than this world and what lies in it. If you perform it once in two days, Allah shall forgive whatever sins you might have committed during those two days. If you perform it every Friday, every month or every year, Allah shall forgive all the sins you happen to commit during that week, month or year."

The most preferable time for it is Friday at the time of sunrise, and it is permissible to count it among the supererogatory prayers of the night or day. It may be counted among the supererogatory prayers, and also as the Prayer of Ja'far (-i Tayyār, Peace be upon him) as has been related in the relevant Tradition. So a person may have the intention of offering the Prayer of Ja'far as a supererogatory prayer, for example, with the Maghrib prayer. It has four Rak'ats with two Salutations. The person shall recite the Sūrat al-Hamd (Chapter 1 of the Quran) along with another Surah of the Quran, and then shall say (in Arabic): "Subhanallāh val Hamdu lillāh va la ilāha illallāhu vallāhu akbar" fifteen times. Then he shall recite the same formula in the Ruku' ten times, and also ten times after raising the head (from the Ruku) and likewise in the first prostration and after raising the head from it, as also in the second prostration and after raising head from it he shall recite the formula ten times, so that he shall recite the formula seventy five times in each Rak'at, and its total number shall be three hundred. Apparently it is sufficient to recite the formula instead of the Dhikr in Ruku' and prostration, though it is more cautious to recite the Dhikr as well in the Ruku' and prostration.

No specific Sūrah of the Quran is to be recited in this prayer, though it is more preferable to recite the Surat al-Zilzāl (Chapter 99 of the Quran) in the first Rak'at, Surat al-'Adiyat (Chapter 100 of the Quran) in the second Rak'at, Surat al-Nasr (Chapter 110 of the Quran) in the third Rak'at and Surat al-Ikhlās (Chapter 112 of the Quran) in the fourth Rak'at.

Problem #1: It is permissible to delay the recitation of the formula till after the prayer if a person is in a hurry, as it is also permissible to divide the prayer itself if he has some urgent work to do, so

that he may offer two Rak'ats once, and after performance of the urgent work he may offer the remaining two Rak'ats.

Problem #2: If a person fails to recite the formula at its proper place, but at another place comes to recall the omission, he may make up for the omitted formulas there along with those required at that place. If a person forgets to recite the formula in the Ruku' and comes to recall the omission after raising his head from the Ruku', he shall recite the formula twenty times. The same shall be the case in the other places and circumstances. If a person does not recall the omission till after the prayer, then, according to the more cautious opinion, it is better to recite it with the intention (Niyyat) of hope (that it would be desirable to Allah).

Problem #3: It is recommended that a person must say (in Arabic) after the second prostration in the fourth Rak'at after reciting the required formula: "O the One who awards the Garments of Respect and Honour! O the one who favours His Servants with Dignity and bestows Grace. O the one Praise is deserved by Him alone! O the one whose knowledge has encompassed everything! O the Possessor of Blessing and Power. O the Possessor of Favour and Generosity! O the Possessor of Might and Mercy! I ask Thee for the sake of the Seats of Dignity of Thy Throne and the maximum Favour from Thy Book and for the sake of Thy Greatest and Highest Name and Thy Most Complete Words to send Blessing to Muhammad and the Progeny of Muhammad and please do for me such and such". Here the person must mention what he asks for.

It is recommended that a person, after finishing his prayer, must pray what has been related by Shaykh Tusi and Sayyid Ibn-i Taus through Mufaddal b. 'Umar. He has said: "I saw Abū 'Abdillah (Imam al Sadiq) Peace be upon him, offering the Prayer of Ja'far. He raised his hands and prayed saying: "Yā Rabb-i. Yā Rabb-i"(O Lord. O Lord), until he lost his breath, then "Yā Rabbāhu. Ya Rabbāhu" (O Lord. O Lord), until he lost his breath. Again: "Rabb-i. Rabb-i," until he lost his breath. "Ya Allāhu. Ya Allāhu", until he lost his breath. "Yā Hayyu. Ya Hayyu" (O the all-Living. O the All-Living), until he lost his breath." Ya Rahimu. Ya Rahimu" (O the All-Merciful. O the All-Merciful), until he lost his breath. "Ya Rahmānu. Ya Rahmānu" (O the Merciful. O the Merciful) seven times. "Ya Arhamar Rahimin" (O the Most Merciful of all Merciful) seven times.

Then he said (in Arabic)

"O Allah, I open my statement with Thy praise, and speak with Thy Eulogy. I glorify Thee. There is no limit for Thy Praise. I eulogise Thee, and who can reach the limit of Thy Eulogy and the end of Thy Glorification ? How can one created by Thee can have the knowledge of Thy Glory? Which is the time when Thou wert not praised for Thy Generosity, qualified with Thy Glory, returning to the Sinners with Thy Clemency? The Inhabitants of Thy Earth. did violate Thy Obedience, but Thou wert Merciful on them with Thy Generosity, All-Generous with Thy Favour. Returning with Thy Munificence. O the one there is no god but Thou, the All-Kind, Possessor of Sublimity and Kindness."

Then he said to me, “O Mufaddal, whenever you have some important wish. Then offer this prayer and pray with this invocation, and ask whatever you wish, Allah will grant your wish, if He wills and on Him we have Trust.”

2. The Prayer for Rain (Istisqā’)

The prayer for Rain (Istisqā’) is also one of the recommended prayers. It means praying for rain when the rivers get dried up and when there is discontinuance of rains, and the sky denies its drops due to the spread of sins, denial of divine favour, non-fulfillment of the rights and obligations, lack of proper weighing, oppression, treachery and giving up commanding what is good and forbidding what is wrong, non-payment of Zakāt and judging with other than what Allah has sent down, and the like, which brings the Wrath of the All-Merciful, and causes the discontinuance of the rains as has been mentioned in the relevant Tradition.

Its procedure is similar to that of the prayer for the Eid al-Fitr and Eid al-Adhā, and has two Rak’ats offered with Jamā’at. There is, however, no objection if it is offered individually with the intention of hope (that it would be desirable to Allah). A person must recite in each of the Rak’ats the Sūrat al-Hamd (Chapter 1 of the Quran) and some other Surah of the Quran. In the first Rak’at he shall recite five Takbirs and after each Takbir shall recite the Qunut. In the second Rak’at he shall recite four Takbirs and after each Takbir shall recite the Qunut. It is permissible to recite any Du’ā ‘in the Qunut, and it is better that it must include asking Allah for sending rain, and pray for rain and the kindness of Allah for sending rains and open the doors of the heavens through kindness. Before praying for rain one must ask Allah to send Blessing on Muhammad and his Progeny

There are some things, which have come down in the Tradition. They include the following:

- I. Reciting the prayer loudly, and reciting the Surahs of the Quran, which are recommended for recitation when offering the prayers for the two Eids;
2. Fasting by people for three days and coming out the third day in a way it should be the Monday, and if it is not possible, let it be the Friday for its honour and preference;
3. Coming out of the Imam, accompanied by the people to a vast open space with patience, honour, fear of Allah and with a look of entreaty. They must select a clean place for offering the prayer. It is better that the people must come out, attired in a way that may attract divine Mercy, as being bare-footed.
4. Bringing the pulpit along with themselves to the open space, and the Mu’adhhdhins (those calling for prayer) coming out in front of the Imam.
5. It has also been mentioned by the Companions (or Ulemā’) that the people should come out accompanied by the old men and women as well children and cattle, and the children should be separated from their mothers, so that they may increase their crying and bewailing which may cause

to attract divine Mercy. They should not allow the infidels to accompany them like the non-Muslim subjects of the Muslim state, etc.

Problem #1: It is better that this prayer should also be offered at the same time as the Eid prayer is offered, though the absence of specification of its time is not far (from being preferable).

Problem #2: There is no Adhān or Iqāmat for this type of prayer, rather in lieu of them the *Mu'adhdhin* (one performing call to prayers) should call (loudly) :“Al-Salāt” (The Prayer is ready) three times.

Problem #3: When the Imam has finished the prayers, he shall, by way of preference, change his cloak so as to put its right side on the left and its left side on the right, and then climb the pulpit, and stand facing the Qiblah, and raise Takbir a hundred times loudly. Then he shall face the people on his right side and recite Tasbih (i.e., “*Subhanallah*”) a hundred times loudly. Then he shall face the people on his left side and recite Tahlil (i.e., “*Là ilaha illallah*”) a hundred times loudly.

Then he shall stand with his face towards the people, and shall recite Hamd (i.e., *AlHamdulillāh*) a hundred times, and there is no harm if he recites it loudly too, as also there is no harm if those following the Imam in the prayer also imitate him in reciting the Dhikrs, rather that loudly too, as it may be more effective in attracting the divine Mercy and be more hopeful for attaining the objective.

Then the Imam shall raise both his hands, and pray, and the people shall also pray, and shall be more serious in praying and entreating, asking the Favour of Allah and making supplication before him. There is no harm if the people respond by saying: “Amen!” after praying by the Imam.

Then the Imam shall deliver his sermon, and shall be more serious in his entreaty and asking the Favour (of Allah). It is better to select some of the Du’as which have come down from the (fourteen) Infallibles, Peace be upon them, as the one which has come down from Amir al-Mu’minin (Peace be upon him, which begins with the words (in Arabic): ‘*Al Hamdu lillāhi sàbighin ni’am...*’ .“(Praise be to Allah, Bestower of Ample boons...).It is better for the Imam to deliver two sermons in this prayer, as is the case with the prayers for the two Eids, delivering the second with the hope (that it would be desirable to Allah).

Problem #4: As it is permissible to offer this prayer at the time of dearth of rains, so it is also permissible to offer it in the event of drying up of rivers and springs.

Problem #5: If there is delay in the acceptance of the prayer, the people shall repeat the prayer until they are blessed with the divine Favour, with the Grace of Allah,

If their prayer is not accepted at all, then there are some considerations, which are in the knowledge of Allah alone. We have no right to protest, nor to lose the hope of Benediction of Allah, the Exalted. It is permissible to continue praying and suffice with fasting three times, which may not be linked with the fast for three other days offered with the hope (that they would be desirable to

Allah). Likewise, the prayer may also be offered repeatedly with the hope (that it would be desirable to Allah).

3. The Ghafilah Prayer

The Ghafilah prayer is one of the recommended prayers. It consists of two Rak'ats between Maghrib and Ishā' prayers. Its details have already been mentioned under the First Introduction of the Chapter on Salāt (Prayers).

4. The Prayer on the Night of the Burial of the Dead

The prayer offered on the night of burial of the dead is also one of prayers recommended. Its details, have also been mentioned earlier under the Chapter on Burial, Rules concerning the Dead.

5. Prayers on First of Every Month, Prayer for Hājat, etc.

The prayers on first of every month, the prayer for Hājat (Demand), etc., which are also among those recommended, have been mentioned in detail in their relevant places.

Chapter on a Traveler's Prayers and its Relevant Rules

It is obligatory for a person on journey to reduce the number of Rak'ats of prayers having four Rak'ats, provided that the following conditions are fulfilled. No reduction takes place in the number of Rak'ats in case of the Morning and Maghrib prayers. Following are the required conditions

1. The Distance. The distance for one way going or coming both together should be eight Farsakhs, with the condition that the one way distance (for going or coming) should not be less than four Farsakhs, regardless whether a person's going is followed immediately by his return, and it has not been discontinued by his passing a single night or more during the journey, or has been discontinued not in a way that it may cause the discontinuation of the journey itself, nor are there other causes for the discontinuation of the journey. In such an event, the person shall exercise the reduction in the number of Rak'ats, and shall also break his fast, while in the latter case it is strictly cautious to offer full prayers and also compensate for the fast.

Problem #1: A Farsakh is equal to three miles, while a mile is equal to four thousand cubits, whose length is equal to the breadth of twenty four fingers, and each finger is equal to the width of seven grains of barley, and each barley is equal to the breadth of seven average hair of a Turkish horse (or a pony). If the distance is less than that, even if to a minimal extent, the person on journey shall offer unreduced prayer.

Problem #2: If the one way distance for going is five Farsakhs, and one way return is three Farsakhs, it shall be obligatory to offer the prayer with reduced number of Rak'ats. If a person repeats going and coming several times to a distance of less than four Farsakhs until the total distance reaches eight Farsakhs or more, there shall be no Qasr (or reduction of two Rak'ats in the number of Rak'ats of the prayers having four Rak'ats), even if it has exceeded the number in which Qasr is allowed. So it is indispensable for Qasr that the total distance covered by once going and coming should be eight Farsakhs.

Problem #3: If there are two routes for a town, the farther having a longer distance than the closer one, and a person undertakes the longer route, he shall be entitled to exercise Qasr.

If a person undertakes the shorter route, (so that he covers a total distance of less than eight Farsakhs), he shall be required to offer prayers with full number of Rak'ats. If a person undertakes a journey on a shorter one-way route so that the one-way route may cover a distance of less than four Farsakhs, he shall offer full prayers, even if he should return from the longer route, covering a total distance of 8 Farsakhs, required for Qasr.

Problem #4: The criterion for calculating the distance is the boundary wall of a town, and in case of a town having no boundary wall, the last house of the town. This is the criterion for towns other than the extra-ordinarily big towns. In case of extra-ordinarily big towns, the end of its district or quarter shall be the criterion for calculating the distance in case it has separate districts or quarters

in a way that they may be like villages lying adjacent to one another. Otherwise, there shall be difficulty (in applying the rule of Qasr in their case), as, for example, a town having quarters joined with one another. In case the distance from the end of a town does not reach the amount permissible for Qasr and if it is calculated from his house, it does reach that amount, then it shall be more cautious to offer the prayer both with and without Qasr though the opinion according to which the person's house is considered to be the criterion for reckoning the distance is not far from being acceptable.

Problem #5: If a person intends to go to a town, but has doubt as to whether it is at a distance allowing Qasr, or believes it to be otherwise, and then during the journey, he comes to realize that it lies at a distance allowing Qasr he shall exercise Qasr even if the remaining distance is not upto the amount allowing Qasr

Problem #6: The amount of distance is established through knowledge and evidence. If there is the testimony of a single witness, it would be more cautious to offer prayer both with and without Qasr case a person doubts whether the distance has reached the permissible amount or not, or has some presumption about it, he shall continue to offer his prayer unabated. In such case, it is not obligatory to exert to attain the knowledge about the truth in a way that it could be troublesome. Of course, according to the more cautious opinion, it is obligatory to seek information through making queries or the like. If a common man has doubt about the amount of distance required by Islamic law, and is not able to follow (as required by a Mujtahid's Taqlid), it would be obligatory on him to offer the prayer both with and without the Qasr

Problem #7: If a person believes that a distance is up to the amount allowing Qasr and so he exercises Qasr but later it transpires to be otherwise, it shall be obligatory on him to offer the prayer (with unabated number of Rak'ats). If a person believes that the distance he has covered is not upto the amount allowing Qasr and so he offers prayers with unabated number of Rak'ats, and then it transpires that it was a distance allowing Qasr to the stronger opinion, it shall be obligatory on him to offer the prayer again with Qasr if there is sufficient time for it. In case the due time has passed, according to the more cautious opinion, he shall of the compensatory prayer with Qasr.

Problem #8: The act of adopting a circular distance is the journey from the starting point to the corresponding point. If a person intends to have a circular movement, he shall exercise the Qasr even if he has his business before reaching the corresponding point, provided that his journey upto that place is four Farsakhs, though it is more cautious for him to offer his prayer both with and without Qasr if his business is before reaching the corresponding point.

2. Intention of Completing the Distance allowing Qasr. If a person intends to go up to a distance less than the one allowing Qasr and then after reaching his destination he intends to go to a distance which is again less than the required distance, and so on, he shall offer full prayers, even if the total distance covered by him is equal to or more than the distance allowing Qasr Of course, if he starts to return, he shall exercise Qasr, provided that he covers the required distance, and has also

intended to cover that much distance. The same rule shall apply if the person has no definite intention, and does not know how much distance he is going to cover, as, for example, when he goes in search of an animal which has escaped and does not know which way it has gone, then he shall not exercise Qasr, when going in search of the animal, even if he has covered a distance more than required for Qasr. Of course, he may shall exercise Qasr his return on the condition mentioned earlier (that the distance on his return must be 8 Farsakhs). If, during the journey, he determines to cover a distance reaching the distance allowing Qasr though by piecing together with the conditions required in it, he shall exercise Qasr. In case he intends to cover a distance of less than four Farsakhs, and waits for some companions with whom he may travel if he finds them otherwise not, or his journey is dependent on obtaining something, but is not sure of getting some companions or obtaining the thing, it shall be obligatory on him to offer full prayers.

Problem #9: The criterion for Qasr is the intention of a person to cover the required distance even if it is attained in several days, provided that in the meantime nothing happens which may cause his journey to cease to be called journey in usual practice, as when he covers daily an ordinary amount of distance by way of a pleasure trip or the like, and not for bearing the hardship of journey, he shall offer full prayer throughout that time, though it is more cautious for him to offer the prayer both with and without Qasr.

Problem #10: It is not a condition in the intention of covering the required distance that it should be independent, rather it would be sufficient even if it is done in the wake of another person, regardless whether it is done out of obedience as is the case with a wife, or under duress as is the case with a prisoner, or voluntarily as is the case with a servant, provided that he knows that the person whom he is following intends to cover the legally required distance ; otherwise, he shall continue to offer full prayers. It is more cautious for such a person to obtain the necessary information, though, according to the stronger opinion, it is not obligatory, and it is not obligatory on the person allowed to inform his follower, even if it is supposed that the person following another must obtain the information (about the intention of the person he is following).

Problem #11: If a person following another believes that the person whom he is following does not intend to cover the required distance, or has doubt about it, and during the journey he comes to know that he intends to cover the required distance, if the remaining distance is up to the amount allowing Qasr, it shall obligatory on him to exercise Qasr; otherwise, apparently it shall be obligatory on him to offer full prayers.

3. Subsistence of the Intention of Journey. If a person changes his intention before reaching the distance of four Farsakhs, or hesitates in the mailer, he shall be required to offer full prayers. As for the prayers he has already offered by way of Qasr, he shall be required to repeat them neither within their due time nor after it. If the change or hesitation has taken place after reaching four Farsakhs, he shall continue exercising Qasr even if he does not return the same day when he intends to return before ten days.

Problem #12: It is sufficient in the subsistence of the intention that the intention to continue the journey itself should subsist even if the place changes, as, for example, a person intends to travel to a certain place, and it was situated on a distance allowing Qasr, but during the journey he changes it to another place, so if the distance covered together with the remaining distance comes to the distance allowing Qasr then according to the most authentic opinion, he shall exercise Qasr throughout that period, in the same way as he would exercise Qasr had he been intending to make the journey without the specification of the place, so that he starts the journey intending to go to any of the places each of which are situated at a distance allowing Qasr but he does not specify them and has left it to the time of his arrival at a limit common between them.

Problem #13: If a person starts hesitating before reaching four Farsakhs, then reverts to his determination, so if he has not covered any distance in the state of hesitation, he shall continue exercising Qasr although what remains is not up to the required amount allowing Qasr even when pieced together. In case he has covered part of the distance in a state of hesitation, but the remaining distance is upto the amount allowing Qasr he shall exercise Qasr. If the remaining distance is not up to the amount allowing Qasr there shall be no difficulty in the obligation for offering full prayers, provided that the remaining distance along with the distance passed in a state of hesitation does not come to the amount allowing Qasr. If, however, the total distance minus the distance passed in the state of hesitation comes to the amount allowing Qasr then it would be more cautious for him to offer the prayers both with and without Qasr, though it is not far from likely to revert to Qasr particularly when the distance covered in a state of hesitation was insignificant.

4. The Person should not intend to discontinue his journey by staying for ten days or more during the journey or by passing through his hometown. For example, if a person intends to cover a distance of four Farsakhs with staying during the journey or in its beginning, or to pass from his home town situated on the way, he shall offer full prayers throughout that period. The same rule shall apply if he has some hesitation with regard to his stay or passing from his hometown in a way repugnant to the intention of covering the distance allowing Qasr. To this category also belongs the case when there is likelihood of occurrence of something disturbing the continuation of the journey, or occurrence of something necessitating a stay during the journey or passing from his hometown being considerable in the eyes of the sane persons. But in case of something not considerable, like falling sick, etc., which would be against the consideration by the sane persons, he shall exercise Qasr.

Problem #14: If, before starting his journey, a person intends to stay (for ten days) and covers some distance, then before covering eight Farsakhs decides to stay (for ten days), or pass from his hometown, or was in a state of hesitation, and then changes his decision, and decides against both the things (namely, staying for ten days or passing from his hometown), then if the remaining distance after the change of decision is up to the amount allowing Qasr even if pieced together, he shall exercise Qasr otherwise not.

Problem #15: If a person does not intend to stay (for ten days), and covers some distance, then before reaching eight Farsakhs, he intends to stay (for ten days), and then changes his intention, and decides against staying (for ten days), then if the remaining distance after the change of intention since his decision is up to the amount allowing Qasr he shall exercise Qasr without there being any difficulty in this rule. The same rule shall apply if the case is not so, and he has not covered any distance between the two decisions, while the total distance comes to the amount allowing Qasr.

If, however, he has covered some distance between the two decisions, then whether the distance he has covered before the change in his decision shall be amalgamated with the remaining distance minus what had been covered during the period of hesitation between the two decisions or not, in case the total distance comes to the amount allowing Qasr In this case, it is more cautious to find out a via media by offering the prayers both with and without Qasr though it is not far from being preferable to revert to the Qasr particularly when the distance covered during the two decisions happens to be negligible, as its instance has already been mentioned.

5. The journey must be lawful, so that if it is unlawful, the person shall not exercise Qasr regard less whether the journey itself is unlawful, as escape from army (duty) or the like, of its purpose is unlawful, as for example, the journey has been undertaken for committing highway robbery or collection of *Mazalim* for a (tyrant) king, or the like. Of course, it shall not fall under this category if what is forbidden takes place during the journey, such as absence (from duty), or the like, which was not the purpose of the person's journey, in which he shall continue to exercise Qasr Rather, according to the stronger opinion, it shall also not fall under this category if the traveller rides a usurped animal. Likewise, if the journey happens to be contrary to what is obligatory for him which the person has failed to fulfill, as, for example, the person happens to be under debt and the creditor has demanded him to pay the debt and the possibility of payment of the debt lies in his hometown and not while he is on journey. Of course, caution must not be given up by offering the prayers both with and without Qasr in case the journey has been undertaken by giving up what was obligatory on the person, though the decision in favour of offering full prayer in this case is not devoid of force.

Problem #16: If a person is obeying an oppressor, he shall exercise Qasr if he is compelled to undertake the journey, or when his purpose of journey is to get rid of the oppression, or such other valid purposes. If, however, the purpose of his journey is to assist the tyrant in his tyranny, or his obedience to the tyrant is tantamount to his support for his tyranny, or strengthening his power, while strengthening his power is forbidden, the person on journey shall perform full prayer.

Problem #17: If the purpose of a person's journey is obedience to Allah, but implicitly he has some unlawful purpose as well, while he attributes his journey to obedience to Allah, he shall exercise Qasr If, on the contrary, the purpose of his journey were unlawful, but as subservient to it he has the purpose of obedience to Allah, or both the purposes were common in a way that had both the purpose were not there, he would not have undertaken the journey, or both the purposes are independent in his view, he shall offer full prayers. He should, however, not give up caution by offering the prayers both with and without Qasr in case other than the former, i.e., when the purpose

of obedience to Allah is subservient to the unlawful purpose, in which case he shall offer full prayers.

Problem #18: If the beginning of his journey was in obedience to Allah, but during the journey he happened to have some unlawful purpose, then if he has covered his journey with the latter purpose, he shall forfeit the permission to exercise Qasr though he might have covered a long distance. However, he would not be required to repeat the prayers in full which he has already offered with Qasr. In case he has not covered any journey with the unlawful purpose, it would be more in keeping with the principles of law, that he would not forfeit the permission to exercise Qasr. It is more cautious for him to offer prayers both with and without Qasr in case he has not covered any distance with the unlawful purpose. Again, if he reverts to the purpose in obedience to Allah after traversing part of the land, and the remaining distance comes to the amount allowing Qasr though pieced together, so that the distance of going to his destination were four Farsakhs or more, it shall also be obligatory on him to exercise Qasr. The same rule shall apply in case the remaining distance is not up to the amount allowing Qasr but the aggregate of what he had already covered along with the remaining distance after discarding the distance covered with the unlawful purpose comes to the amount allowing Qasr. In this case, however, according to the more cautious opinion, it is better to add full prayer to the one offered with Qasr. If, however, the aggregate does not come up to the amount allowing Qasr except by adding the distance covered with the unlawful purpose, then the obligation for offering full prayers shall not be devoid of force, though it is more cautious to offer prayers both with and without Qasr. If, in the beginning the purpose of a person's journey was unlawful, but then he shifted to obedience of Allah, he shall exercise Qasr if the remaining distance comes up to the amount allowing Qasr though as a result of piecing together. Otherwise, it is more cautious to offer prayers both with and without Qasr though continuing to offer full prayer would not be devoid of force.

Problem #19: If, in the beginning, the purpose of a person's journey was unlawful. Then he determined to keep fast, and shifted to obedience to Allah. If it occurred before noon, it shall be obligatory on him to break the fast, provided that the remaining distance comes up to the amount allowing Qasr even as a result of piecing together. Otherwise, his fast shall be valid.

If, the shifting to obedience to Allah occurred after noon, the fast would not be far from being valid, but it is more cautious to complete it, and then keep fast in compensation as well. If, in the beginning, the purpose of a person's journey was lawful, and then it shifted to an unlawful purpose during the journey, if it occurred after breaking the fast or after noon, his fast shall not be valid. If the shifting took place before both the above (i.e. after breaking the fast or after noon), then there shall be hesitation in the validity of his fast. So he should not give up caution by keeping fast and compensating it later.

Problem #20: If a person returns from an unlawful journey, then, if it were after repentance or occurrence of something which would exclude the journey from being a part of unlawful journey, as, for example, the purpose of his return were something separate, not a return to his hometown, he

shall exercise Qasr. Otherwise, the obligation of offering full prayers is not far from being the case, though, it is more cautious for him to offer prayers both with and without Qasr.

Problem #21: To the category of unlawful journey is included a journey for the purpose of hunting for pleasure sake, as is undertaken by the adorers of the world. If, however, it were for the sake of obtaining food, the person shall exercise Qasr. If the journey were undertaken for the purpose of trade, in that case the person shall break his fast. As regards the prayers, there is some difficulty (in deciding about the rule in its case). It is more cautious to offer the prayers both with and without Qasr.

To the category of unlawful journey is not included a journey undertaken for pleasure sake alone, so that in its case, it is not obligatory to offer full prayers.

6. The person should not be one of those who carry their homes along with them, like some of the inhabitants of the jungle who wander around the lands and stay in places having water, grass-lands and pastures, but do not have a permanent abode. To this category also belong the sailors and boatmen who reside in the ships and boats. In case of such people, it is obligatory on them to offer full prayers while on their special journeys. Of course, in case they undertake the journey for the purpose of *Hajj* or pilgrimage or the like, they shall also exercise Qasr like others (accompanying them). If anyone of them undertakes a journey in search of a special abode or a place of water and pastures, and the distance covered by him is upto the amount allowing Qasr then there is difficulty in deciding about the obligation of offering prayers with or without Qasr, and so caution must not be given up by offering prayers both with and without Qasr.

7. Undertaking journey should not be a part of his profession, as the drivers, postmen, owners of taxis and the like. To this category also belong the boatmen and sailors when their residence lies outside the boat or ship, and they undertake the voyage as a profession.

If, however, they carry their abodes with them, then they would belong to the previous category.

Anyhow, it is obligatory on all of them to offer full prayers during their journey when it is part of their profession, even if their journey is meant for themselves and not for others, as a driver carrying his own luggage or the luggage of his family from one place to another.

Of course, such people shall exercise Qasr in a journey which is not a part of their profession, as when a sailor leaves his ship and undertakes a journey for pilgrimage, etc.

The criterion for excluding the journey from one allowing Qasr is one which falls under the category of a journey undertaken as a profession or trade. It shall apply only in case the person makes a considerable journey as a profession, and it is not a condition to undertake the journey twice or several times. Of course, the obligation for exercising Qasr is not far from being applicable in the first journey, even if it falls under the category of journey undertaken as a profession, though

it is more cautious to offer prayers both with and without Qasr in this case, and the second journey, and deciding in favour of offering full prayers in case of the third journey.

Problem #22: If a person's profession is carrying luggage in summer excluding winter or vice versa, then apparently it shall be obligatory on him to offer full prayers during (the journey undertaken as a) profession, though it would be more cautious to offer prayers both with and without Qasr. As regards the case of the leaders of the caravans who undertake journey during the special months of *Hajj*, apparently it is obligatory on them to exercise Qasr.

Problem #23: It is a condition for the continuation of application of journey as a profession necessitating offering full prayer that the person should not stay in his own town or any other town for ten days even without intention; otherwise, the rule of the journey as profession shall cease to apply in his case and he shall revert to exercising Qasr but only in his first journey excluding, the second, not to speak of the third. But he should not give up caution by offering prayers both with and without Qasr in the first journey if he has stayed in a town other his own for ten days without intention. Rather it is more cautious to offer prayers both with and without Qasr also in the second and third journeys in all circumstances, or when he stays in his own town (for ten days) with or without intention.

Problem #24: If a person's profession is not to undertake journey, but something has happened to him necessitating him to undertake several journeys, he shall exercise Qasr as is the case with a person having some job in a town, but he happens to visit the place several times. The same rule shall apply to a person the distance from whose house, for example, to the tomb of Imam Husayn is up to the amount allowing Qasr and he vows or decides to visit the tomb on the night of each Friday. The same rule shall apply to the amount allowing Qasr and he goes to the town daily, then apparently it shall be obligatory on him to exercise Qasr during the journey and in the town which is not his home town.

Problem #25: A shepherd whose job is to travel as a shepherd, regardless whether he has some special place or not, or a trader who tours around for his trade, or a tourist who has no home and whose job is tourism, may also be included in the sixth category. Anyhow, it shall be obligatory on all of them to offer full prayers.

8. Traveler's Arrival in Place of Permission. So Qasr cannot be exercised before the traveler's arrival in the place where Qasr is allowed. The limit of permission is the place where the traveler may not hear the sound of Adhān (call to prayers) (of his own town), and the walls (of his home town) or its shapes, but not their shadows, may become out of sight. Caution must not be given up by the materialization of both (i.e. absence of hearing of the sound of Adhān and the invisibility of the walls) simultaneously. It is also a condition for the non-audibility of the sound of Adhān and the disappearance of the walls (of his home town) should be due to long distance and not due to some other reason.

Problem #26: It is a condition for exercising Qasr that the traveller must reach the place from where Qasr is allowed, when he starts his journey from his home town.

But is it a condition to arrive at the place allowing Qasr when he starts his journey from the place where he has stayed (for ten days) and from the place where he has passed thirty days in a state of hesitation, or not? There is hesitation in deciding about it, and so caution must not be given up in both cases.

Problem #27: As it is a condition for Qasr in the beginning of the journey to arrive at the place from where Qasr is allowed, similarly the rule of journey ceases to operate at the time of return after arriving at the point from where Qasr was allowed, and so the person shall be required to offer full prayers.

It is more cautious to observe the elimination of both the signs. According to the more cautious opinion it is better to delay offering prayer until entering his place of residence, and to offer prayers both with and without Qasr he has offered prayer after arriving at the limit (allowing Qasr). As regards the place where he intends to stay (for ten days), is the limit allowing Qasr applicable to it, so that the rules concerning journey may cease to operate after arriving there, or not? There is difficulty in deciding about it. So caution must not be given up either by delaying to offer the prayer or offering prayers both with and without Qasr.

Problem #28: The criterion in the eye of the person seeing, ear of the listener and the sound of the person calling to prayer and the weather is that they should all be of the average scale.

Problem #29: According to the stronger opinion, the standard for the inaudibility of the Adhān is its inaudibility in a way that it should not be distinguishable between Adhān and otherwise. Caution must be observed in case where it is distinguishable as Adhān, but its words are not distinguishable, and in the case where the person has not reached the place where the sound is not audible at all.

Problem #30: Where there are neither houses nor walls, it is sufficient to suppose them. Rather they should also be supposed in cases like the abodes of the Bedouins and the like who have no walls in their abodes.

Problem #31: If a person doubts whether he has reached the limit allowing Qasr not, he shall deem not to have reached the limit, and so he shall continue offering full prayers while going on the journey, but shall exercise Qasr on his return, except when he comes across some hindrance, as the brief or detailed knowledge arising about the invalidity of the prayers is against it, like the case of a person who has to offer full prayer for Zuhr at the said place while going on the journey, and intends to offer Asr' prayer with Qasr at the same place.

Problem #32: If a person happens to be aboard a ship or the like, and starts offering prayer before reaching the limit (allowing Qasr) with the intention of offering it without Qasr then he reaches the limit during the prayer, so if it occurs before he performs Ruku' in the third Rak'at, he shall

complete it with Qasr and his prayer shall be valid, provided that he was sure of completing the prayer before reaching the limit; otherwise, if he reaches the limit before starting the third Rak'at, he shall finalise it with Qasr and his prayer shall be valid.

In case he has started the third Rak'at (before reaching the limit), then there is difficulty in applying the rule of Qasr and so it is more cautious for him to complete the prayer with Qasr and then offer it again in full, or complete it in full, and then offer it again with Qasr as is also the case when he reaches the limit after going into Ruku', it shall be difficult to decide. So caution must not be given up by completing the prayer in full, and then offering it again with Qasr. If the person is returning, and starts offering prayer with the intention of Qasr before reaching the limit (allowing Qasr) and then he reaches the limit during the prayer, he shall complete it in full and it shall be valid.

Things that Terminate Application of Rules of Journey

There are a number of things which lead to the termination of application of the rules of journey. They are as follows:

The Home Town. So a journey is deemed to have ended if a person happens to pass from his home town, and after it for offering prayers with Qasr he requires to cover a fresh distance allowing Qasr regardless whether it is his actual hometown, or his place of birth, or a place of his domicile, which is a place chosen as his place of residence and a permanent abode. It is not a condition that he should own some property in it, or should have stayed there for six months.

Of course, it is a condition for the place of domicile that he should have stayed in it for such a period that it may usually be considered his home town and place of residence. Rather sometimes a place is called his home town due to a long period of stay when he happens to stay in a town without the intention of staying in it permanently or with the intention of leaving it.

Problem #1: If a person shuns his actual home town or place of domicile, and chooses another place as his home town, then if he happens to own no property in the former home town, or had some property but it was not worth living, or it was worth living but he did not stay in it for six months with the intention of permanent residence, it shall cease to be called his home town.

If however, the person happens to own some property and has stayed in it for six months after making it the place of his permanent residence, or its being his actual home town, then according to the prevalent opinion of the jurists it shall be called his present hometown, and shall be considered his legal home town, and they make it obligatory on him to offer full prayers on passing from that place as long as his property remains in it. Rather, some of the jurists make it obligatory on him to offer full prayers even when the person owns a property in it even if it is not worth living, and is an orchard of palm trees or the like; rather even in case he has lived in that place for six months, even if without the intention of permanent residence, but, for example, with the intention of trade.

The stronger opinion is, however, against all this, and does not apply the rule of home town in all the cases mentioned, and considers that a place ceases to be the home town of a person absolutely by shunning it, though it is more cautious to find a via media between applying the rule of home town and otherwise particularly in the first case.

Problem #2: It is possible for a man to have two home towns at one and the same time, and make both of them places of his permanent residence, so that he may stay in each of them, for instance, for six months every year. But there is difficulty in accepting more than two home towns for a person, and so observance of caution is necessary.

Problem #3: Apparently, a person who is not independent in his intention and living shall also be deemed dependent on whom he is dependent in matter of home town, so that the hometown of the former shall be the home town of the latter, regardless whether the former is a minor, as is generally

the case, or an adult according to law, as is the case with some male children and a large number of female children, particularly in the early stage of coming of age.

The criterion here is the dependence and lack of independence, as sometimes a discreet minor is found to be independent in his intention and living, while, on the contrary, some times a person who is an adult according to law has no independence (of action and living). It is not exclusively with the father and children, but the basic criterion is dependence even if it is on any other relative or even a stranger. All this relates to the place of domicile, but as regards the actual home town, there is no need of independence of action for determining it, as a home town is not opted or taken by intention. In case of shunning the home land, whatever has been said here shall also apply in that case.

Problem #4: If a person hesitates in migrating from his home town, then apparently it shall continue to be deemed his home town until and unless his migration and shunning that place do not materialize.

As regards the place of domicile there is no difficulty in declaring that it ceases to be called his home town if the person fails to reside in it for a period of time which is usually considered necessary for calling it a home town. If a person has stayed at a place for a period which is usually considered necessary for calling it a home town, then it is more cautious to apply the rules of home town and otherwise; though, according to the stronger opinion, it would also continue to be deemed his home town.

2. Decision for staying continuously for ten days or the knowledge about staying for ten days in it, even if it is not in his control.

Problem #5: The nights lying in the middle of the ten days are included in the stay often days to the exclusion of the first and last nights. So ten days and nine nights are sufficient (for calling it a stay of ten days), and to compensate the deficiency of the day from the (eleventh) day, according to the stronger opinion, as when a person intends to stay from the noon of the first day upto the noon of the eleventh days, as, according to the stronger opinion, the beginning of the day is counted from the dawn. So if a person starts his stay from the sunrise, the end of the tenth day shall be counted at the sunrise on the eleventh day, and not the sunset on the tenth day.

Problem #6: It is a condition that the place of stay must be one and the same. If he intends to stay in several places for ten days, the rule of journey shall not cease to apply to it, as for example, when a person intends to stay at Najaf and Kūfa at one and the same time. Of course, a distance caused by a river or the like shall not affect the unity of the place when the whole area is considered a single town, as the river on two sides of Baghdad and Istanbul, so that if a person intends to stay on both sides of the river, it shall suffice in the termination of the rule of journey.

Problem #7: It is not a condition in the intention to stay not to leave the surrounding walls of a town. Rather, if a person goes out of the surrounding walls of a town to the gardens or farms of the

town, the rules of a resident shall nevertheless apply to him. Rather even if he intends to go out of the limit allowing Qasr, even if it is less than four Farsakhs, it shall not be harmful, when his intention is to return soon, so that his period of stay may not exceed, for instance, one hour or two, in a way that it may not cease to be usually called a stay often days in that town. As regards the stay for period more than that, there is difficulty (in calling a stay of ten days in that town), particularly when it was with the intention of passing the night.

Problem #8: The brief intention is not sufficient in the materialization of stay (for ten days). So if a person is dependent on another, like a wife or friend, if intending to stay as much as on whom he or she is dependent is not sufficient, even the latter intends to stay for ten days, when the former did not know the extent of the latter's stay in the beginning. So after a few days the former comes to know that the latter intended to stay for ten days, he/she shall continue exercising Qasr except when after that he intends to stay for ten days, rather even if he intends to stay, for example, up to the end of the month or until the Eid, which in fact come to ten days, but he/she did not know it at the time of departure, it is not far from being insufficient, and the Qasr being obligatory on him/her; but, as far as possible, caution must not be given up.

Problem #9: If a person plans to stay (for ten days), and then changes his intention, if he has offered the four Rak'at prayers in full during the intention, he shall continue offering full prayers as long as he stays in that place. If he intends to depart after one or two hours, but he has not offered the prayers, or has offered a prayer which does not involve Qasr like the morning prayer, after the change he shall revert to Qasr. If, however, he has offered a four Rak'at prayer in full due to ignorance about his intention to stay (for ten days), or has performed it in full due to vicinity of one of the holy shrines after being ignorant of his intention to stay (for ten days), then he should not give up caution by offering the prayers both with and without Qasr though the obligation for exercising Qasr would not be far from being in conformity with the principles of law.

Problem #10: If a person (on journey) failed to offer a prayer in a way that it was obligatory on him to compensate it, and he compensated it in full, and then changed his intention to stay (for ten days), he shall continue to be governed by the rule of offering full prayers, though there is difficulty (in accepting this rule), and it is more cautious to offer the prayers both with and without Qasr. If the person has changed his intention before the prayer becomes due, then apparently he shall return to exercising Qasr.

Problem #11: If a person plans to stay (for ten days), and then intends to keep fast, then changes his mind after the noon before offering full prayers, he shall revert to exercising Qasr in his prayers, but his fast shall be valid, and he shall be like one who has kept fast and has traveled after the noon.

Problem #12: There is no difference in changing the mind to stay whether he intends not to stay (for ten days) or hesitates in it, so that if it happens after offering the prayer in full, he shall continue to do so. But if it occurs before offering the prayer in full, he shall revert to exercising Qasr.

Problem #13: If the time often days stay is over, he shall not be required to renew his plan to stay in order to offer prayers in full, so that as long as he does not undertake a fresh journey, he shall continue to offer prayers in full.

Problem #14: If a person intends to stay (for ten days), and the rule of offering full prayers is established by offering a single prayer in full, and then the person leaves his place up to a distance less than one allowing Qasr and his intention was to return to the place of his residence as it was the place of his residence where his luggage was still lying, and he had not shunned it, then if he intended to stay for ten days after return in it, there is no difficulty in his continuing to offer his prayers in full. In case his intention was not that, regardless whether he was hesitant or intended not to stay there for ten days after his return, then, according to the stronger opinion too, he shall continue to offer his prayers in full, while going from his place, as well as at the destination and while returning and at the place of stay until and unless he starts a fresh journey, particularly when his destination lies on the way to his home town though it would be more cautious to offer the prayers both with and without Qasr particularly while coming back as well as at the place of his stay, and more particularly when his place of stay lies on the way to his own home town. Of course, if he starts a fresh journey at the time of departing from his place of residence, and intends to return to it, so that it happens to be one of the stopping places in his new journey, he shall be governed by the rule of obligation to exercise Qasr while returning as well as the place of residence. As regards the rule regarding while going and at the destination, there is hesitation in deciding about it, and so caution must not be given up by offering the prayers both with and without Qasr though it is not far from being obligatory to offer the prayers in full in both (i.e. while going as well as at the destination). This is the rule when the person does not intend to depart during the ten days to a place lying at a distance of less than the one allowing Qasr at the beginning. Otherwise, it has already been mentioned that if he intended to return very soon, he shall offer prayers in full. In case otherwise, there shall be difficulty. In case he leaves for a place lying at a distance less than the one allowing Qasr and was hesitant about returning to the place of his residence or otherwise, or was negligent about it, then it would be cautious for him to offer the prayers both with and without Qasr and this caution must not be given up, though, according to the stronger opinion, he shall continue to offer the prayers in full as long as he does not start a fresh journey.

Problem #15: If a person intending to stay (for ten days) has to undertake journey, and then he intends to return to his place of residence, and stay there for ten days, then, if it has happened after reaching four Farsakhs, he shall exercise Qasr going and at the destination as well as while returning.

If the place lies after passing from the limit allowing Qasr he shall exercise Qasr while leaving until when he decides to return, and it shall not be obligatory on him to compensate for the prayers he has already offered with Qasr. As regards the rule relating to the period during the time he decides to return, it is more cautious to offer the prayers both with and without Qasr though it is closer to the traditional authority to continue to exercise Qasr. The same rule shall apply if the person intends

to return without staying at the new place, he shall continue to exercise Qasr even at the place of staying.

Problem #16: If a person starts a prayer with the intention of exercising Qasr then during the prayer, he decides to stay there, he shall offer full prayer. If the person intends to stay and starts a prayer with the intention of offering it in full, and subsequently changes his mind during the prayer, then if it were before going into the third Rukū', he shall complete the prayer with Qasr. If, however, it were after going into the third Rukū', but before completing the prayer, then, according to the stronger opinion, his prayer shall be invalid, and he shall revert to exercising Qasr though it would be more cautious for him to complete it in full, and then offer it again with Qasr and offer it both with and without Qasr as long as he does not undertake journey.

3. Staying for thirty days at the place of hesitation. To hesitation is added the case when he intends to depart the next day but fails to do so, and so on until thirty days pass (in this state of hesitation).

To this category shall be added the case when a person intends to stay, for instance, for nine days, and then decides to stay for another nine days, and so on, in which case he shall exercise Qasr until thirty days, and then start offering prayers in full, even if the time left is not for more than a single prayer (having four Rak'ats).

Problem #17: Apparently a lunar month shall be deemed to have thirty days, even if a person has started hesitating from the first of the month.

Problem #18: It is a condition that the place of hesitation must be one and the same, like the place of residence, so that in case of being more than one, the rule of journey shall not cease to apply.

Problem #19: If a person stays in a place in a state of hesitation, he shall offer full prayers after the completion of thirty days. If he leaves the place of hesitation after it for a place lying at a distance less than one allowing Qasr and intends to return to that place, he shall be governed by the rule concerning the person who intends to stay at some place and leaves it, which has already been mentioned.

Problem #20: If a person remains in a state of hesitation, for instance, for twenty nine days or less, and then travels to another place, and still remains in a state of hesitation, he shall continue to exercise Qasr as long as he remains in that state, except when he intends to stay at a place or has remained in a state of hesitation for thirty days.

Rules Concerning a Traveller

It has already been understood that in case of fulfillment of all conditions, two Rak'ats shall be reduced from the prayers of Zuhr, Asr and Ishā'. The supererogatory prayers for Zuhr and Asr shall also drop, but the other supererogatory prayers shall remain intact, and it is more cautious to offer the Vatrāh prayer (i.e. the supererogatory prayer for Isha' prayer) with the intention of hope (that it would be desirable to Allah).

Problem #1: If a traveller offers a full prayer after the fulfillment of all the conditions for Qasr despite having knowledge of the relevant rule and the subject, his prayer shall be declared void, and he shall be required to offer it again (with Qasr) whether within the due time or after it. If he were ignorant about the actual rule, and that it is a rule that a traveller must exercise Qasr it shall not be obligatory on him to offer the prayer again (with Qasr) not to speak of compensating for it. If a person had knowledge about the actual rule, but he was ignorant of some of the details, as, when he was ignorant of the rule that a journey to a distance of four Farsakhs with the intention of returning makes it obligatory on the person to exercise Qasr or that if his profession was traveling, then if he stays in his own home town for ten days, it shall be obligatory on him to exercise Qasr in his first journey, and such other rules, then if such a person offers full prayer, he shall be bound to offer the prayer again (with Qasr) within its due time or after it.

Similarly, if a person knows the rule but does not know the subject, as when he thinks that his destination does not lie at a distance allowing Qasr and so he offers full prayer despite the place being at a distance allowing Qasr (the same rule shall apply). If a person has forgotten that he was on journey, and so he offers full prayer, and then recalls (that he was on journey), it shall be obligatory on him to offer the prayer again (with Qasr) within the due time. If the person comes to realize it after the due time of the prayer, it shall not be obligatory on him to compensate for it.

Problem #2: According to the stronger opinion, the rules relating to the prayers mentioned here are also applicable to fasting, so that a fast is declared void in case a person has knowledge (about the rules of Qasr during journey) and keeps fast deliberately. Likewise, a fast shall be valid if the person is ignorant of the actual rule to the exclusion of its details and its subject, (in which case his fast shall be declared void). Of course, the rule of forgetfulness does not apply in case of fasting, so that if a person does not keep fast out of forgetfulness, it shall be obligatory on him to compensate for it.

Problem #3: If a person who is required to offer full prayer exercises Qasr his prayer shall be declared void. So also if a person intends to stay, but he exercises Qasr out of ignorance of the fact that he was required to offer full prayers, (his prayer shall also be declared void).

Problem #4: If a person who has forgotten that he was on journey comes to recall it during the prayer, then if it were before going into the third Ruku', he shall complete the prayer with Qasr and would suffice with it.

In case he recalls (that he was on journey) after going into the third Ruku', is prayer shall be void, and it shall be obligatory on him to offer it again, provided that there was sufficient time for it even if up to a single Rak'at.

Problem #5: If the time for offering prayer becomes due while the person is still in his home town, and is able to offer the prayer, but he undertakes the journey without offering the prayer until he crosses the limit allowing Qasr and there is still time left for offering prayer, he shall exercise Qasr. But he should not give up caution by offering full prayer as well.

If the time for offering prayer has become due while he is on journey, and he arrives at his own home town before offering prayer, while the time for offering the prayer is still there, he shall offer full prayer, though it is more cautious for him to exercise Qasr as well.

Problem #6: If a person fails to offer a prayer while in his own town, he shall have to compensate for it by offering the prayer in full even while on journey, in the same way as when he fails to offer a prayer while on journey, it shall be obligatory on him to compensate for it by offering the prayer with Qasr even while he is (back) in his home town.

Problem #7: If a person fails to offer a prayer while he was in his home town at the beginning of the time, but at the end of the time he was on journey, or vice versa, then, according to the stronger opinion, he shall observe the time when he failed to offer the prayer which is the end of the time, so that in the former case he shall offer the prayer with Qasr while in the latter he shall offer the prayer in full, though he should not give up caution by offering the prayer both with and without Qasr.

Problem #8: A traveller who has no intention to stay (for ten days) shall have the discretion to offer the prayer with or without Qasr in the following four places: They are the Masjid al-Harām

(Mecca), the Masjid al-Nabi, Peace be upon and his Progeny, (in Madina), Masjid al-Küfa and the Haram of Imam Husayn, Peace be upon him; though it is preferable to offer the prayer (even in such places) in full. There is hesitation in including the cities of Mecca and Madina in the sanctity of the first two mosques, but caution must not be given up by exercising Qasr. while in Mecca and Madina. To this category do not belong all other mosques and shrines. There is no difference in these mosques, (i.e. Masjid al-Harām, Masjid al-Nabi and Masjid al-Kufa), whether it is their roofs, courtyards or their low lying sections like the Bayt al- Tasht in Masjid al-Kufa.

According to the stronger opinion, the whole holy tomb is included in the Haram of Imam Husayn, and extends from the side of the upper end to the grilled windows adjacent to the portico and from the lower end to the gate adjacent to the gallery, and from behind upto the limit of the mosque, the interior of the mosque and the gallery also being included in it, but the caution must not be given up by exercising Qasr.

Problem #9: The discretion granted in such holy places is of a permanent nature, so that if a person starts offering prayer with the intention of offering it in full may change it into a prayer in full, or vice versa, as long as he has not surpassed the place where such change is allowed. Rather, there is no objection if he intends to offer the prayer without specifying to be with or without Qasr from the beginning and opts for either of them later.

Problem #10: To this category of discretion in prayers mentioned here does not belong fasting, so that in such holy places it is not valid to keep fast as long as one does not intend to stay there or has not remained there in a state of hesitation for thirty days.

Problem #11: After every Qasr prayer, it is approved to recite thirty times: “*Subhānallāh wal Hamdu lillāh wa là ilāha illallāhu vallāhu Akbar*”.

Chapter on the Jamā'at Prayer

Among all the obligations, specially those relating to the daily prayers, offering prayers with Jamā'at is one of those recommended emphatically, and it is particularly emphasized in respect of offering the Morning, Maghrib and Ishā' prayers. It has a tremendous reward. But it is primarily not declared obligatory, by Shari'ah or any other provision, except in case of the Jum'ah prayers with the condition of fulfillment of its relevant conditions mentioned in its proper place. It is not legally valid in any of the initially supererogatory prayers, even if they are rendered obligatory due to a vow or the like, except the prayer for rain (Istisqā). It has already been mentioned that in case of the prayer for the Eid al-Fitr and Eid al-Adha it is more cautious to offer them (with the intention of offering) them individually, though there is no objection in offering them with Jamā'at with the intention of hope (that it would be desirable to Allah).

Problem #1: The uniformity of the prayer of the Imam and his follower as regards its kind and quality is not a condition for the validity of the Jamā'at. So a person offering any daily prayer may offer it with the Imam who may be offering any other prayer, even if their prayers differ as regards their being with or without Qasr and Ada' (offered at the due time) or Qadā (i.e a compensatory prayer offered after the due time).

The same is the case with the Ayāt prayers, so that they may also differ (as when one of them is offering the Ayat prayer for earthquake, and the other for solar or lunar eclipse).

Of course, it is not permissible for a person offering a daily prayer to offer it behind the Imam offering the prayers for Eid al-Fitr or Eid al-Adhā, or Ayāt or burial, or even the prayer for caution or circumambulation (*Tawaf*) or vice versa.

Likewise, it is not permissible to follow an Imam who is offering any of the above-mentioned five prayers different from one another. Rather there is difficulty in declaring the prayer for circumambulation and cautionary prayer with Jamā'at as valid.

Problem #2: The minimum number required to hold a Jamā'at other than on Friday and the two Eids (i.e. Eid al-Fitr and Eid al-Adha) is two persons including the Imam, regardless whether the persons offering prayer behind the Imam are men or women, or, according to the stronger opinion, even a discreet boy.

Problem #3: It is not a condition in holding a Jama'at for a prayer other than the Jum'ah prayer, prayers for two Eids (i.e. the Eid al-Fitr and Eid al-Adhā) and some secondary prayers called "*Ma'ādah*", provided that they are valid according to the Shari'ah, that the Imam should have the intention of Jamā'ah and Imāmat (i.e. leading the prayers), though his award for it depends on it. As regards the person offering prayer behind the Imam, it is obligatory on him to have the intention of following the Imam (Iqtida) so that if he fails to do so, the Jamā'at shall not be held even if he follows the Imam in his actions and words.

It is also a condition that there should be a single Imam to lead the prayers, so that if the person offering prayer behind the Imam has intention of following two Imāms simultaneously, the Jamā'at shall not be held, even if they are offering the prayers together. It is also obligatory to specify the Imām by name, or description or mental or external gesture, as intending to follow the present Imam, even if he does not know him by face provided that he knows that the Imam is a morally sound person, possessing the qualification required for leading the prayers. If a person intends to follow one of the two present persons, the Jamā'at shall not be held, though later he intends to specify one of them.

Problem #4: If a person doubts whether he had the intention of following the Imam in prayer or not, he shall decide against it, though he may know that he had stood there with the intention of attending the Jamā'at, even if outwardly he looked like following the Imām.

Of course, if he is busy in doing something done by the followers in prayers, as, for example, preferably keeping quiet in a Jama'at, he shall decide in favour of attending the Jama'at,

Problem #5: If a person has the intention of following a person named Zayd, and he turns out to be 'Umar, then if 'Umar is not morally sound, his Jamā'at and prayer shall be declared void, if he has added a pillar under the impression of following the Imam otherwise, its validity shall not be devoid of force. It is more cautious to complete the prayer, and then offer it again.

If Umar happens to be morally sound, then prayer and Jama'at of the follower shall be valid, according to the stronger opinion, regardless whether he intended to follow Zayd under the impression that the present person leading the prayers is Zayd, or he intended to follow the present person leading the prayers, but he had the impression that the present Imam is Zayd. It is, however, more cautious for him to complete the prayer, and offer it again in the first case, even if it is different from the individual prayer.

Problem #6: According to the more cautious opinion, it is not permissible for the person offering prayer individually to shift to Jamā'at during the prayer.

Problem #7: Apparently it is permissible to shift from Jamā'at to offering individually even if voluntarily in all circumstances, even if he intended to do so from the beginning of the prayer, but it is more cautious not to shift it, except in case of emergency, even if it is a worldly one, particularly in the latter case.

Problem #8: If a person intends to offer prayer individually after the Imam has recited the Surah from the Quran but before he goes into the Rukū', then it would not be obligatory on him to recite the Surah from the Quran, rather if it happens during the recitation of the Surah, it would be sufficient for him after the intention of offer the prayer individually to recite the remaining part of the Surah, though it would be more cautious to recite it again with the intention of closeness (to Allah) and hope (that it would be desirable to Allah), particularly in the latter case.

Problem #9: If, during the prayer, a person intends to offer the prayer individually, according to the more cautious opinion, it shall not be permissible for him to shift over to Jamā'at.

Problem #10: If a person joins the Imam in the Rukū' before he lifts his head from it, even if after reciting the Dhikr, or he joins him before it, but does not start the prayer until the Imam goes into the Rukū', it would be permissible for him to join the Imam and it would be considered a single Rak'at in his account, and this is the last place where he may join the Imam in a Rak'at at the beginning of the Jamā'at. So joining the Rak'at at the beginning of the Jamā'at depends on joining the Imam in the Ruku' before he starts raising his head from it.

In the other Rak'ats, there is no harm if the person fails to join the Imam in the Ruku', so that he may perform the Rukū' even after the Imam has raised his head from it, provided that he joins him in a part of the Rak'at before the Ruku'; otherwise, there shall be difficulty.

Problem #11: Apparently when a person joins the Jamā'at in the beginning of the Rak'at or during the recitation of the Sūrah, and incidentally he remains behind the Imam in Ruku' and what is affiliated with it, his prayer and Jamā'at shall be valid, and it shall be considered a Rak'at in his account.

What we have mentioned in the previous Problem is exclusively meant for the case when a person joins the Jama'at while the Imam is offering Rukū', or before it after the recitation of the Surah from the Quran.

Problem #12: If a person goes into Rukū' with the idea of joining the Imam in the Rukū', but could not join him, or doubts whether he has joined him in the Ruku' or not, it would not be far from declaring the validity of his prayer individually, and it is more cautious for him to complete the prayer, and offer it again.

Problem #13: According to the stronger opinion, there is no objection if a person joins the Jamā'at with the intention of having Rukū' with the Imâm hopefully in spite of not being sure about it, so that if he succeeds in joining him, his prayer shall be valid; otherwise, it would be void even if he performs the Ruku'.

It would be a similar case when he recites Takbirat al-Ihram with the intention that if he joins the Imam, he shall follow him otherwise, he would offer the prayer individually before the Ruku', or he may wait for the second Rak'at on the condition mention in the following Problem.

Problem #14: If a person intends to follow the Imâm, and recites Takbir, then the Imam raises his head before the person performs Rukū', the person shall be bound to offer the prayer individually, or wait for the Imam to stand up for the other Rak'at, so the person shall make it his first Rak'at, provided that the Imam does not delay the prayer in a way that he ceases to be following him otherwise, it would not be permissible for him to wait.

Problem #15: If a person joins the Imam in his first or second prostration in the last Rak'at, and intends there by to obtain the advantage of the Jamā'at, he shall have the intention (Niyyat), recite Takbir, and perform one or two prostrations and Tashahhud (with the Imam), and then get up after the Imam has recited the Salutation. But he should not give up caution by completing the Prayer and offer it again, though it is sufficient to have the intention, recite the Takbir and perform other things while following the Imam, when the validity of his prayer shall not be devoid of validity.

It is better for the person not to join this Jamā'at (at this stage). If a person joins the Imam in the last Tashahhud, it would be permissible for him to join him after having intention (Niyyat) and reciting Takbir, and then sitting with the Imam and reciting Tashahhud, so that when the Imam recites Salutation, he should stand up and complete his prayer, and that intention and Takbir shall be sufficient, and he shall thereby obtain the advantage of the Jama'at , although he has not joined the Imam even in performing a single Rak'at.

Conditions for Jama'at Prayers

There are some conditions in addition to what have been mentioned earlier. They are as

First There should be no hindrance between the Imam and the followers or some of the followers with others who are source of link between the Imam and others, so that they may not see the Imam. This is a condition when the follower in the prayer is a male. In case, however, a female follows a male in prayer, there is no objection if there is a hindrance between her and the Imam, nor if there is a hindrance between her and the other follower. If, however, there is a hindrance between a female follower and other female followers who are a link between her and the Imam, or between her and the female, with the supposition of the validity of a female leading the prayers, then there is difficulty.

Second, That the place where the Imam is standing should not be higher than the place of standing of the followers, except when it is negligible. It is more cautious to depend on the amount of difference in the height according to which usually it is not considered higher even if by way of indulgence. There is, however, no objection if the place of standing of the followers is higher than that of the Imam, even if to a great extent, but the extent should be according to the prevalent custom as the roof of a shop or a house, but, according to the more cautious opinion, not that of the lofty buildings (or sky scrappers) which have become common in this age.

Third. The followers should not be far way from the Imam or the first row, so that according to the prevalent opinion, the distance becomes too much. It is more cautious that between the place of prostration of the followers and the place of standing of the Imam, or between the place of prostration of the followers in the following row and that in the forward one there should not be a distance of more than the usual foot.

It is more cautious than the above that the place of prostration of the followers in the following row should be near the place of standing of those in the forward row and not more.

Fourth. The place of standing of the followers should not be forward than that of the Imam, and it is more cautious that it should rather be backward even if somewhat. There is no harm if the follower goes forward than the Imam at the time of Rukū' or prostration due to his larger size, provided that he is not forward than the Imam while standing, though it is more cautious to observe this condition in all circumstances, particularly at the time of sitting, his knees should go forward than those of the Imam.

Problem #1: A darkness or dust which hinders the followers from seeing the Imam shall be considered a hindrance. Similar is the case of a river or a road, provided that (due to these things) there is not a distance disallowed in Jamā'at between the Imam and the followers. Rather, apparently a net is also not considered a hindrance, except when its holes are too small in a way that it may fall under the category of a curtain or wall. As regards a transparent glass, it is also quite close to not being considered a hindrance, though it is more cautious to avoid it.

Problem #2: There is no objection in a small hindrance which does not preclude observation at the time of prayers, even if it hinders observation at the time of prostration, as when it has a height of the span of a hand or more, when it is not a hindrance in observation while sitting; otherwise, there shall be difficulty (in not considering it a hindrance), and so caution should not be given up in its case.

Problem #3: There is no objection in the hindrance caused by the followers in the prayers standing in the forward rows, even if they have not yet started the prayer, though they are preparing to do so, in the same way as there is no objection if some or most of those standing in the first row are not able to see the Imam due to length of the row.

Same is the case when those standing in the second row are not able to see the Imam due to the first row if the first row is too long.

Problem #4: If the rows have reached until the gate of the mosque, and one or more rows are standing outside the mosque in a way that one of them is standing, for example, on the entrance and others on both sides of the gate, then it is more cautious to declare the prayer of those on both the sides of the first row (outside the mosque) between whom and the Imam there is a hindrance (i.e. the wall); rather, the invalidity of their prayer is not devoid of force.

Same is the case with those standing on both sides of the internal Mihrāb (inside the front wall, so that there is a hindrance between them and the Imam).

Of course, the prayer of all (those standing in) the other rows shall be valid.

Problem #5: If during the prayer some hindrance or distance takes place between the Imam and the followers, then it would be considered to have been there from the beginning, and consequently the Jamà'at shall be declared void, so that the prayer shall be considered to have been offered individually.

Problem #6: There is no harm in a temporary hindrance (which is not of a permanent nature) as the passing of a human being or an animal (from the front of those offering prayers).

If, however, those passing are united (in a line) it shall not be permissible, even if they are moving (and not standing).

Problem #7: If the prayer of those in the forward row is finished, there is difficulty in the validity of the prayer of those standing in the following row, even if those in the forward row (stand up and) join the prayer immediately. So caution must not be given up by shifting to offering the prayer individually.

Problem #8: If it is known that the prayer of those in the forward row has been void, the prayer of those in the following row shall also automatically be declared invalid, if some distance or hindrance has taken place.

Of course, in case of ignorance (about the invalidity of the prayers of those in the forward row), the prayer of those in the following row shall be considered valid.

If, however, the prayer of those in the forward row is valid according to their own *Taqlid*, but it is invalid according to the *Taqlid* of those in the following row (or rows), there shall be difficulty in considering it a Jamā'at in spite of the creation of the distance or hindrance (as a result of the invalidity of the prayer of those in the forward row).

Problem #9: It is permissible for those standing in the following row to recite Takbirat al-Ihrām before those standing in the forward row, when the latter have stood up and are preparing to recite the Takbirat al-Ihrām very soon.

Rules Concerning Jamā'at Prayer

According to the stronger opinion, it is obligatory on the follower in a prayer to give up reciting the Sūrah of the Quran in the first two Rak'ats in the prayers offered quietly and also in the first two Rak'ats in the prayers offered loudly, in case he is hearing the voice of the Imam even if in the form of a humming.

In case, the follower in a prayer does not listen the voice of the Imam even in the form of humming, it is permissible, rather approved, for him to recite the Sūrah of the Qur'ān.

It is more cautious in case of the last two Rak'ats in prayers offered loudly that he should give up reciting the Surah of the Quran, if he is able to listen the recitation of the Sūrah by the Imam and start reciting *Tasbih*.

In case of the (two Rak'ats of) the prayers offered quietly, he is like one offering prayers individually, and so it is obligatory on him to recite the Sūrah of the Quran, or Tasbih, as he wishes, regardless whether he listens to the recitation of the Surah of the Quran by the Imam or not.

Problem #1: There is no difference in the follower's not listening (recitation of the Sūrah of the Quran by the Imam) whether it is due to the long distance, too many sounds, his deafness or something else.

Problem #2: If a person is able to listen to a part of the recitation of the Surah of the Quran by the Imam to the exclusion of the other parts, then it is more cautious to give up reciting the Surah absolutely.

Problem #3: If a person doubts whether he is listening the voice of the Imam or not, or whether it is the voice of the Imam or some one else, then it is more cautious for him to give up reciting the Surah of the Quran, though, according to the stronger opinion, it would be permissible to recite the Sūrah.

Problem #4: It is not obligatory on the follower in the prayer to patiently listen to the recitation of the Surah of the Quran by the Imam, though it is more cautious to do so.

Likewise, it is also not obligatory on him to hasten in standing up when the Imam recites the Surah of the Quran in the second Rak'at, and it is permissible for him to make his prostration longer, and stand up after the Imam has recited a part of the Surah of the Quran, provided that it does not create an inordinate delay.

Problem #5: The Imam is not responsible to the follower for something other than the recitation of the Surah of the Quran in the first two Rak'ats when he is following him in the two Rak'ats. In the last two Rak'ats, the follower is like one offering prayers individually even if the Imam recites Surat al-Hamd (i.e. the Chapter 1 of the Quran) in the last two Rak'ats, and the follower listens to it, observing the caution mentioned in the beginning of this Chapter. If the follower has not joined the

Jama'at in the first two Rak'ats, it shall be obligatory on him to recite the Surah of the Quran in both the Rak'ats, as they would be the first two Rak'ats of his prayer. If the Imam does not allow him to recite the other Surah of the Quran, he shall suffice with the recitation of the Surat al-Hamd and leave the recitation of the other Surah, and join the Imam in the Ruku'. If the Imam does not give him enough time to complete even Surat al-Hamd, then according to the stronger opinion, it would be permissible for him to complete the recitation, and join the Imam in the prostration. It may be closer to caution too, though it would be permissible for him to have the intention of offering the prayer individually.

Problem #6: If a person joins the Imam in the second Rak'at, the Imam shall be responsible to recite the other Surah of the Quran, and he shall follow the Imam in reciting the Qunut and Tashahhud, though it is more cautious for him to bend while sitting when the Imam is reciting Tashahhud (in order to show that unlike others, it is his first Rak'at, then after standing up, it shall be obligatory on him to recite (the Surat al-Hamd as well as) the other Surah of the Quran, as it would be the third Rak'at of the Imam, regardless whether the Imam recites Surat al-Hamd or Tasbeeh in it.

Problem #7: If the follower in a prayer recites (Surat al-Hamd and another Surah from the Quran) behind the Imam, as an obligation, as in case the Imam has already offered one or two Rak'ats, or by of approval, as in case of the first two Rak'ats of the prayers offered loudly, when he is not able to listen to the voice of the Imam, it shall be obligatory on him to recite them quietly, even if the prayer happens to be one offered loudly.

Problem #8: If a person joins the Imam in the last two Rak'ats, then if he joins the Imam before his Ruku', it shall be obligatory on him to recite the Surat al-Hamd and the other Surah of the Quran, but if the Imam does not allow him enough time to complete both, he shall give up the recitation of the other Surah. If the person knows that if he joins the Jama'at, the Imam shall not give him enough time to recite (even) Surat al-Fatihah (Surat al-Hamd), then it would be more cautious for him not to join the Jama'at, except after he goes into the Ruku'. So he shall recite the Takbirat al-Ihram and then go into the Ruku' with the Imam, in which case it shall not be obligatory on him to recite (the other Surah of the Quran).

Problem #9: It is obligatory on the follower in prayers to allow the Imam in its actions, in the sense that he should neither do anything earlier than the Imam nor delay anything which is ostensibly inordinate. As regards the words, according to the stronger opinion, it is not obligatory on the follower to follow the Imam, except in reciting the Takbirat al-Ihram, in which case it is obligatory on him neither to recite it before the Imam nor along with him. It is more cautious for him not to start reciting it before the Imam has finished its recitation, without there being any difference in the words which can be heard or otherwise, though it is more cautious to do in case of the words which are audible, particularly in case of Salutation. If a person fails to follow the Imam in what it is obligatory on him to follow, he shall be considered to have sinned, but his prayer as well as his Jama'at shall be valid, except when he performs Ruku' while the Imam is still busy in reciting the

Surat al-Hamd and the other Surah of the Quran in the first two Rak'ats on his own behalf and on behalf of the follower. In such case, the validity of his prayer, let alone his Jamā'at, shall be difficult, rather forbidden, as when he performs anything earlier or ostensibly too late than the Imam in a way that it loses the form of Jamā'at, and so his Jamā'at shall be declared void, even in case where his prayer is deemed valid.

Problem #10: If a person recites Takbirat al-Ihrām before the Imam erroneously or under the impression that the Imam has already recited his Takbir, his prayer shall be considered to have been offered individually. If he intends to offer it with the Jamā'at, he shall shift it to the supererogatory one, and complete it after two Rak'ats.

Problem #11: If a person raises his head from the Ruku' or prostration before the Imam erroneously or under the impression that the Imam has already raised his head, it shall be obligatory on him to revert and follow the Imam, and in this case an excess in the pillar shall not harm the prayer. If he fails to revert, he shall be deemed to have sinned, and his prayer shall be valid if he has recited the Dhikrs of both (the Ruku prostration) along with their obligatory things other wise, it would be more cautious to declare his prayer to be void, and it is even more cautious than that to complete the prayer, and then offer it again. If the person has raised his head deliberately before the Imam, he shall be deemed to have sinned, but his prayer shall be declared valid if it were after the recitation of the Dhikr and the other obligatory things; otherwise, his prayer shall be declared void, if he has given them up deliberately. If he has raised his head deliberately, it would not be permissible for him to follow the Imam, so that if he follows the Imam deliberately, his prayer shall be declared void due to the deliberate excess. In case he follows the Imam erroneously, the same rule shall apply if there has been a pillar in excess.

Problem #12: If a person has raised his head from the Ruku' before the Imam erroneously, and then reverts to it in order to follow the Imam, and then the Imam raises his head before he reaches the limit of Ruku', it shall not be far from likely to declare his prayer void, though it is more cautious for him to complete the prayer, and then offer it again.

Problem #13: If a person raises his head from prostration, and then sees that the Imam is still in prostration, and then thinks that it is the first prostration, so he reverts to it intending thereby to follow the Imam, but later it transpires that it was the second prostration, then there is difficulty in accounting it for the second. So caution must not be given up by him by completing the prayer, and offering it again. If the person thinks that it was the second prostration, and, therefore, he performs another prostration with that intention, but subsequently it transpires that it was the first, he must consider his prostration to be the second, and now he must have the intention of offering the prayer individually and finalize the prayer, though it is not far from being permissible to follow the Imam in the second prostration, and delay it until he joins the Imâm, and the first case shall be more cautious, in the same way as it would be more cautious to offer the prayer again, despite following the Imam.

Problem #14: If a person has performed Rukū' or prostration before the Imam deliberately, it shall not be permissible for him to follow the Imam (subsequently) If it were done erroneously, then it shall be obligatory on him to revert to standing up or sitting, and then performing the Ruku' or prostration shall not be devoid of force, though it is also not free from difficulty. Nevertheless, it would be more cautious to offer the prayer again.

Problem #15: If a person is busy offering a supererogatory prayer, when the Jama'at gets ready, and he fear he would not be able to join it, then it would be approved for him to discontinue his prayer, (and join the Jama'at). If he were busy offering an obligatory prayer individually, it shall be approved for him to shift to a supererogatory prayer, and then complete it after two Rak'ats, in case has not crossed the limit allowing the shift, as when he has already gone into the Ruku' for the third Rak'at.

Conditions for an Imam of Jamā'at

There are several conditions for an Imam of Jamā'at. They are: Imān (or Shi'ah belief), purity of birth (i.e. legitimate birth), sanity and *Bulugh* (i.e. being of age), when the person following him happens to be of age; rather the *Imāmat* of a minor even when leading some one like him (i.e. a minor) is difficult (to accept as permissible); rather it is close to declaring it inadmissible. It is also a condition that the Imam must be a male, when the person following him is a male rather, according to the more cautious opinion, in all circumstances.

It is also a condition that the Imam must be morally sound, so that it is not permissible to offer prayer behind a profligate or one whose position (as to his being of a legitimate birth) is not known. *Adālat* (or moral soundness) is a psychological condition which impels a person to be constantly pious (or God-fearing) and prevents him from the commission of major sins, rather, according to the stronger opinion, even from the commission of minor sins, let alone the persistence in the commission of what are called major sins, and also from the commission of acts which are usually considered as exponent of an irresponsible attitude of their perpetrator towards faith. It is also more cautious to abstain from things repugnant to the ideal of manhood (*Muruvvat*), though it is not a condition (for an Imam of Jamā'at).

As regards the major sins, they include every sin for which Allah has promised punishment of Fire (or Hell), or a severe punishment ('Iqāb), or which have been strongly condemned, or there is an evidence of their being more heinous than some of the major sins or their likes, or according to the dictates of reason they are major sins, or there is a consensus in Shari'ah over their being major sins, or it has been mentioned in a textual authority that they are major sins.

There are several major sins. They include; despair of Allah's Favour; Consider one self beyond Allah's Grip; Calumny against Allah, His Prophet or the Prophet's successors, (peace be upon them); killing a person prohibited by Allah except when it is demanded by right; Disobedience to the parents; Oppressive usurpation of the property belonging to an orphan ; Slandering a woman having a husband ; Escape from Army duty; Severing the bonds of kinship; Sorcery; Fornication Sodomy; Theft; Perjury; Withholding evidence; False Testimony; Breach of Promise; Fraudulent will; Taking alcoholic drinks; Charging Usury; Getting unlawful property; Gambling; Eating the flesh of the dead; Drinking blood; Eating pork or what has been slaughtered in the name of others than Allah even without there being any emergency; Falling short of weights and measures; Return to *Jāhiliyyah* after Hijrat; Helping the Oppressors and getting support from them; Blocking off enjoyment of rights without any due excuse; Falsehood; Arrogance; Extravagance and Prodigality; Treachery; Calumny; Back-biting; Indulgence in worldly pleasures; Degrading the value of *Hajj*; Abandoning prayers; Refusing to pay Zakāt; Persistence in the commission of the minor sins.

As regards Polytheism (i.e. belief in the existence of Allah's partners); Denial of what has been sent down by Him and War against those close to Him, they are the biggest of the major sins, but

counting them among the conditions for abstinence from them in order to be of a sound moral character would be a kind of indulgence.

Problem #1: The persistence which leads the minor sins to enter the domain of the major sins is the constancy and continuance of committing sin without any intervening repentance. It is not far from being the persistence when a person intends to revert to sin once he has committed it, even if he does not actually commit it, particularly when he intends to revert to it at the time of the first commission of the sin. Of course, apparently its realization does not take place simply by the failure to repent after the commission of the sin without there being any intention of reverting to it.

Problem #2: According to the stronger opinion, it is permissible to give the charge of leading prayer to a person who himself knows that he is not morally sound, but the followers believe in his being morally sound, though, in such case, it is more cautious to give it up. Anyhow it would be a valid Jamà'at, and shall be governed by all its relevant rules.

Problem #3: Moral soundness (*Adalat*) is established through legal testimony and the prevalent notoriety producing satisfaction; rather confidence and satisfaction are sufficient for the purpose in whatever way they might be obtained, even if obtained by means of the following of a group of persons possessing sagacity and righteousness, in the same way as ostensible goodness leads to the impression about moral soundness. Rather, according to the stronger opinion, ostensible goodness is sufficient, even if it has not produced favorable opinion, though to be more cautious this should also be a condition.

Problem #4: It is not permissible for a sitting person to lead a standing person in prayer, nor for a person in a lying posture to lead a person who is sitting.

Likewise, if a person is unable to pronounce letters according to their proper source of extraction (*Makhrāj*) or mixes up the pronunciation of a letter with that of another, or one who mistakes in proper marking of sounds, in case it is due to the person's inability to do so, then it would not be permissible for him to lead one who can do all this properly.

Same is the case of a dumb person leading another who can speak, though the latter may not be able to pronounce the letters properly.

Likewise, there is difficulty in the permissibility of a person who cannot pronounce the letters properly to lead another person who does it properly, where it is not the responsibility of the Imam to lead the followers, as in the last two Rak'ats, and so caution must not be given up.

Problem #5: There is difficulty in the permissibility of Imāmat by persons having some disability, and its caution must not be abandoned by avoiding it, even if he is leading another having a similar disability, or one who is lower in rank than himself, as one sitting leading another who is in a lying posture, and this rule is not devoid of force. Of course, there is no objection if a sitting person leads

another in the same posture, or one who has had Tayammum, or has a splint, to lead another in prayer.

Problem #6: If the Imam and the follower differ in matters relating to prayer according to Ijtihād and Taqlid, it shall be valid for the follower to follow the Imam, even if they do not agree in practice in case the follower is of the opinion that his prayer is valid in spite of the Imam having erred in *ijtihād* or his *Mujtahid* having erred, as when the follower believes that it is obligatory to recite the four Tasbihs thrice, while the Imam is of the opinion that it is obligatory to recite the Tasbihs only once, and so he acts upon it.

The follower must not follow the Imam in case he believes that according to the Ijtihād or Taqlid the Imam's prayer is void, as there would be difficulty where they differ as to the recitation of the other Sūrah of the Quran, even if the follower believes in the validity of his prayer, as when in the opinion of the Imam it is not obligatory to recite another Surah of the Quran and so he gives up its recitation, while the follower holds the opinion that it is obligatory to recite another Sūrah. So in this case caution must not be given up by the follower by giving up following that Imam.

Of course, if the difference between them is not known, it would be permissible for the follower to follow the Imam, and it is not obligatory on him to make query and investigation.

In case, however, there is knowledge about the difference of both in the opinion, and there is suspicion of their difference in practice, then, according to the stronger opinion, it would not be permissible for him to follow that Imam in so far as it relates to the problems in which it is not permissible to follow the Imam despite clear position, and so also there is difficulty in following the Imam in matters where there is difficulty.

Problem #7: If the Imam starts offering prayers under impression that its due time has reached, while the follower believes otherwise, or has doubt about it, it shall not be permissible for the follower to follow that Imam in that prayer. Of course, if he knows that during the prayer the due time of the prayer has reached, he may join the Imam in case judgment is given in the validity of the prayer of the Imam himself.

Problem #8: If a dispute takes place among the Imams, then, according to the more cautious opinion, it is better to give up following all of them.

Of course, if they dispute for bringing another forward, as when each of them invites another to go forward, then the person who is favored by the followers to be preferred must be preferred. In case they also differ, the person possessing all the qualifications must be brought forward.

In case there is no such person, or there may be several such persons, then the person having a better pronunciation should be brought forward. Then the one having better knowledge about the rules of prayer, and then the one who is the oldest in age, should be brought forward.

In the mosque, the Imam who has the charge of leading prayers must be given preference, even if there is another superior to him, though it is better to let the superior one lead the prayers. The owner of the house is to be preferred to others who have permission to lead the prayers, though it is better that the one superior to others must lead the prayer. A Hashimi is to be preferred to another who is equal to him in qualifications.

The above preferences are in consideration of superiority and approval, not by way of necessity and obligation, even as regards the preference of Imam in charge of leading the prayers in a mosque, and so it is not forbidden for another to compete with him, even if he is inferior to him in all respects. But the rivalry (in such cases) is bad, rather contrary to the ideals of manhood, even if the rival is superior to another in all respects.

Problem #9: It is more cautious that a person suffering from black or white leprosy, or one who has been inflicted *Hadd* even if he has repented, should abandon Imāmat, and the followers should give up offering prayers behind them.

The Imāmat of a person who has been left uncircumcised due to some excuse is also disapproved.

Same is the case with a person whose Imāmat is not approved by the followers.

Similarly, it is disapproved for a person having performed Tayammum to lead another who has obtained cleanness by taking bath or ablution; rather, it is better that any person who has any blemish should not lead in prayer another who has no blemish.

Problem #10: If a follower in prayer knows that the prayer of the Imam is void due to his being polluted (or unclean), or due to giving up a pillar of the prayer, or the like, it would not be permissible for him to follow that Imam, even if the Imam believes in the validity of his prayer due to ignorance or inadvertently.

Problem #11: If a follower finds some unclean substance on the garment of the Imam which cannot be excused, then, if he knows that the Imam has forgotten it, it shall not be permissible for him to follow that Imam in the prayer.

If, however, the follower knows that the Imam has been ignorant of the unclean substance, it would be permissible for the follower to offer prayer behind that Imam.

In case the follower does not know whether the Imam is ignorant of the unclean substance or has forgotten it, then there shall be hesitation and difficulty in the permissibility (of the follower's following that Imam in prayer), and so caution must not be given up.

Problem #12: If, after the prayers, it transpires that the Imam was a profligate or unclean, the prayer of those who have offered prayers with him shall be valid, and all those things which are excused in prayer shall be excused in this case as well.

SECTION FOUR - DEALING WITH FASTING (SOWM)

Chapter on Intention (Niyyat)

Problem #1: Intention (Niyyat) is a condition in fasting, so that a person intends to perform that *'Ibādat* (devotional service) prescribed by Shari ah, and determines to keep himself away from all those things which invalidate it with the intention of obtaining closeness (to Allah).

If a person intends to abstain from all those things which vitiate a fast, but does not know that some of things have such effect, as, for example, enema, or considers that they have no such effect, but does not practice them, his fast shall be valid.

Similarly, if he intends to abstain from things which he knows are included among those which invalidate the fast, according to the stronger opinion, his fast shall be valid.

In a fast, after the intention of closeness to Allah and sincerity of purpose, there is no further condition in the intention except specifying the fast which one intends to keep in obedience to the command of Allah.

While keeping fast in the month of Ramadān, it is sufficient to have the intention of keeping fast the next day without specifying it. Rather, even if he has an intention of keeping fast other than of Ramadān in that month due to negligence or forgetfulness, the fast shall be valid, and shall be counted among the fasts of Ramadan, contrary to the one who knows it, so that if he has such intention with knowledge, his fast shall be counted neither as a fast of Ramadān nor otherwise.

According to the stronger opinion, it is indispensable in case of a fast for other than the month of Ramadān to specify the particular category of the fast, such as for expiation, compensation or general vow (*Nadhr*) or a special vow.

It is sufficient to specify briefly, as when it is obligatory on him to keep a special category of fast, and he has the intention to keep fast which he owes, it would be sufficient.

Apparently there is no condition of any specification in a generally recommended fast, so that if a person has the intention of keeping fast the next day for the sake of Allah, it shall be valid, if it is the proper time for it, and the person be one for whom it is valid to keep fast voluntarily.

The same shall be the case if it were a specially recommended fast too, so that it is specified for a particular time, as the blank days (when there is no moon), Friday or Thursday.

Of course, in order to obtain a special reward, it is a condition that the person should keep fast at that particular day and with that special intention.

Problem #2: If a person is keeping compensatory fast for another person, it is a condition that he should have the intention of keeping fast on behalf of another, even if he himself does not owe any fast.

Problem #3: During the month of Ramadān one may not keep any fast except for Ramadān, whether it is obligatory or an approved one, whether the person keeping fast is *Mukallaḥ* for keeping fast or not, as a traveller or the like. Rather even if the person is ignorant of the month being Ramadān or due to forgetfulness, the person keeps fast for another month, the fast shall be counted as one of the month of Ramadān, as mentioned earlier.

Problem #4: According to the stronger opinion, there is no time for the intention according to the Shari'ah in case of a specified obligatory fast, whether it is for the Ramadān or any other month.

Rather the criterion for keeping the fast is the determination and resolution remaining in the heart, even if the person becomes neglectful about his fast due to sleep or the like. There is no difference in the occurrence of this determination whether it takes place close to dawn or before it, and whether it takes place in the night preceding the day in which the fast is intended, or before it. So if a person has intention of keeping fast the next morning, and sleeps with this determination until the end of the next day, according to the most valid opinion, it shall be a valid fast.

Of course, if the person fails to have intention due to some excuse like forgetfulness, negligence or ignorance about the month being that of Ramadān, sickness or journey, and his excuse is removed before noon, its time is extended according to the Shari'ah upto noon, provided that the person has not taken anything breaking the fast. So when it is past meridian, its time is also over. Of course, there is difficulty in application of the rule to all types of excuses; rather in case of sickness, it is not free from difficulty, though it is not devoid of closeness (to validity).

In case of an unspecified fast, the time for option is extended upto the noon, but not after it. So if a person gets up in the morning intending not to keep fast, but does not take anything which may break the fast, then before noon he decides to keep compensatory fast for Ramadān, or expiation or vow in general, it shall be permissible and valid, but not after noon. In case of a recommended fast, the time for option is extended upto when there still some time left when it is possible to renew the intention in it.

Problem #5: If a person doubts about a day whether it is of the month of Sha'bān or Ramadān, it shall be decided to be of Sha'bān, and so it shall not be obligatory on him to keep fast. If the person keeps fast with the intention that it is for the month of Sha'bān, but later it transpires that Ramadān had begun on that day, it shall be counted to be for Ramadān.

Likewise, if a person under the impression that it is still the month of Sha'bān keeps fast as compensatory or for a vow, it shall be counted to be for Ramadān if it coincides with Ramadān. Rather, even if a person keeps fast with the intention that if Ramadān has started it may be deemed to be an obligatory one for Ramadān, otherwise a recommended one, it shall not be far from being valid, even if he had hesitation in his intention as to its time. If a person keeps fast with the intention that it is for Ramadān, but it was not the month of Ramadān, then it would neither be for Ramadān nor for any other month.

Problem #6: If on a doubtful day a person intended not to keep fast, then during the day it transpired that it was a day of Ramadān, then if he has already taken something which breaks the fast or the position has become clear after noon but he has not taken anything which breaks the fast, he shall refrain from taking anything during the remaining part of the day, but shall keep fast in compensation for it.

If, however, it was before noon, and he has not taken anything which breaks the fast, he may renew the intention, and it would be permissible for him.

Problem #7: If a person keeps fast on a doubtful day with the intention that it was for the month of Sha'bān, and then takes inadvertently something which breaks the fast, then it transpires that it was a day of Ramadān, it would be a valid fast.

Of course, if he vitiates his fast by hypocrisy or the like, it shall not be permissible for him, even if it transpires to be a day of Ramadān before noon, and he has renewed his intention.

Problem #8: As it is obligatory to have an intention at the beginning of the fast, it is also obligatory that it must continue throughout the fast. If a person intends to discontinue a specified obligatory fast in the sense that his intention is to withdraw from what is called a fast, then, according to the stronger opinion, the fast shall be rendered void, even if he reverts to the intention of keeping fast before noon. The same shall be the case if a person intends to discontinue his fast due to some blemish in his fast which later turns out to be otherwise, it is also repugnant to the continuance of a fast if a person hesitates in continuing the fast or withdrawing it. The same shall be the case if a person hesitates in continuing his fast due to the occurrence of something which he does not know whether it is something that invalidates the fast or not. In case of a non-obligatory specified fast, if a person intends to discontinue it, then reverts before the noon, his fast shall be valid.

This is all with regard to the intention of discontinuation. But the mere intention to discontinue the fast with the intention of taking something that breaks the fast is not itself something that breaks the fast, according to the stronger opinion, even if it is consequently intended to discontinue the fast. Of course, if a person intends to discontinue a fast, and considering the necessity for it, has such an intention separately, according to the stronger opinion, the fast shall be rendered void.

Chapter on Things Which Must Be Refrained in a Fast

Problem #1: There are some things from which a person keeping fast must abstain. They are as follows.

First & Second: Eating or Drinking, whether usual things like bread and water, or unusual things like pebbles or the juice of trees, even if they are in a very small quantity, like one-tenth of a grain or one-tenth of a drop.

Problem #2: The criterion is the application of the words eating and drinking, though they be in a way unusual. So if water reaches the cavity of his mouth through his nose, it shall be called drinking, though it is in an unusual way.

Third: Sexual Intercourse, whether the person subjected is a male or female, a human being or an animal, in the natural or unnatural way (i.e. from the front or the backside), whether the person subjected is alive or dead, a minor or an adult, whether the person committing the act is keeping fast or the one subjected, in all these cases the fast shall be deemed to be void, even if there has been no ejaculation. The fast is not rendered void if the act is done due to forgetfulness or coercion, depriving the person acting of control, excluding compulsion which also invalidates the fast. If a person indulges in a sexual intercourse out of forgetfulness or due to coercion, and during the act comes to realize (that it invalidates the fast), or the coercion is removed, he must withdraw immediately, so that if he delays the withdrawal, his fast shall be rendered void. If a person merely intended to rub his organ on the thighs, but the penetration has taken place unintentionally, then the fast shall not be rendered void. The same rule shall apply in case a person intends penetration, but it does not take place.

By what has been mentioned about the absence of something that breaks the fast is meant the intention of the person breaking the fast. The sexual intercourse takes place with the penetration of the glans penis or a part of it. Rather the fast shall be rendered void by the mere application of what is called penetration in case of a person whose penis is chopped off, even if there is no part of the penis left unchopped.

Fourth: Ejaculation of the Semen, whether by masturbation, touching, kissing, rubbing (the male organ) on the thighs (of another person), or such other acts which are intended to cause discharge of semen. Rather even in case when the discharge of semen is not intended, but it was the usual consequence of the said act, in that case too it shall render the fast void. Of course, if ejaculation takes place without doing some thing which causes ejaculation in a person as a matter of his habit even without any intention on his part, it shall not render the fast void.

Problem #3: There is no objection if a person performs Istibra' after urinating or pulls off in case he has had Ihtilam during the day, even if he knows that it will cause the emission of whatever semen is left in the passage, when it is done before performing the bath for *Janābat*.

As regards the performance of Istibrâ' after the bath for *Janâbat*, if he knows that it will cause a fresh *Janâbat*, then it is more cautious to give it up; rather the necessity of giving it up is not devoid of force.

It is not obligatory to prevent discharge of semen after ejaculation, if a person wakes up before it, particularly when it may cause some harm and distress.

Fifth: Deliberate Continuance of *Janâbat* upto the Morning in Ramadân or at the time of its Compensation. Rather in the latter case, according to the stronger opinion, the fast shall be declared void if a person gets up in a state of *Janâbat* in the morning, though it may not be deliberate, as also, according to the stronger opinion, the fast of month of Ramadân is rendered void if a person forgets to perform the bath for *Janâbat* at the night before morning until a day or a few days have passed in that state.

Rather it is more cautious to include the fast of other than Ramadân as well, such as the fast for specified vow or the like, though, according to the stronger opinion, it is to the contrary, except in case of the compensatory fast for the month of Ramadân. So caution must not be given up in its case.

As regards the invalidation of the fasts for other than the month of Ramadân or the compensatory obligatory specified or *Muwassa'* fast (which has some vast time for compensation) or a recommended fast due to the deliberate continuation in a state of *Janâbat*, there is difficulty (in accepting it). According to the more cautious opinion, it is void in case of obligatory *Muwassa'*, and according to the stronger opinion, it is not void, particularly in case of a recommended fast.

Problem #4: If a person gets polluted at a time when there is sufficient time neither for taking ritual bath nor Tayammum with the knowledge about it, he shall be treated as one deliberately continuing in a state of *Janâbat*.

If, however, there is sufficient time only for Tayammum, he shall be deemed to have sinned, and his specified fast shall be declared valid, though it is more cautious to compensate for it.

Problem #5: If a person pollutes himself under the impression that there is vast time, but later it transpires that it is otherwise, he shall have no liability, if he had made necessary investigation about it; otherwise, he shall be required to compensate for it.

Problem #6: As a fast is invalidated due to the deliberate continuance in a state of *Janâbat*, so is the fast rendered void on the continuance of pollution due to menstrual or puerperal blood until dawn. So if a woman becomes clean of them before morning, it becomes obligatory on her to perform ritual bath or Tayammum. And in case a woman deliberately fails to take ritual bath or perform Tayammum, her fast shall be rendered void.

Likewise, according to the stronger opinion, it is a condition in the validity of the fast of a *Mustahadah* to perform the ritual baths which are performed during the day for offering prayer to

the exclusion of other baths. So if a woman becomes a *Mustahadah* before offering the morning prayer or the prayers for Zuhr or Asr in case where it is obligatory to perform the ritual bath as in case of Medium or Major Istahadah, and she fails to perform the ritual bath, her fast shall be rendered void, contrary to the case when she becomes a *Mustahadah* after offering the prayers for Zuhr and Asr, and she fails to perform the ritual bath until sunset, in which case her fast shall not be declared void. However, she must not give up the caution by performing the ritual bath for the last night. It shall be sufficient for her to perform the ritual bath before morning in order to offer the prayer for night or the morning. In such case, her fast shall be valid.

Problem #7: If a person has no means for performing the ritual bath or Tayammum, his bath shall be declared valid if he continues to be in a state of pollution due to *Janābat* or the uncleanness due to menstrual or puerperal blood.

Of course, in case of a fast which is invalidated due to the continuance in a state of *Janābat* even unintentionally, as the compensatory fast for the month of Ramadan apparently it shall thereby be rendered void.

Problem #8: For the validity of a fast performance of the ritual bath for touching the dead body is not a condition, as it is also not harmful if a person touches a dead body during the day.

Problem #9: If a person fails to perform the ritual bath due to unavailability of water or the other means for Tayammum and due to tightness of time he is obliged to perform Tayammum for fasting, so if he fails to perform it until he gets up in the morning, he shall be like one who has failed to perform the ritual bath, and he is not obliged to continue in a state of Tayammum while awake until he gets up in the morning, though it would be more cautious.

Problem #10: If a person wakes up after having nocturnal pollution (*Ihtilām*), then if he knows that the pollution has taken place at night, his fast shall be intact if the time is short; otherwise, he shall be required to compensate for the fast of the month of Ramadān, though it is more cautious to keep fast that day and also keep a compensatory fast for it, and though the permissibility of sufficiency for keeping a compensatory fast after the next month of Ramadān is not devoid of force. If the person has sufficient time (for taking ritual bath) and he is keeping a compensatory fast for the month of Ramadān, the fast shall be void (in case he fails to perform the ritual bath). If, however, it were a fast for any other month or a recommended one, it would be valid; other wise, it would be more cautious to affiliate it with that of the month of Ramadān.

In case he does not know the time when the pollution has taken place, or when he know that the pollution has taken place during the day, the fast shall not be rendered void, without there being any difference between his having sufficient time or not, or the fast being a recommended one. It is not obligatory on him to perform the ritual bath immediately, in the same way as it is not obligatory on any person having been polluted involuntarily during the day to perform the ritual bath immediately, though it would be more cautious to do so.

Problem #11: If a person becomes polluted at night in the month of Ramadan, it shall be permissible for him to sleep before performing ritual bath if it is possible for him to wake up once or twice, rather even more particularly if it is his habit to wake up, and in that case his sleep shall not be forbidden, though it is more cautious to give up sleep for the second time or more. If a person sleeps with the hope that he would wake up, but he fails to wake up until morning, if he intended not to perform the ritual bath even if he woke up, or was hesitant about it, or had not decided about it, then if he has not been hesitant, forgetful or negligent, he shall fall under the category of one who deliberately continues in a state of pollution, and so it is incumbent on him to compensate for it and also expiate, as follows. If, however, he intended to perform the ritual bath, he shall be under no liability whether compensating for it or expiating. But a person who has had a nocturnal pollution should not give up caution, in case he wakes up and then sleeps, and does not wake up until morning, by keeping fast for that day and also compensating for it, though, according to the stronger opinion, the fast for that day shall be valid.

If such a person wakes up and sleeps again until the morning, his fast shall be declared void. So it shall be obligatory on him to abstain from things which break the fast in honour of the fast, and also compensate for it. If a person sleeps for the third time, and does not wake up (until morning), according to the prevalent opinion, he shall also have to expiate, though there is hesitation (in accepting this opinion); rather the absence of obligation is not devoid of force. But caution must not be given up.

If a person is forgetful or negligent about performing the ritual bath, and intend neither to perform it nor to give it up, there are two opinions about whether it should be governed by the first rule or the second, the better one being favour applying the second rule to it.

Sixth: According the stronger opinion, Deliberate Lying about Allah, the Exalted, His Prophet and the Imams, Peace be upon them, and, likewise Lying about the other Prophets and saints, Peace be upon them, according to the more cautious opinion, without there being any difference whether the lie relates to this world or Hereafter, and whether it is oral or in writing, or by indication or indirect expression, or the like, which establishes the lie against them, (Peace be upon them). So if a person asks him whether the holy Prophet, Allah's Blessings be upon him and his Progeny, has said so and so, he makes a sign meaning "Yes" instead of "No", or "No" instead of "Yes", his fast shall be rendered void. Likewise, if a person relates something true from the holy Prophet, Allah's Blessings be upon him and his Progeny, and then he should say that what I had related from the Prophet was untrue, or relates something untrue from him at night, and in the day he should say that what he had related from him at night was true, his fast shall be rendered void. There is no difference whether a person lies about them in what relates to their sayings or otherwise, like the false reports that he had done so and so, or he was such and such.

According to the stronger opinion, the rule of invalidity of the fast shall not apply in case the purpose of the person is not serious with regard to the reports, as when he is just joking or talking nonsense.

Problem #12: If a person intends to tell the truth, but it turns out to be untrue, it shall do no harm to the fast. The same shall be the case if a person intends to tell something untrue, but it turns out to be true, even if he knows that it invalidates the fast.

Problem #13: There is no difference whether the lie has been invented by the person himself or by some one else, as it were mentioned in any of the books on history or Traditions, if it were in the form of a Tradition. Of course, it would not invalidate his fast if he relates something as a story or a narration from any other person or book.

Seventh: Immerse the Head in Water, even if the body remains outside it. The impure water is not treated at par with pure water. Caution must not be given up in case of something like rose water, particularly when it has lost its odor. There is, however, no harm in pouring water (on the head) or the like, in a way it may not be deemed to be immersing the head in the water, even if there is a large quantity of water used. Rather there is no harm even if a part of the head is immersed in water even if some of its adjoining parts are also included at that time. It shall not be called immersing the whole head if it is done in parts, as when half of the head is immersed in water and then taken out, and then the other half is immersed (and taken out).

Problem #14: If a person throws himself into the water under the impression that it would not amount to immersing in the water, but immersing in the water takes place, his fast shall not be rendered void, provided that immersing does not usually takes place in such case. If, however, he is aware that it may result in dipping in water, then it is more cautious to affiliate it with the case of doing it deliberately, except when the person is sure of the contrary.

Problem #15: If a fasting person dips in the water while performing the ritual bath, if the fast were voluntary, or an obligatory one with a vast time (to compensate for it), his fast shall be rendered void, but his bath shall be valid. If the fast were a specified obligatory one, then if at the very beginning he intended to perform the ritual bath by dipping in water, his fast and ritual bath shall both be rendered void, though there is hesitation in it. If a person has intention of performing the ritual bath while still under the water, or at the time of getting out of it, his bath shall be declared valid, but not his last in a month other than the month of Ramadān, as in the month of Ramadān, both (the fast and the ritual bath) shall be declared invalid, except when he repents and intends to perform the ritual bath, while he is coming out of the water, in which case it would be valid.

Eighth: Putting thick dust in the throat, or even if the dust is not thick, though, according to the stronger opinion, it shall be otherwise, whether the dust has been raised by himself by means of sweeping or the like, or it is raised by another, or it has been raised by the wind when there was a possibility of its reaching him and he also did not prevent it. In case it was difficult to abstain from it, there is hesitation (in declaring the fast void). There is no objection in it in case of forgetfulness, negligence or a coercion depriving the person of control, or under the impression that it would not reach him, except when the dust gathers in the cavity of the mouth, and he swallows it deliberately. According to the stronger opinion, steam is not to be affiliated with dust, except when it transforms

into water in the mouth and the person swallows it, in the same way as smoke is also not be affiliated with dust. Of course, according to the more cautious opinion, it shall be affiliated with the dust if a person swallows a lot of smoke.

Ninth: Enema with a liquid, even due to a disease or the like. There is, however, no objection if - it is performed with a solid thing used for treatment like a suppository, but there is difficulty if opium or the like is entered for the addicts or others for the purpose of nourishment or intoxication, and so caution must not be given by abstaining from it. The same rule shall apply to everything which provides nutrition through the same passage; rather through any other passage too, as an injection which is nutritious. Of course, there is no objection in an injection which is not nutritious and is meant for treatment, in the same as there is no objection in putting some medicine in the body by means of an operation.

Tenth: Deliberate Vomiting, even if it is necessary except the unintentional vomiting. The criterion here is what is called vomiting. If a person swallows something at night which has to be vomited, and vomiting during the day may be an introduction to it, his fast shall be intact, if he does not vomit by way of disobedience or sin, even if the emission of the thing depends on vomiting.

Of course, if suppose a person has swallowed something which according to the Shari'ah must be vomited, in that case there is hesitation in the validity or invalidity of the fast, though it would be more in keeping with the principles of law to declare it valid.

Problem #16: If something comes out by belching, and reaches the cavity of the mouth, and is then swallowed unintentionally, the fast shall not be rendered void. If a person swallows it deliberately, the fast shall be rendered void, and he shall be liable to compensate for it, and also expiate. It is not permissible for a fasting person to belch deliberately, when he knows that some thing will come out with the belch by which it will be called vomiting, or it may go back after coming out unintentionally. If, however, he is not sure about it, but there is only a possibility of it, then there is no harm in it, as in such case if something comes out and goes back again, his fast shall not thereby be rendered void. This is so when it is not his habit; otherwise, there shall be difficulty (in its permissibility), and so caution must not be given up.

Problem #17: A fast is not invalidated by swallowing the saliva which has gathered in the mouth, even if it has gathered due to recalling something. Likewise, according to the stronger opinion, (a fast is not invalidated) by swallowing the phlegm which has not yet reached the cavity of mouth, without there being any difference whether it has come down from the head or has emerged from the chest (or lungs). As regards the phlegm which has reached the cavity of mouth, caution must not be given up by abstaining from swallowing it. If the phlegm has come out of the mouth, and then a person swallows it, his fast shall thereby be rendered void. The same rule applies to saliva. Rather, (the same rule shall apply) if there is a pebble in the mouth of a person, and he takes it out, and there is some saliva on it, then the person puts it again into his mouth and swallows it. (The same rule shall apply), if a tailor wets a thread by his saliva, then puts it back into his mouth, and

swallows it along with the moisture on it. (The same rule shall apply), if a person uses the tooth brush, and it comes out wet with saliva, and then he puts it back into his mouth and swallows the moisture etc., on it, and his fast shall be rendered void.

Of course, if the moisture on the tooth brush is mixed up with his saliva in a way that it may not be said that he has swallowed his saliva with something other in it, there shall be no harm. The same rule applies to tasting broth, chewing the food or the amount of water left after rinsing. Likewise, there is no harm in chewing the bark of a tree, according to the more valid opinion, even if its taste has remained in his saliva as long as it is not due to the scattering of its particles, even if they are absorbed in the mouth.

Problem #18: Whatever has been mentioned above with regard to the things which invalidate fast besides continuance of the state of pollution, the details of which have already been given, the fast is invalidated thereby when such things occur deliberately and not otherwise, as forgetfulness, or lack of intention which do not invalidate the fast of all kinds, in the same way as the intention of all kinds invalidates fast, without there being any difference between a person who has knowledge about the rule, or, according to the stronger opinion, one who is ignorant of the rules, or, according to the more cautious opinion, one who is incapable. (or interdicted).

If a person eats something out of forgetfulness, and then he supposes that his fast has been rendered void, and so he breaks his fast deliberately, his case shall be treated as one who breaks his fast deliberately. If a person is coerced in a way that he has no control, and something is put into his mouth, his fast shall not thereby be rendered void. (On the contrary), if a person is compelled (to eat something) and eat something by himself, his fast shall be declared void, If a person, while practicing *Taqiyyah* from the opponents (i.e. the Ahl al-Sunnah), in any case acts according to their verdict or decision, it shall not break his fast. So if a person commits something by way of *Taqiyyah*, which in the opinion of the opponents does not break a fast, according to the stronger opinion, his fast shall be valid. The same rule shall apply if a person, (by way of *Taqiyyah*), breaks his fast before the disappearance of the redness (from the east, according to the practice of the Ahl al-Sunnah). The same rule shall apply if in case of a doubtful day to its being a day of Sha'ban or Ramadān), a person breaks the fast, by way of *Taqiyyah* due to the judgment of their judges according to the standards of Shari'ah which do not make it obligatory to compensate it despite the continuance of doubt, according to the stronger opinion.

Of course, if a person knows that their decision about Eid is contrary to the actual position, it shall be obligatory on him to break the fast by way of *Taqiyyah*, but, according to the more cautious opinion, he shall be bound to compensate for it.

Chapter on Acts Which are Disapproved For a Person Keeping Fast

Problem #1: There are a number of things which are disapproved for a person keeping fast. They are as follows:

1. Coming in contact with women by kissing, touching or sporting with them, which is lustful for young men, and for those who become sexually excited it is even stronger. This is when a person does not intend discharge of semen, and it may not occur to him by habit; otherwise, it is forbidden in a specified fast. Rather it is better to give it up, even in case of a person who by habit is not sexually excited, though there is likelihood of his being excited by it.
2. Applying antimony, when sprinkled in the eyes, or when it contains musk, or it reaches the throat, or it is feared that it will reach the throat, or its (bitter) taste may be found in the throat due to the aloe, etc., contained in it.
3. Pulling out blood by cupping, etc., which may cause weakness, or whatever belongs to the same category, which may cause excitement of bile, without there being difference in its practice in Ramadān or any other month? Rather its disapproval is stronger during Ramadan Rather it is forbidden during Ramadān, but generally even in a specified fast, when it is known that it may cause swooning which invalidates fast, and there is no necessity for doing it.
4. Entering *Hammām* (to take bath) when there is fear that it may cause weakness.
5. Snuffing, particularly despite the knowledge it may reach the brain or the stomach. Rather, it would invalidate the fast if it reaches the throat.
6. Smelling the flowers, particularly the narcissus, and it means any vegetable having a (pleasant) smell. Of course, there is no harm in using perfumes as they are the gifts of a person keeping fast, but it is better to give up the perfume of musk. Rather, it is disapproved for a fasting person to apply it, in the same way as it is better to give up smelling strong scents which may reach the throat.

Problem #2: There is no harm if a man sits in water (for steaming), but it is disapproved for a woman, in the same way as it is disapproved for both men and women to soak the cloth and place it on their bodies. There is no harm in chewing foodstuff for feeding children or birds, or tasting broth, to the exclusion of other things, in a way that it may not reach the throat, or it may reach the throat unintentionally, or intentionally but out of forgetfulness. There is no difference in putting food in the mouth, regardless whether it is for some valid reason or not. It is disapproved to taste any and every thing.

There is no harm in brushing the teeth with a dry brush, rather it is recommended to do so. It is not far from being disapproved to use a wet brush for teeth, in the same way as it is disapproved to pull out molar teeth; rather, do any thing generally which may cause bleeding.

Rules Concerning Things that Invalidate Fast

Problem #1: commission of the things which invalidate fast as mentioned earlier are a cause of expiation in the same way as they make it obligatory to compensate for it, when it is done deliberately and willingly without any coercion, according to the more cautious opinion, as regards lying about Allah, the Exalted, His Prophet, Blessing be on him and his Progeny, and the Imams, Peace be upon them, and dipping in water, and having enema, and according to the stronger opinion, in case of the rest; rather, in case of lying about them, (Peace be upon them) is also not devoid of force. Of course, according to the stronger opinion, vomiting does not make it obligatory.

According to the more cautious opinion, in this respect there is no difference between the person knowing and an ignorant person who is neglectful. As regards an incapable (or interdicted) person who fails to pay heed to make query apparently it is not obligatory on him, though it would be more cautious (in his case too).

Problem #2: Here are three types of expiations for giving up the fast of the month of Ramadān:

Emancipation of a slave, keeping fast for two months consecutively and feeding sixty indigent persons, whichever is chosen by him, though, it is more cautious to select one of them according to the above order, if possible. It is more cautious to perform all the three types of expiations if a person has broken his fast by something prohibited, such as eating something usurped, drinking wine, or having a prohibited sexual intercourse, or the like.

Problem #3: According to the stronger opinion, expiation is not repeated with the repetition of its cause in a single day, including performance of sexual intercourse, even if the type of its cause differs, but caution must not be given up in case of performance of sexual intercourse.

Problem #4: An expiation is rendered obligatory for giving up the fast of the month of Ramadān or a specified vow or by its becoming expiatory after breaking it in the after noon. It is not obligatory if a person gives up fast of other kinds, regardless whether they are obligatory or recommended, and whether the person has broken the fast before noon or after it. Of course, some of the jurists have declared the obligation of expiation in case a person breaks a fast of ritual retirement (*I'tikāf*), provided that it is an obligatory one. Some of the jurists have declared the obligation of expiation in case of all types of things that break the fast, but others have specified it with the performance of sexual intercourse. Apparently it must be exclusively in case of performance of sexual intercourse, in the same way as apparently it is due to the breaking of the ritual retirement and not for breaking fast. There is, therefore, no difference whether it takes place during the night or the day.

Of course, if it takes place during the day in the month of Ramadān, it would entail the obligation of two expiations, in the same way as if the breaking of the fast takes place in the month of Ramadān without the performance of sexual intercourse, it shall entail the expiation of the month of Ramadān only.

Problem #5: If a person breaks his fast deliberately, and then goes on a journey in order to avoid the liability of expiation or goes on a journey after noon, or in other cases, according to the more cautious opinion, the expiation shall not drop. Similarly, according to the more cautious opinion, the expiation shall not drop if a person goes on a journey and breaks the fast before arriving at the permitted limit. Rather, according to the more cautious opinion, the expiation shall not drop if a person breaks the fast deliberately, and then something takes place which compels a person to break fast like menstruation or discharge of puerperal blood or some disease, etc., though in such case, according to the stronger opinion, the expiation shall drop, in the same way as when a person breaks his fast on a doubtful day on the last day of Ramadān, and then it turns out to be the (first) day of Shawwāl, then according to the stronger opinion expiation shall drop as also the liability to compensate for it.

Problem #6: If a person has had sexual intercourse with his wife during the month of Ramadān while both of them were fasting, then if the wife allows him to do it willingly, both of them shall be liable for expiation and its Ta'zir which is twenty five stripes. If, however, the husband compels the wife to have the act with him, her liability for the expiation and Ta'zir shall also fall on the husband.

If the husband at first compels her in a way that she is deprived of control and intention, and during the act she becomes willing, then, according to the stronger opinion, the husband shall be liable for two expiations while she shall be liable for a single expiation. If, however, the coercion exercised by the husband is such that the act itself is done with her willingness, so if the woman was compelled, then, according to the stronger opinion, two expiations shall be established against the husband, but the wife shall not be liable for any expiation at all. Apparently, the same shall be the case with Ta'zir. The law relating to the wife under coercion shall not apply to a stranger woman who is compelled (to have sexual intercourse with a man). There is no difference in the application of the rule whether the wife is permanent or temporary. If the wife compels the husband to have sexual intercourse with her, she shall not be liable for anything on behalf of the husband.

Problem #7: If a person is not fasting due to his being on journey or sick, while his wife is fasting, it shall not be permissible for him to compel her to have sexual intercourse with him, so that if he does so, the wife's liability shall also fall on him.

Problem #8: As regards the payment of expiation by feeding the poor it may be done either by feeding them to their full or by giving each of them a *Mudd* of wheat, barley, flour, rice, bread, or any other foodstuff, though, it is more cautious to give two *Mudds*. It is not sufficient in a single expiation to feed a single person twice or several times or giving him two or more *Mudds*, when sixty poor persons are available, rather it would be indispensable that there should be sixty poor persons. If a person has a family (of several members), it shall be permissible to give him according to one *Mudd* for each member, provided that there is surety that the person shall feed them or give the food to them. One *Mudd* is equal to a quarter *Sā'*, and a *Sā'* is equal to 214 ¼ *Mithqals*.

Problem #9: It is permissible to pay expiation voluntarily on behalf of a dead person whether it is for a fast or something else. But there is difficulty in its permissibility on behalf of a living person, and it is more cautious to declare it not permissible particularly in case of a fast.

Problem #10: For a continuous fasting for two months, it is sufficient to fast for the first month and for the first day in the next month, and it is permissible to fast on different days for the remaining days even by discretion. If a person is required to fast consecutively, but in the mean time gives up the fast without any due excuse, it shall be obligatory for him to start fasting consecutively again. In case the discontinuation has been due to some due excuse, such as sickness, menstruation, or discharge of puerperal blood or going on journey in emergency, it shall not be obligatory on that person to start fasting consecutively again, but shall confine to fast for the remaining to the exclusion of the days for which he has already fasted.

The cases of excuse include the case of forgetting to have intention until its time has lapsed, so that he recalls it after the noon.

Problem #11: If a person is not able to make any of the three expiations for the month of Ramadān, it shall be obligatory on him to give alms as much as he is able to. In case he is not able even to do so, he must ask Allah's Forgiveness, even though for once. It is, however, more cautious to expiate if he becomes able to do so after asking Allah's Forgiveness.

Problem #12: In the following cases, it is obligatory to compensate without any expiation:

First: In case an unclean person sleeps again after having woken up from sleep, and his sleep continues until dawn. Rather, according to the stronger opinion, it applies in case he sleeps for the third time after having woken up twice, though there is a stronger caution of expiation also becoming obligatory in such case

The sleep in which a person has had a nocturnal pollution is not counted as the first sleep, so that the sleep after it could be counted as the second sleep, but caution must not be given up in this case, as already mentioned.

Second: If the fast of a person is broken merely by not having intention, or due to hypocrisy, or the intention of not fasting despite having done nothing that breaks the fast.

Third: If a person forgets to perform ritual bath, and one or two days have passed, as mentioned earlier.

Fourth: If a person does something that breaks the fast before making enquiry about the dawn, and later it transpires that the day has already dawned while he was able to make the enquiry; rather, according to the more cautious opinion, even if he was not able to do so.

The-same rule shall apply if he makes enquiry but is not sure that it is night, so that he has presume on about the day having dawned, or, according to the more cautious opinion, has doubt about it,

though, according to the stronger opinion, he shall not be under the obligation to compensate provided that he had presumption after having made enquiry; rather the absence of its obligation provided that there is doubt after having made enquiry is also not devoid of force, as when he makes enquiry and becomes sure that there is still night, and so he eats something, and then it turns out to be otherwise, his fast shall be valid.

This is the rule in case of a fast of the month of Ramadān. But in case of other types of fasts, including even the specified obligatory one, apparently the fast shall be declared void due to eating after the day has dawned in all circumstances, even in case of making enquiry and being sure that it is still night.

Fifth: Eating something while depending on the information of a person that it is still night, while in fact the day had already dawned.

Sixth: Eating something despite the information by another person that the day has already dawned, considering the information to be based on a joke.

Problem #13: It is permissible for a person who is sure that the day has not dawned to eat something without making enquiry. So if a person eats, or drinks something in such a position, without there transpiring that the day has dawned, or otherwise, the person shall be under no liability.

In case a person is not sure about the start of night, it is not permissible for a person to eat anything, so that if he eats something in such a position, expiation and compensation shall both be obligatory on him, even if he is not sure that there is still day and he continues to doubt.

Seventh: If a person breaks his fast depending on the information of another person that the night has fallen, though it had not fallen, while the informer was a person whose information was to be relied upon, as when the information has been given by two morally sound persons rather even by a single morally sound person; otherwise, according to the stronger opinion, expiation shall also be obligatory.

Eighth: If a person breaks the fast with the certainty that the night has already fallen, though it had not fallen, despite there being no cause for it in the sky; but in case there is some cause in the sky, and so he presumes that the night has fallen, and breaks his fast, then it transpires that he was mistaken, it shall not be obligatory on him to compensate for it

Ninth: If a person takes some water into his mouth for cooling it by rinsing etc., and the water enters his throat, or one who puts water into his mouth without any reason.

If, however, a person forgets (that he has water in his mouth), and swallows it, then he shall not be liable to compensate.

Similarly, if a person rinses with water for performing ablution for offering an obligatory (daily) prayer; though its being otherwise in performing ablution in all circumstances, rather for general cleanness, if not devoid of force.

Conditions for the Validity of Fast and its Obligation

Problem #1: There are several conditions for the validity of a fast. They are: Islam, faith, sanity and purity of menstrual and puerperal blood.

A fast is, therefore, not valid for one who is not believer, even for a part of the day. So if a person apostasies, and then returns to faith (during the day), his fast shall not be valid, even if the fast were a specified one, and he has renewed his intention before noon.

So also, a fast is not valid in case the person is insane, even if it periodically recurrent, when it continues throughout the day or recurs during part of the day. The same rule applies to a drunken or a fainted person.

It is more cautious for a person who recovers from intoxication while he had already had intention to keep fast that he must complete his fast, and then compensate for it. As regards a fainted person, if he recovers from fainting while he had intended to keep fast, he must complete his fast; otherwise, he must compensate for it.

The fast of a sleeping person is also valid, provided that he has already had intention to keep fast, although he has remained asleep throughout the day. The fast of a woman having menstrual or puerperal blood is not valid, if she sees it even a moment before the sunset, or it has discontinued a moment before the dawn.

It is also a condition for the validity of the fast that the person should not be suffering from disease or eye-sore which is harmful for the fast due to its becoming serious or the prolongation of his recovery from it, or its pain may become severe, regardless whether there is certainty to that effect, or there is its likelihood causing fear. To this is affiliated the fear that the fast may cause a disease or harm, when its origin is reasonable and worth considering for sane persons. So in case of such an apprehension, a fast shall not be valid, and it would be permissible, rather obligatory, not to keep fast. (Mere) weakness is, however, not sufficient, even if it is too much. If, however, it is to the extent that is not usually tolerable, it shall be permissible not to keep.

If a person fasts under the impression that it would not be harmful, but after its completion, it turns out to be otherwise, then there is difficulty in declaring it valid; rather its being invalid is not free from force. It is also a condition for the validity of the fast that the person should not be

on a journey which necessitates Qasr (reduction in the number of Rak'ats and renunciation of keeping fast) in prayers. So it is not valid for a person on journey, according to the stronger opinion, even if it were a recommended one.

There are, however, three following exceptions to the above rule:

First, fasts for three days in lieu of an animal sacrifice (in Mecca).

Second, fasts in lieu of the sacrificial camel due to a person who leaves Arafat deliberately (*during Hajj*) before sun-set, and they are for eighteen days.

Third, a votive fast, when a person vows to keep fast particularly when on a journey, or clearly vows that he shall keep fast whether he is in his hometown or on a journey, to the exclusion of a general vow.

Problem #2: In addition to what has already been mentioned, it is also a condition for the validity of a recommended fast that the person should not owe the compensation for any obligatory fast.

Caution must not be given up in general obligatory fast for expiation, etc.; rather, this condition is not devoid of force generally in the case of all types of obligatory fasts.

Problem #3: Whatever we have mentioned as the condition for the validity of the fast is also a condition for its obligation, except Islam and faith. One of the conditions for the obligation of the fast is the person's being of age, so that it is not obligatory on a minor, even if he has the intention of keeping fast as approved one, while he becomes of age during the day. Of course, if he becomes of age before morning, it shall be obligatory on him to keep fast.

It is more cautious for a person who has intended to keep fast as an approved one to complete the fast even if he has become of age during the day, rather even if he becomes of age before noon, but has not taken anything, then it would be better for him, according to the more cautious opinion, to have the intention of keeping fast and complete it.

Problem #4: If a person is in his home town and then proceeds on a journey, in case it were before noon, it shall be obligatory on him to break the fast. If it were after noon, it shall be obligatory on him to continue his fast, and his fast shall be valid.

If a person is on a journey and he enter his hometown, or a town where he intends to stay for ten days, then if it were before noon, and he has not already taken anything which breaks the fast, it shall be obligatory on him to keep the fast. If it were after noon, or before noon while he has already taken something that breaks the fast, then it would not be obligatory on him to keep fast.

Problem #5: If a person on journey who is ignorant of the rules keeps fast, his fast shall be valid, and it shall be sufficient for the fulfillment of his duty, in the same way as you have already understood about the person who is ignorant of the rules of prayers, as Qasr is like not keeping fast, while keeping fast is like offering full prayers. So all the rules we have mentioned under the prayers shall also apply here. So for all those on whom offering a full prayer is obligatory like the hired drivers or those undertaking a journey for the commission of a sin, or one who intends to stay at a place (for ten days), or one who stays at a place for thirty days but is always hesitating to stay or leave the place, etc., it shall be obligatory on such person to keep fast.

Of course, (there is some difference in the rules applicable to a traveller and one keeping fast. As) when a person undertakes a journey for hunting for trade, it is a condition that he should not keep fast, while he is required to offer prayers both with and without Qasr. So also its obligatory on a person to keep compensatory fast if he happens to forget it and recalls it after the lapse of its due time, but this is not the case with one who has offered full prayers (So that he is not required to offer it with Qasr) as already mentioned in the four holy places, it is a condition that the person shall not keep fast, while it depends on the discretion of the person to offer prayers in these holy place with or without Qasr. So also if a person undertakes a journey after noon, he shall be required to continue his fast, though it would be obligatory on him to exercise Qasr in his prayers. If a person reaches his home town after noon, he shall break his fast, but if he has not already offered his prayer, and reaches his home town after noon, he shall be required to offer full prayer (without Qasr). It has already been mentioned under the Section on Prayers that the criterion for exercising Qasr prayers is the arrival of the traveller in the limit where Qasr is allowed. The same criterion is observed in fasting too, so that a person is not allowed to break the fast until he reaches the limit (where breaking the fast is allowed), rather if he does so, according to the more cautious opinion, he shall be liable to compensate as well as expiate for it

Problem #6: According to the more proper opinion, it is permissible to undertake an optional journey during the month of Ramadān, even if it were for avoiding keeping fast, but it is disapproved to undertake such a journey before the passage of twenty three days of Ramadān, except when the journey is meant for the performance of *Hajj* or 'Umrah, or for a property which is feared to perish, or for a brother who is feared to be killed. In case of a specified obligatory fast, other than the fast for the month of Ramadān, it is more cautious to give up undertaking journey, if the journey is optional. In the same way if a person is on journey, it is more cautious to stay (for ten days) to keep such fast, though in case of a specified vow, it is permissible to undertake a journey, and it is not obligatory to stay (for ten days) if he is on journey.

Problem #7: It is disapproved for a traveller during the month of Ramadān, rather for every person for whom it is permissible not to keep fast, to eat or drink to his fill. So is the performance of sexual intercourse (disapproved) during the day; rather, it is more cautious to give it up; although, according to the stronger opinion, it is permissible to do so.

Problem #8: Following persons are allowed not to keep fast during the month of Ramadān:

1. An old man or woman, if it is not possible for them to keep fast, or it is painful for them.
2. One who is suffering from the disease of thirst, regardless whether he is unable to control the thirst, or it is painful for him.
3. A pregnant woman whose delivery time is close, and fasting would be harmful for her or her foetus.
4. A nursing woman being short of milk, when fasting would be harmful for her and her infant.

All the above mentioned persons are allowed not to keep fast. It is obligatory on each of them to expiate in lieu of each day by giving away a *Mudd* of food, and to be more cautious two *Mudds*, except in case of an old man or woman, or one having the disease of thirst, when they are not able to keep fast, so that there is difficulty in declaring them to be liable to expiate, rather its being otherwise is not devoid of force, as it is also a matter of hesitation in case of a pregnant women whose delivery time of the child is close at hand, or a nursing woman who is short of milk, when it is harmful for both of them, and not their child.

Problem #9: There is no difference in a nursing woman whether the suckling is her own child or she has been nursing the infant voluntarily or against payment It is more cautious that it must be confined to the case when there is no other woman to take her place for nursing the baby voluntarily or against payment by the baby's father or her mother or voluntarily.

Problem #10: It is obligatory on a pregnant woman or a nursing woman later to compensate for the fast (given up by them), as also it is more cautious to declare it obligatory on the first two (i.e. an old man and woman), if later they become able to keep fast

Procedure of Finding First of Ramadān and Shawwāl

The first of every month is established by ocular vision (of the moon), even if the moon is seen by a single person, though it is more useful if it is confirmed by several persons and general opinion, or by passage of thirty days from the preceding month, or through legal evidence which consists of the testimony of two morally sound persons, or the decision of a judge when it is not known to be mistaken or to have an erroneous basis, but no regard is to be paid to the statement of the astrologers, or the encirclement of the moon, or its disappearance after the evening glow in proving that the moon belongs to the last night, though it may help in such assumption.

Problem #1: It is indispensable to entertain the legal evidence if it testifies the ocular vision of the moon, but mere scientific testimony is not sufficient.

Problem #2: It is not a condition for the tenability of the evidence that it should be adduced before a judge of a *Shari'ah* court, rather it is a sufficient proof for every one before whom it is produced; rather even if it is adduced before a judge, but he rejects it due to not being confirmed by the evidence of two morally sound witnesses in his opinion, but the witnesses be morally sound in the opinion of another, in which case the person for whom the witnesses are reliable shall act upon it as regards fasting or otherwise. It is not a condition for both the witnesses to have seen the moon at one and the same time after they have agreed to have had an ocular vision of the moon at night.

Of course, it is a condition that they must agree on the details of the vision. If, however, they differ some of the external details in which there is likelihood of difference of identification, such as the moon being high, it's being encircled or its appearance in the northern or the southern direction, then their testimony is not far from being acceptable in case the difference is not-exorbitant. If, however, the description of one or both of them is contrary to the actual position, as when they testify that it was turned towards the sky, which is contrary to what is its position in the early days of the month, their testimony shall not be entertained. It would be sufficient if both the witnesses give a general description of the moon, or one of them gives information which is not against the actual position while the other gives general information.

Problem #3: The testimony of four women shall not be accepted as regards the sight of the moon, nor that of one man and two women, nor of the testimony of a single witness with the addition of another's oath.

Problem #4: There is no difference if the two morally sound witnesses belong to the same town, or they are outsiders, and whether there is any reason for the sight of the moon in the sky or not.

Of course, in case of non-existence of the reason for the sight of the moon in the sky, the sky is clear and a number of people have gathered to see the moon, and there is so much of difference and contradiction among them that it may strengthen the likelihood of the error of the two morally sound persons, in that case there shall be difficulty in accepting their testimony.

Problem #5: The tenability of the decision of the judge of the Shari'ah court is not limited to his own followers only, but it would be an authority even for another judge when it is not established that he has ever mistaken or the basis of his decision has been erroneous.

Problem #6: If the sight of the moon is established in another town but not in one's own town, then if they are close to each other, or it is sure that they have a common horizon, it shall be sufficient (for acceptance), otherwise not.

Problem #7: It is not permissible to depend on a telegram or the like with regard to the information about the sight of the moon, except when the two towns are close to each other or have a common horizon, and the sight of the moon is established in that town through the decision of a judge of the Shari'ah court, or by legal evidence, and for its proof it is sufficient if the telegram has been sent by two morally sound persons.

Chapter Concerning Compensation for the Fast of Ramadān

A child is not liable to compensate for the fasts he has not kept during his childhood, nor a lunatic or a fainted person for the fasts given up by them during the period of their excuse, nor is a born infidel required to compensate for the fasts he has not kept during the period of his disbelief.

It is, however, obligatory to compensate for the fasts given up by others than the above mentioned persons, including even an apostate who is required to compensate for the fasts given up by him during the period of his apostasy.

The same rule applies to a woman having menstrual or puerperal blood, though they are not required to compensate for the prayers given up by them (during the period of their excuse).

Problem #1: It has already been mentioned that fasting is not obligatory on a person who has become of age before noon, but has not taken anything, nor on a person who has intended to keep fast as a recommended one, and becomes of age during the day. So if such persons break the fast, they shall not be required to compensate for it; though it would be more cautious to do so.

Problem #2: It is obligatory on an intoxicated person to compensate for the fast given up during his intoxication, regardless whether taking the intoxicant was for medication or in a prohibited way. Rather it shall be obligatory on such a person to compensate for the fast if, before the intoxication, he has had intention to keep fast, and he must also complete the fast (he has already started).

Problem #3: If an opponent (i.e. a non-Shi'ah) joins the Shi'ah faith, it shall not be obligatory on him to compensate for the fasts he has already kept according to his own faith or the right faith (i.e. the Shi'ah faith) with the intention of seeking closeness (to Allah). However, it shall be obligatory on him to compensate for the fasts he has given up during that period.

Problem #4: There is no immediacy in compensation. Of course, to be more cautious, it is also not permissible to delay the compensation until the next Ramadan.

In case a person delays the compensation, then he shall have a vast time for the compensation.

Problem #5: It is not obligatory to observe sequence in compensation, nor to specify the days, so that if a person owes the fasts for a few days, it is sufficient for him to keep fast for that number of days with the intention of compensation, even if he does not specify the first, or second day, and so on.

Problem #6: If a person owes the fasts of two or more months of Ramadān, it shall be his discretion to select the former or the latter months.

Of course, if a person owes the fasts of this year along with those of the last Ramadān, and there is not sufficient time for compensating the fasts of both until the next Ramadān, it shall be more cautious for him to opt for the fasts of this Ramadān.

If he opts to the contrary, then apparently his option shall be valid, but he shall be liable to expiate for the delay.

Problem #7: If a person has given up the fasts for the month of Ramadān due to sickness or menstrual or puerperal blood, and dies before being exonerated, their compensation shall not be obligatory, though it shall be preferable if the fasts are kept on behalf of that person.

Problem #8: If a person gives up the fasts of the month of Ramadān or some of its days due to some excuse which continues until the next Ramadān, then if the excuse was any sickness, he shall not be bound to compensate, and he shall expiate by paying one *Mudd* of food per day, and his compensation shall not be in lieu of the expiation. If the excuse is other than sickness, like a journey or the like, then, according to the stronger opinion, he shall be bound only to compensate. The same rule shall apply if the cause of death is sickness, while the cause of delay is another, or vice versa. But he should not give up caution by compensating as well as paying a *Mudd* of food per day, particularly when the excuse were a journey. The same rule shall apply in the latter case.

Problem #9: If a person gives up the fasts of the month of Ramadān or some of its days without any excuse deliberately, and does not compensate for it until the next Ramadān, he shall be bound to expiate by paying a *Mudd* of food per day, and compensate for them later in addition to the expiation for deliberately giving up fasting.

The same rule shall apply if a person gives up fasting due to some excuse, but the excuse does not subsist, nor does any other excuse arise, and he dilly-dallies the compensation until the arrival of the next Ramadān.

If, however, the person has had the intention of compensation after the removal of the excuse, but there arose another-excuse during the tight time, then it would be more cautious for him to expiate as well compensate.

Problem #10: The expiation for the delay does not multiply with the multiplication of the years. So if a person gives up the fasts for three days in three months of Ramadān consecutively, but fails to compensate for them, he shall be liable to a single expiation for the first and so for the second and compensation only for the third, if he does not delay it until the fourth Ramadan.

Problem #11: It is permissible to pay the expiation of several days in a single month of Ramadān or more to a single poor person, and it is not obligatory to pay each poor person a single *Mudd* of food per day.

Problem #12: It is permissible for a person to break the fast before noon, if its time is not too short when he is keeping a compensatory fast for the month of the Ramadān. But it is forbidden to do so after noon rather it entails the obligation of expiation, though it is not obligatory to abstain from taking anything which breaks the fast during the rest of the day.

The expiation in this case is feeding ten poor persons, a *Mudd* of food to each of them.

If it is not possible for a person to do so, he shall be bound to keep fast for three days.

Problem #13: A fast is like a prayer in so far as it is also obligatory on the Wali (or the eldest son) of a person to compensate for the fasts given up by his deceased father in all circumstances. Of course; it is not far from being non-obligatory on him if his father has given them up by way of disobedience to Allah, though it is more cautious that it may be deemed obligatory even in that case, and this caution must not be given up.

The Wali is bound to compensate for as obligatory on his father to compensate, so that if the father had given up due to some excuse and during the Ramadān passes away, or when the father was sick and his sickness continued until the next Ramadān, then it shall not be obligatory (on his Wali to compensate for the fasts given up by his father in that period), due to the liability for compensation having dropped for that period. There is not difference whether the deceased person has left any property enabling the Wali to make the charity on his behalf or not, though it would be more cautious in the first case to pay the charity as well as compensate with the consent of the heirs. Some of the cases relating to this section have already been mentioned under the Chapter on Compensation for the Prayers.

Chapter on the Kinds of a Fast

There are four kinds of a Fast, namely: Obligatory, Recommended, Disapproved and Prohibited.

The Obligatory fast is the fast for the month of Ramadān, a fast for expiation, a compensatory fast, the fast in lieu of a sacrificial animal during the *Hajj*, the fast on the third day of the ritual retirement, votive fast and the other allied fasts (as the fast for an undertaking or an oath) though counting the votive fast and its allied kinds under the obligatory fasts is by way of indulgence.

Chapter on an Expiatory Fast

An expiatory fast has several kinds. They include the following.

1. An expiatory fast in which something else is also obligatory. It is the expiation for a premeditated murder in which all the three kinds of expiations are obligatory. According to the more cautious opinion, the expiation for breaking a fast in the month of Ramadān by performing some prohibited act also falls under the same category.

2. It is an expiation which is rendered obligatory due to inability to do something else. This is the expiation for Zihār, and the expiation for homicide not amounting to murder (or unintentional murder), in which the obligation for expiation is rendered obligatory in case a person is unable to emancipate a slave. The other one is the expiation for breaking the compensatory fast for the month of Ramadān, in which a person is bound to keep fast in case he is unable to feed the poor. So also there is the expiation for oath, which consists of emancipation of a slave or feeding ten poor persons or clothing them, and in case he is unable to do it, he is bound to keep fast for three days. Then there is the expiation by a woman on scratching her face in distress resulting in bleeding, or tearing out her hair in distress. So also there is the expiation by a man on tearing his clothes in grief (on the death) of his wife or children, both of which are identical with the expiation for oath. Then there is the expiation for leaving Arafat deliberately before sun-set (during Hajj), which amounts to fasting for eighteen days in case a person is unable to sacrifice a camel.

Likewise, there is the expiation for hunting an ostrich after having tied *Ihrām* (for *Hajj*) which consists of sacrificing a camel, and in case he unable to do it, according to the stronger opinion, he must prepare food equal to its price, and distribute it among sixty poor persons, one *Mudd* of food to each poor person, and, to be more cautious, two *Mudds* to each of them. If the food is enough for more than sixty poor persons, then he must confine the distribution to sixty persons, and if it is not enough to feed sixty poor persons, then he is not bound to complete the number. The caution of distributing two *Mudds* of food is to be observed in case when it may cause the distribution to less than sixty persons; otherwise, he must confine the distribution of one *Mudd* of food per person, and complete the number of sixty. In case he is unable to do so, according to the more cautious opinion, he is bound to keep a fast for each *Mudd* until the completion of the number of sixty. This is the maximum expiation (for hunting an ostrich). In case he is unable to do so, he must keep fast for eight days.

The expiation for hunting a wild cow (or a blue bull) is sacrificing a cow. In case a person is unable to do so, he is bound to prepare food equal to its price and distribute it among thirty poor persons, one *Mudd* of food per person, according to the stronger opinion, and two *Mudds* (per person) according to the more cautious opinion. If there is a residue, it is for himself, and if it falls short, he is not bound to complete the number. As already mentioned, he is not bound to distribute two *Mudds* of food per person if it results in falling short. If he is unable to do so, he is bound to keep fast for a day per *Mudd* until the completion of number of thirty. This is the maximum expiation for hunting a wild cow. If he is unable to do so, he shall keep fast for nine days. The same shall be the

expiation for hunting a wild ass, rather it would be more cautious to treat it as equal to an ostrich. The expiation for hunting a deer is sacrificing a goat. In case a person is unable to do so, he shall prepare food equal to the price of a goat and distribute among ten poor persons, one Mudd of food to each of them, according to the stronger opinion, and two Mudds of food, according to the more cautious opinion, while the rule relating to the case of its being in excess or falling short as well as the observation of caution is the same as mentioned earlier. In case he is unable to do so, according to the more cautious opinion, he shall be bound to keep fast for one day in lieu of each Mudd until ten days. This is the maximum expiation for hunting a deer. If a person is unable to fast for ten days, he shall keep fast for three days.

3. When a person has the discretion either to keep fast or do something else, and that is the case of giving up the fast for the month of Ramadan. So also is the expiation for vitiating the ritual retirement by performing sexual intercourse, or the one for a woman tearing her hair in distress and the expiation for a vow or an undertaking. In such cases a person has the discretion to select any of the three types of expiation's (namely emancipation of a slave, fasting for two months or feeding sixty poor persons).

Problem It is obligatory to observe the sequence in fasting for two months in case of the liability for both the expiations and the optional and sequential expiation. This is fulfilled by fasting through out the first month and for a day in the next month, as mentioned before. Likewise, a person is bound to observe sequence, according to the more cautious opinion, in fasting for eighteen days in lieu of two months; rather, it is more cautious to observe the sequence while fasting in all the other expiations as well. It does no harm to the sequence in case a person happens to give up fasting due to any due excuse in between. So he may continue the fasting as before (after the removal of the excuse).

Chapter on Recommended Fasts

The emphatically recommended fasts are as follows:

1. The fast for three days in each month, the preferable being on the first and the last Thursdays and the first Wednesday in the second unit of ten days.
2. The white days, and they are the thirteenth, fourteenth and fifteenth of every month.
3. The Eid al-Ghadeer, i.e. the 18th of Dhu'l Hijjah.
4. The Birth-day of the holy Prophet, Allah's Blessings be upon him and his Progeny, i.e. the 17th of Rabi' al-Awwal
5. The Day of the Prophet's Mab'ath (i.e. Beginning of the Prophetic Mission), i.e. the 27th of Rajab.
6. The Day of the Expansion of the Earth, i.e. the 25 of Dhu'l Qa'dah.
7. The Day of 'Arafah, for one who does not feel weakness while reciting the Du'ã decided by him to recite provided that the first should be in a way that it may fall on the Eid day.
8. Eid-i Mubãhalah, i.e. the 24th of Dhu'l Hijjah, on which day a person should keep fast with the general intention of seeking closeness to Allah and by way of Thanks for the Prophet's Announcement of the great excellence of Amir al-Mu'minin (Peace be upon him).
9. Every Thursday and Friday.
10. The First of Dhul Hijjah to the Ninth (of Dhu'l Hijjah).
11. The entire months of Rajab and Sha'bàn, or some of their days, even if it is a single day from each of them.
12. The NowRuz.
13. The first and third of Muharram.

Chapter Concerning the Disapproved Fasts

The disapproved fasts are as follows:

1. The fasts kept by a guest without the permission of his host, and so are the fasts kept by him despite his host's forbidding him. It is more cautious to give them up, even without the permission of the host. So also the fast of a child without the permission of his father, despite its not being painful to him as regards the father's kindness. Caution must not be given up when the father forbids him to do so, even if it is not painful to him. Same is the case when the child's mother forbids him to keep fast. It is more cautious for the child, how low so ever, to obey the order of the father, how high so ever. Rather, the child should also observe the permission of his mother.

3. It is better to give up the fast on the day of Arafah if it causes weakness due to the recitation of the relevant Du'ās and keeping fast at the same time. Similarly, it is better to give up fast when there is likelihood of the coincidence of the day of Arafah and the Eid.

Apparently disapproval here does not mean the same as is generally used even in the matters relating to 'Ibādât (Worship).

Chapter on the Prohibited Fasts

Following are the prohibited fasts:

1. Fasts on the Eid al-Fitr and Eid al-Adhã.
2. The fast on 30 of Sha'ban with the intention that it is a part of Ramadan
3. The fast on the Day of Tashriq (i.e. on the 11th, 12th and 13th of Dhul Hijjah) for a person who is in Minã, regardless whether he is busy in performing the rites of Hajj or not.
4. A votive fast kept for the performance of a sinful act
5. A fast to keep silence, in the sense that the fast is kept with the intention of keeping silence, even if for a part of the day. There is no harm in keeping silence if it is not the intention of the fast, even if the person keeps silence throughout the day.
6. The continuous fast. According to the stronger opinion it includes a fast with the intention of keeping it throughout the day and night until the morning or two days including the night. There is, however, no harm if breaking the fast is delayed until morning or the next night without such an intention for the fast, though it is more cautious to abstain from doing so.
7. Similarly, it is also more cautious for the wife to give up a recommended fast without the permission of her husband. Rather, caution must not be given up in case it entails some trouble, rather generally in case the husband disallows it.

Concluding Chapter on A Ritual Retirement (I'tikāf)

A ritual retirement consists of staying in the mosque with the intention of performing divine worship. It is not a condition in it to have the intention of performing any other worship other than that of ritual retirement, though it is more cautious to do so. It is initially a recommended act according to the Islamic Shari'ah, but sometimes its performance becomes obligatory due to a vow, an undertaking, oath, being hired (to perform it on behalf of another person), or the like. It is valid throughout the time it is valid to keep fast. The most preferred time for it is the month of Ramadān, and even more preferable the last ten days of the month of Ramadān. Now its conditions and rules are mentioned hereunder.

Conditions of a Ritual Retirement

There are some conditions relating to the ritual retirement (I'tikāf) They are as follows:

First: Sanity. So it is not valid in case a person is insane, even if having periodical attacks of insanity, nor in case a person is intoxicated, or is otherwise deprived of sanity.

Second: Intention. After specifying the ritual retirement, there is no condition of anything more than seeking closeness (to Allah) and purity of purpose.

It is also not a condition to have the intention of its being obligatory or recommended as is the case with other kinds of worship, so that one must have the intention of an obligatory retirement in an obligatory one and a recommended retirement in a recommended one, though the recommended ritual retirement turns obligatory on the third day, and it is better that it must be taken into consideration at the beginning of the intention, rather it must be renewed on the third day.

The proper time for beginning the ritual retirement is early morning from the first day, in the sense that it should not be delayed further.

It is also permissible to start it from the early part of the night or during the night, so that he should have the intention at the time of beginning it. Rather it is more cautious to include the first night in it, and the person must have the intention from the beginning of the night.

Third: The Fast. It is not valid without keeping fast. It is not a condition to fast for oneself, as one may fast on behalf of another, regardless whether it is obligatory or a recommended one, whether it is being performed for oneself or one has accepted its liability on behalf of another person, without there being difference in the kinds of the retirement and the types of the fast. Rather, it is valid to perform the ritual retirement for a vow, or on having been hired (to perform it on behalf of another) during the month of Ramadān, provided that the person does not in the meantime withdraw his intention. Rather, if a person vows to perform the ritual retirement during some specified days, and he owes the votive fast, then if he keeps the votive fast during the ritual retirement, he shall be absolved of the fast owed by him.

Fourth: The ritual retirement should not be for less than three days including their nights. As regards the retirement for more than three days, there is no harm in it, there being no limit as to the maximum time for it, though it shall become obligatory on the third day after the passage of every two days. So if a person has performed the ritual retirement for five days, it shall become obligatory for the sixth day, and if he has completed eight days of retirement, it shall become obligatory for the ninth day, according to the more cautious opinion, and so on.

The day is counted from the sun-rise to the time of disappearance of the redness in the east. If a person performs the ritual retirement from the dawn (of the first day) until the sun-set of the third day, it would be sufficient, and it is not a condition to include the first or the fourth night, though it is permissible to do so. There is, however, hesitation and difficulty in the sufficiency of the third day by means of piecing together, so that if, for example, a person starts his retirement from the noon of a day, he may continue it until the noon of the fourth day.

Fifth; The ritual retirement must be performed in any of the four mosques, namely, the Masjid al Iharām (in Mecca), Masjid al-Nabi, Allah's Blessings be on him and his Progeny, (in Madinah), Masjid al-Kufah, and Masjid al-Basrah.

As regards the performance of the ritual retirement in mosques other than the above four mosques, there is difficulty (in its permissibility). Caution, therefore, must not be given up by performing the ritual retirement in other grand mosques with the intention of hope that it would be desirable to Allah. However, as regards the performance of the ritual retirement in mosques other than the grand mosques, like the tribal mosques or the market mosques, it is not allowed there.

Sixth: Permission of the person whose permission is a condition as the permission of an employer to his special employee, when there exists an agreement between them to the effect that the benefit of the ritual retirement performed by the employee shall go to the employer; other wise, there shall be no specified condition, though, in some cases, it is not specified; or the condition of the husband's permission in respect of the wife when it is accompanied by negation, though there is difficulty in accepting it, but caution must not be given up.

As regards the permission of the parents for the children, it is a condition in case it is painful for them; otherwise, there is no condition of the permission of the father and mother, though it is more cautious.

Seventh: Continuation of stay in the mosque. So if a person leaves the mosque deliberately and of his own will without any of the lawful reasons, his ritual retirement shall be rendered void, even if he is ignorant of the relevant rule.

Of course, if he leaves the mosque out of forgetfulness or under coercion, his ritual retirement shall not thereby be rendered void. Similarly, if a person leaves the mosque for some reasonable, lawful and usual exigency, such as easing nature through urination or defecation or for performing ritual

bath for Janābat, or the like, (his ritual retirement shall not be rendered void). It is not permissible to perform ritual bath in the Masjid al-Harām or Masjid al-Nabi, and so a (polluted) person is bound to perform Tayammum, and go out for performing the ritual bath. In the other mosques too, if the performance of the ritual bath requires his stay and desecration of the mosques, (he shall be bound to have Tayammum and go out for performing the ritual bath) In case his stay in the mosques shall not entail their desecration, he may stay there; rather, it is more cautious, even if he is allowed to go out.

Problem #1: It is not a condition for the validity of the ritual retirement that the person performing it must be adult, so that, according to the stronger opinion, it is allowed even in case of a discreet child.

Problem #2: Shifting from one retirement to another is not allowed, even if both of them are identical, as regards their being obligatory or recommended, nor from performing it on behalf of one person to performing it on behalf of another, nor from performing it on behalf of another to performing it for himself, or vice versa.

Problem #3: It is allowed to discontinue the ritual retirement during the first two days, but on the completion of the two days it shall become obligatory,

Rather, according to the stronger opinion, the third becomes obligatory for every second in the first three, and the second, i.e., the sixth, and, according to the more cautious opinion, in every third in the other two as well.

As regards the ritual retirement performed in fulfillment of a vow, if it were specified, then it shall not be allowed to be discontinued otherwise, it shall be like a recommended one.

Problem #4: It is indispensable for the days of the ritual retirement to be continuous, and they include the two intervening nights too, as mentioned earlier.

So if a person vows to perform the ritual retirement for three continuous days without the intervening two nights, it shall not be valid, if he intends to perform the retirement according to the Shari'ah.

The same rule shall apply if a person vows to perform the ritual retirement for one or two days with the condition that it shall not be for more days, (in which case the retirement shall be invalid).

If, however, he does not confine it to one or two days only, then his retirement shall be valid, and he shall be bound to add one or two days further.

Problem #5: If a person vows to perform the ritual retirement for one month, he may perform the retirement from the first of one month to the first of another month, even if the month consists of less than thirty days, but, it shall be more cautious to add one day to it.

Problem #6: It is a condition in a single retirement that it should be performed in a single mosque, and it is not allowed to perform it in two different mosques, even if they are adjacent, except when they are considered to be a single mosque.

If a person is unable to complete his ritual retirement in the place he had intended due to some fear or demolition, or the like, his retirement shall be rendered void, and he shall not be allowed to complete it in another grand mosque.

Problem #7: The roofs, basements and the Mihrābs (prayer niches) of the mosques are considered part of the mosques, and so it shall be governed by the rules of mosques as long as they are considered to be outside them, contrary to what is added to them like corridors or the like, as they are not considered part of the mosques unless it is not sure that they are part of the mosques, and considered to be so, and, therefore, the two domes of (the tombs of) Muslim b. Aqil, Peace be upon him, and Hâni, Allah's Mercy be on him, are both apparently outside the Masjid al-Kūfah.

Problem #8: If a person has specified a special part of the mosque as the place of his ritual retirement, it shall not be confined to that place only and his intention shall be considered ineffective, even if he specifies its roof and excludes the floor, or vice versa. Rather, such limitation engenders difficulties in the validity of some of the duties.

Problem #9: Among the lawful exigencies for leaving the mosque (where a person is performing ritual retirement) are giving evidence or visiting a sick person, provided that his relation with the sick person is such that his visiting him or her is considered one of the usual necessities. The same rule applies to joining the funeral procession, saying good-bye to a traveller, or welcoming a person who has returned from journey, or the like, even if none of these things may be considered definitely necessary for him. The criterion for determining what necessitates his leaving the place of retirement is what is considered reasonably, lawfully and usually among the necessary and preferable things, regardless whether they are concerned with the matters of this world or hereafter, and whether his failure to leave the place of retirement would cause some harm or not. Of course, it is more cautious to undertake the shortest route, and confine his visit to the fulfillment of the exigency and necessary business, and it shall be obligatory on him, if possible, not to sit under the shadow. It would be more cautious for him not to sit at all, except when necessary. Rather it shall be more cautious that he must not even walk under the shadow, though, according to the stronger opinion, it is permissible for him. As regards his attending the Jama'at (for offering prayers), there is difficulty (in its permission), except in holy Mecca.

Problem #10: If a person becomes polluted (due to discharge of semen) in the mosque, he shall be bound to leave the mosque for performing the ritual bath, in case it is not possible to perform the ritual bath within the mosque without staying in it and desecrating it. As regards the rules relating to (the pollution in the two holy mosques, (i.e. the Masjid al-Haram and the Masjid al-Nabi), they have already been mentioned, and if he fails to leave them, his ritual retirement shall be rendered

void due to his stay in those mosques (where the performance of the ritual bath is not allowed in any circumstances).

Problem #11: If a person removes someone who was sitting in ritual retirement there in the mosque before him, then his retirement shall not be far from being void. The same shall be the case if a person, performing the ritual retirement sits on usurped bedding, though there is no difficulty in the validity of his retirement in case he is ignorant of the bedding being usurped, or has done it out of forgetfulness. If the floor of a mosque has been paved with usurped clay and bricks, it would be obligatory to abstain from its use, if possible, so that if a person commits insubordination by not abstaining from its use, his retirement shall not be far from being likely. If it is not possible to abstain from its use, then caution must not be given up by abstaining from (performing the ritual retirement) there.

Problem #12: If a person's stay outside the place of his ritual retirement prolongs so much that it loses the form of retirement, his retirement shall be rendered void.

Problem #13: A person performing the ritual retirement is allowed to make it a condition in his intention (Niyyat) that he may revert from the retirement whenever he wishes, including even the third day in the event of occurrence of some excuse, even if it is one of the usual and ordinary excuses like the arrival of the spouse from journey, and does not concern specially the necessary things which legalize the prohibited things, then he shall be allowed to follow his conditions, so that if they are general, he may follow them generally, but if they are special, he shall follow them in special matters. If, however, a person makes it a condition that he may revert from his retirement without the occurrence of any excuse, then it shall be difficult to accept, rather it shall be forbidden. A person who vows is allowed to revert from his ritual retirement if some excuse occurs in his vow, so that he must say, for example, "I am responsible to undertake the ritual retirement for Allah on the condition that I may be entitled to revert from the retirement in the event of such and such excuse", then he shall be allowed to revert, and shall not be liable for committing a sin, or violation of the vow, nor to compensate for it. Caution must not be given up by mentioning the condition at the time of starting the ritual retirement too. If the condition is mentioned before intending to perform the retirement or after starting the retirement, then it shall not be effective. If a person makes a condition at the time of intending to perform ritual retirement, and subsequently drops the condition, then apparently the condition cannot be dropped.

Rules Concerning the Ritual Retirement

There are certain things which are forbidden for a person performing ritual retirement. They are as follows.

1. Coming close to women through sexual intercourse or touching them or kissing them lasciviously rather, it renders the ritual retirement void. There is no difference between a man and woman (in the application of this rule). So it is also forbidden for a woman performing ritual retirement.
2. Masturbation, according to the more cautious opinion.
3. Smelling perfumes and flowers for pleasure and enjoyment. This rule shall not, however, apply to a person who is deprived of the power of smelling.
4. Sale and purchase. It is more cautious, besides these two acts, to give up the various kinds of trade like conveyance, lease, etc. If a person performing ritual retirement makes some transaction, it would be valid, and, according to the stronger opinion, it shall be legally effective. There is no harm if a person performing the ritual retirement engages himself in various worldly matters for earning livelihood including even tailoring, weaving, or the like though, it is more cautious to abstain from it. Of course, there is no harm in undertaking such jobs in case of emergency.

Rather, there is no harm in sale and purchase, if a person needs to pursue them for eating and drinking in case there is no one to do these jobs on his behalf, and even conveyance if it is also not possible without resorting to sale and purchase.

5. Dispute in matters relating to this world or hereafter, when its meant for obtaining domination or expression of superiority. If, however, it is meant for the expression of truth and correction of the mistake of others, then there is no harm in it. It is more cautious for a person sitting in retirement to abstain from all those things from which a person who has tied *Ihrām* (for Hajj or 'Umrah) is required to abstain, but, according to the stronger opinion, it is contrary to the person who has tied *Ihrām* particularly as regards wearing stitched garments, shaving hair, eating the meat of a hunted animal and contracting a marriage which are all permissible for a person performing ritual retirement.

Problem #1: There is no difference between the day and night in the prohibition of things for a person performing ritual retirement, except as regards breaking the fast.

Problem #2: Everything that invalidates a fast also invalidates a ritual retirement, as fast is one of the conditions for the ritual retirement, and so the invalidation of fast also invalidates retirement.

So also a sexual intercourse invalidates retirement, even if performed during the night. Likewise, touching and kissing lasciviously (invalidates ritual retirement). Moreover, a sexual intercourse invalidates the retirement even if performed inadvertently. As regards the other prohibited things,

according to the more cautious opinion, they are applicable when committed deliberately or inadvertently. The same is the case with touching and kissing lasciviously, even if both the acts are done inadvertently. If a ritual retirement is a specified obligatory one, one must complete it, and should compensate for it (in the event of its invalidation). In case it is an unspecified one, one must perform it again, if the invalidation occurs in the first two days, and it should be completed and started again, if the invalidation takes place on the third day.

If a person invalidates a specified obligatory retirement, he shall be bound to compensate for it. Its compensation is not required to be made immediately, though it would be more cautious. If it were an unspecified one, it shall be obligatory to perform it again. Likewise, if it were a recommended one, it is obligatory to compensate for it in the event of its invalidation after two days. But, if invalidated earlier, there shall be no liability on the person. Rather, there is difficulty in the legality of its compensation. If the retirement were an obligatory one, it shall be obligatory to compensate for it or perform it again, if there is no condition of reversion in it, as has already been mentioned; otherwise, there shall be neither any compensation nor repetition of its performance.

Problem #3: If a person invalidates an obligatory retirement by performing sexual intercourse, even if at night, expiation shall become obligatory. The same rule shall apply in case the retirement were a recommended one, according to the more cautious opinion, if a person has had sexual intercourse without abandoning retirement. In the event of its performance, however, despite abandoning retirement, according to the stronger opinion, there shall no expiation, as it is not obligatory in other prohibited things too, though it would be more cautious if it were obligatory. Its expiation is identical with the one for the month of Ramadân, though it would be more cautious to be sequential like the expiation for Zihâr.

Problem #4: If a person vitiates his obligatory retirement by performing sexual intercourse during the day in the month of Ramadân, he shall be liable for two expiations. The same rule shall apply if it occurs after noon during the compensatory fast for the month of Ramadân. If a husband compels his fasting wife who is not performing retirement in the month of Ramadân (to join him in the sexual intercourse), he shall be liable for two expiations for himself due to (the violation of) his retirement and (breaking) his fast, and one expiation for his wife for (breaking) her fast. According to the stronger opinion, the same rule shall apply if the wife were also performing ritual retirement, though, according to the more cautious opinion, he should be liable for a fourth expiation for (the violation of) of her retirement.

If the wife were also willing, then each of them shall be liable for one expiation, if the sexual intercourse were performed during the night, and two expiations if the intercourse were performed during the day.

SECTION FIVE - ZAKAT

Zakāt is among the obligatory (*Wājib*) things of Islamic faith, and a person who denies it to be obligatory is considered to be among the infidels, according to the details already mentioned under the Section on *Taharat* (Purification).

It has been reported from the Ahl-i Bayt (Members of the Prophet's Family), the Pure, Peace be upon them: "If a person fails to pay even a Qirat (=0.195 g) from Zakāt, he shall cease to be one of the believers (*Mumins*), or Muslims" and (another tradition says:) "So when such a person dies he may die as a Jew if he likes, or he may die as a Christian if he likes".

(Another tradition says :) There is no owner of a property, a (palm-) tree, an agricultural farm or a vine who fails to pay Zakāt out of his property, but Allah shall throw on his neck a yoke up to seven stages of the earth until the Day of Resurrection."

(Yet another tradition says :) "There is no human being who fails to pay anything from the Zakāt of his property, but on the Day of Resurrection Allah shall turn it into a dragon of fire and throw it on his neck that will go on grabbing his flesh with its teeth until the person's judgment is finalized."

There are several other similar traditions (about those who fail to pay their Zakāt) that dazzle the human minds.

As regards the advantages of Zakat, they are tremendous, and its reward is stupendous. There is a tradition about the advantages of *Sadaqah* (Alms) which also includes Zakāt: Allah rears it up as anyone of you brings up his child until it shall meet you on the Day of Resurrection, when it shall be (as big as) the Uhud (Mountain)."

(Another tradition says :) "It drives away a repugnant death."

(Yet another tradition says :) "A secret *Sadaqah* extinguishes the Lord's Wrath."

There are several other similar traditions (on the advantages of *Sadaqah* and Zakāt

Hereunder there are two Parts.

Part One - Zakāt on Property

This part shall deal with those on whom payment of Zakāt is obligatory, the articles on which it is obligatory to pay Zakāt, and the Categories of those who are entitled to receive Zakāt, the uses of Zakāt and their description.

Chapter One - Those on whom Payment of Zakāt is Obligatory

Problem #1: Following are the conditions for those on whom payment of Zakāt is obligatory.

First: Legal majority or maturity (Bulugh). So payment of Zakāt is not obligatory on a person who has not attained legal majority or maturity (Bulugh).

If there is a minor having a legal agent who performs trade on his behalf, it shall be approved (Mustahab) for him to take out Zakāt from his assets, as it is approved for him to take out Zakāt from his agricultural produce. But as regards (the Zakāt on) his cattle, according to the stronger opinion, Zakāt shall not apply to it. It is a condition that the person attaining to legal maturity should have attained the maturity from the beginning of the year, where the year is a criterion, while in other cases the criterion shall be before the time of application of the Zakāt

Second: Sanity. So it is not obligatory to pay Zakāt on the property of an insane person. The sanity of the person throughout the year is a condition, where there is a condition of the person being sane throughout the year, but in other cases, sanity is a condition at the time when Zakat becomes obligatory. In a case where it is a condition that the person should have remained sane throughout the year, if the person suffers from insanity, the year is dropped, contrary to the case of a person who is asleep, rather even a person who is intoxicated, or has swooned, according to the stronger opinion. If, however, the period of insanity is brief, then there shall be difficulty in dropping the year.

Third: Freedom. So no payment of Zakāt is obligatory on a slave, even if we recognize his ownership of some property.

Fourth: Ownership. So no payment of Zakāt is obligatory on a property donated, nor on a property loaned, except after the receipt of their delivery. Nor is it obligatory on a person in whose favour a will is made except after the death of the testator and the acceptance of the will by the person in whose favour the will is made, as, according to the stronger opinion, it is a condition for the receipt of the ownership in whose favour the will is made.

Fifth: Full Right of Disposal. So Zakāt is not obligatory on an endowment, even if it were a family or private endowment, nor on the income accrued on it in case of a public endowment, even if it were restricted to an individual nor on the mortgaged article, even if it were possible to release it from mortgage; nor on the property in the possession of another, even if it were possible for the person to dispossess the possessors by means of legal evidence or oath; nor on a stolen property; nor on a buried property whose place of burial has been forgotten; nor on a lost property; nor on a property dropped in the sea; nor on the property inherited from a missing person that has neither been received by him nor his agent; nor on a debt, even if it were possible to discharge it.

Sixth: Falling under *Nisāb* (the minimum amount of property liable to payment of Zakāt). Its details, God willing, shall follow.

Problem #2: If a person doubts as to his having attained the legal age of maturity (or majority) at the time of Zakāt falling due, or as to the time of Zakāt falling due on the attainment of the legal age of maturity, it shall not be obligatory to charge Zakāt (on his property). The same rule shall apply in case of doubt as to the restoration of sanity at the time Zakāt fell due when the person has had a past record of insanity. In case, however, the person has had a past record of sanity, and he doubts as to the occurrence of insanity at the time Zakāt has fallen due, it shall be obligatory to charge Zakāt on his property.

Problem #3: In a case where there is a condition of enjoyment of full right of disposal, it is also a condition that full one year should have been complete. So in case the enjoyment of full right of disposal has taken place during the passage of a year, and then terminated, the year shall be dropped, and another year shall be required. In a case where there is no condition of the full one year, there is hesitation or difficulty in its being a condition at the time Zakāt falls due, though according to the stronger opinion it is so, but according to the more cautious opinion, it is not so.

Problem #4: There is no impediment in the application of the liability for Zakāt in case of establishment of option for a person other than the owner of the property, except in case of a conditional option for the payment of its price where the transaction is dependent on the continuation of the existence of the property itself. If a person purchases a number of sheep that is liable for Zakāt, while there is an option for the seller, the year of the transaction shall be counted from the time it has been entered, and not from the time of the expiry of the option.

Problem #5: No Zakāt shall be obligatory on the income of the private endowment before its delivery to the endowed person. However, after the delivery, it shall be treated at par with his other property, provided that all its relevant conditions are fulfilled.

Problem #6: A person taking a loan shall be liable for Zakāt on it after the loan has come into his possession, and a full year has passed since it had been in his possession, and the lender or creditor shall not be liable for anything until full repayment of the loan or debt. In case a person does not receive full repayment of his loan or debt, even if it is for escaping from Zakāt, it shall not be obligatory on him.

Problem #7: If a person becomes unable to pay Zakāt once he had already been liable, or when a full year has passed since his ability, the obligation of Zakāt on him shall subsist, and he shall be bound to pay the Zakāt whenever he regains the ability. If a person regains ability after having been unable, even after the passage of several years, his liability shall be counted from the time he has regained the ability. There is difficulty in accepting as approved the Zakāt for one year if he regains the ability after the passage of several years (of inability), not to speak of the case when he has regained the ability after the passage of a single year.

Problem #8: If a property liable to Zakāt belongs to two or more persons, the liability shall be counted on each share, and not on the total amount of shares, so that each of the shares reaching the limit (Nisab) shall be liable to payment of Zakāt, excluding the share not reaching such limit.

Problem #9: If a person is able to perform Hajj with the property within the limit of liability for Zakāt, then if a full year has passed, or the liability has fallen before the departure of the caravan for Hajj and his pecuniary ability to proceed for Hajj, he shall be liable to pay the Zakāt. In case, after the Zakāt has been defrayed, he has still pecuniary ability to perform Hajj, he should be bound to perform Hajj, otherwise not. If full year is completed after the departure of the caravan for Hajj, and performance of Hajj is possible by expending the amount of property within the limit of liability for Zakāt, or a part thereof, he shall be bound to perform Hajj. In such case, if he expends the money, the liability for Zakāt shall drop. In case the person defies the injunction, and fails to perform the Hajj, he shall be liable for the Zakāt for the full year. In case the time of the departure of caravan coincides with the completion of the full year or the time since it becomes obligatory on him, he shall be bound to pay Zakāt and not to perform Hajj.

Problem #10: An infidel is also liable to pay Zakāt, though it shall not be legally valid even if he pays it. Of course, the Imam, Peace be upon him, or his deputy, is entitled to get it from him by force. Rather, according to the stronger opinion, the Imam is entitled to get it compensated by the infidel in case the latter has wasted the property liable to payment of Zakāt, or the property has been wasted while in his possession. Of course, if the infidel embraces Islam after it has become obligatory on him, his liability for its payment shall drop, even if the property itself subsists, though there is difficulty in accepting this opinion. This is the rule when the infidel embraces Islam after the completion of full one year, but if he embraces Islam even a moment before it, then apparently the payment of Zakāt shall be obligatory on him.

Chapter Two - Things on which Payment of Zakàt is Obligatory or Approved

Problem #1: Zakàt is obligatory on three cattle, namely, camels, cows and sheep (male and female both), two rich minerals, namely, gold and silver, and four cereals, namely, wheat, barley, dates and raisins (or currants), and it is not obligatory except on these nine items. Zakàt is approved on fruits and other things grown on land including even saiwort excluding vegetables or green crops (of grain) like Qatt (a grain eaten by desert people after pounding it), brinjal (or aubergine), cucumber, melon and the like. It is not free from difficulty in declaring payment of Zakàt to be approved in case of (other) grains The same is the case with merchandise and mares. As regards horses, ponies and donkeys, Zakàt is not approved in their case. The rules relating to the nine items on which Zakàt is obligatory are given in the following three sub-chapters.

Sub-Chapter One - Payment of Zakat on Cattle

There are four conditions for the obligation of Zakat on cattle in addition to those mentioned earlier. They are: the Nisabs (criteria of payment of Zakat), grazing in the pastures, completion of one full year and their not being employed for service.

I - Detailed Rules about Nisâbs

Problem #1: There are the following Nisâbs for camels, cows and sheep

A. Nisâbs of Zakat on Camels

There are the following twelve Nisâbs on camels:

1. One sheep on each unit of 5 camels.
2. Two sheep on each unit of 10 camels.
3. Three sheep on each unit of 15 camels.
4. Four sheep on each unit of 20 camels.
5. Five sheep on each unit of 25 camels.
6. One Bint-i Mukhâd on each unit of 26 camels.
7. One Bint-i Labun on each unit of 36 camels.
8. One Hiqqah on each unit of 46 camels.
9. One Jadha'ah on each unit of 61 camels.
10. Two Bint-i Labun on each unit of 76 camels
- 11 Two Hiqqah on each unit of 91 camels.
12. On each unit of 121 camels Zakât shall be charged in the following way one Hiqqah on each 50 camels, one Bint-i Labun on each 40 camels, which means that it shall be obligatory to charge the Zakât according to the rates of these numbers wherever applicable. If action cannot be taken without both these numbers, both of them shall be taken into account. One may take into account either or both of them Therefore, one cannot imagine a case where action cannot be taken accordingly; rather, it can be attained in one of the ways in case of groups of ten Of course, in case of a number consisting of units (i. e., numbers from one to nine) lying between two groups of ten, one cannot imagine action on them .So action shall be taken by counting in a way that may take in

all the numbers without taking into account the units So in case of the number being 121 camels, three forties shall be taken into account and three Bint-i Labuns shall be payable as Zakāt.

Again, in case of the number being 130 camels, two forties and one fifty shall be taken into account, and two Bint-i Labuns and one Hiqqah shall be payable as Zakāt. In case there are 140 camels, two fifties and one forty shall be taken into account, and two Hiqqahs and one Bint-i Labun shall be payable as Zakāt In case there are 150 camels, three fifties shall be taken into account, and three Hiqqahs shall be payable as Zakāt Where there are 160 camels, four forties shall be taken into account, and four Bint Labuns shall be payable as Zakāt. Action shall be taken in a similar way until the number reaches 200 camels, when one may account for five forties and pay five Bint-i Labuns, or account for four fifties, and pay four Hiqqahs.

B. Nisābs of Zakāt on Cows & Buffaloes

There are two Nisabs for cows including buffaloes, one where they are 30 and the other where they are 40. So for each 30 cows one Tabi' or one Tabi'ah, and for each 40 cows one Musnah shall be paid as Zakāt. Here too the rule should be applied, as far as possible, taking into account the above standard of payment of one Tabi' or Tabi'ah for each 30 Cows and one Musnah for each 40 cows. There is no Zakāt until the number reaches sixty. When the number reaches sixty one cannot imagine that the rule cannot be applied to groups of ten, when they are accounted for according to thirty - thirty or forty - forty or they may be together (i.e.30-40). So in case of 60 cows, they shall be counted as two thirties, and two Tabi's shall be paid as Zakāt. In case of 70 cows, they shall be accounted for as 30 and 40, and one Tabi' and one Musnah shall be paid as Zakāt. In case of 80 cows, they shall accounted for as two forties, and two Musnahs shall be paid as Zakat. In case of 90 cows, they shall be accounted for as three thirties, and three Tabi shall be paid as Zakāt. In case of 100 cows, they shall be accounted for as two thirties and one forty, and two Tabi'ahs and one Musnah shall be paid as Zakāt. In case of 110 cows, they shall be accounted for as two forties and one thirty. (and two Musnahs and one Tabi'ah shall be paid as Zakat). In case of 120 cows, one may either account for as four thirties or three forties (and make payment accordingly)

C. Nisābs of Zakāt on Sheep

There are five Nisābs of Zakāt on Sheep.

1. For each unit of 40 sheep - one sheep.
2. For each unit of 121 sheep - two sheep.
3. For each unit of 201 sheep - three sheep.
4. For each unit of 301 sheep - 4 sheep, according to the more cautious opinion The problem is, however, very difficult.

5. For 400 sheep or above, for each 100 sheep - one sheep, how high so ever the number may be.

Problem #2: Payment of Zakāt is obligatory on each of the Nisabs mentioned above, and it is not obligatory on what falls short of the Nisāb, as also no payment of Zakat is obligatory on what falls between two Nisabs except what was obligatory on the previous Nisāb, which means that whatever payment of Zakāt was obligatory on the previous Nisab shall remain payable on whatever falls between two Nisabs till it reaches the next Nisab. Thus, whatever falls between two Nisabs shall be exempted in the sense that nothing shall be payable on it more than the previous Nisāb, not in the sense that nothing shall be payable on it at all.

Problem #3: A Bint-i Mukhad is a she-camel which has entered her second year. So also a Tabi' or Tabi'ah (is a bull or cow that has entered his/her second year Again, a Bint-i Labun is a she-camel that has entered her third year, and so is a Musnah (a cow which has entered her third year). A Hiqqah is a she-camel that has entered her fourth year, while a Jadha'ah is a she-camel that has entered her fifth year.

Problem #4: If it is obligatory on a person to pay a she-camel, for example, which has entered her second year, but he has a she-camel of three years. He shall pay the she-camel of three years (as Zakāt) and take back two sheep or twenty Dirhams.

If, on the contrary, a person has a she-camel of a younger age, he shall pay it (as Zakat), and shall pay two sheep or twenty Dirhams in addition. According to the stronger opinion, (if it is obligatory on a person to pay a she - camel which has entered her second year), it shall not be permissible for him to pay voluntarily a she-camel which has entered her third year in place of a she-camel which has entered her second year If, however, the person has neither, then he may purchase which ever of the two categories he likes, though he should not give up caution by purchasing the she-camel which has entered her second year (which it is obligatory on him to pay).

Problem #5: (As regards the payment of Zakāt according to the Nisāb), the property of one person shall not be merged with that belonging to another, although both may have a common or combined pasture, resting place, drinking place, male animals, a milking person or a milking place. Rather it is a condition that both of them should have attained the obligation for the payment of Zakāt, even if the aggregate of the shares of both may have reached the amount of Nisab. It shall make no difference if the owner of two (or more) properties is the same, even if they are situated at a distance from each other.

II - Detailed Rules Concerning Grazing in Pastures

Problem #1: It is a condition that the cattle (on which payment of Zakāt is obligatory) should have grazed in the pasture throughout the year, so that if it happens to be fed on fodder during the year in a way that according to the custom or tradition it may cease to be called a cattle grazing in the pasture, it shall not be obligatory to pay Zakat on it. Of course, there shall be bad effect if the

interval lasts for one or two days; rather even if it lasts for a few days; and rather, it shall not be far from having no bad effect if it takes place on different times.

Problem #2: It makes no difference in dropping the payment of Zakat if the cattle has taken the fodder by itself or it has been given the fodder by its owner or some other person from his own property or the property belonging to the cattle's owner with his permission or without it. So also it makes no difference whether the fodder has been given of one's own accord, or in an emergency, or due to some hindrance in grazing, such as snow or the like. Similarly, it shall make no difference whether the cattle is fed on chopped fodder, or it is set free to graze by itself in the farm owned (by its owner), as in all these cases, the cattle shall be considered to have ceased to be grazing (in the pasture). Of course, apparently it shall not cease to be considered to be grazing (in the pasture) if the pasture is obtained on lease, or it is purchased, provided that it is not a cultivated farm.

Again, there shall be an impediment if the cattle were grazing in the field ready for farming, and it happens to be one meant for farming in the usual and customary way. If, however, a seed is spread in the field that produces herbage in the pasture without any further labor for its growth, then it shall not be far from being no hindrance in considering it to fall under the category of grazing in the pasture if the cattle were grazing in it. Similarly it shall not cease to be considered to be grazing in the pasture if an oppressor (or usurper) is paid (by the cattle's owner) to let the cattle graze in a lawful (*Mubäh*) land (or an ownerless land).

III - Detailed Rules Concerning (Completion of a Whole) Year

Problem #1: A year is considered to be complete after the passage of eleven months. Apparently the Zakāt is shifted to its owners (i.e. those who are entitled to receive it) at the start of the twelfth year when it becomes their wavering ownership and its payment becomes obligatory unwaveringly, and so it is not permissible for the owner of the property to make any changes in it which may deprive those entitled to receive it of their right. In case he does, he shall be held responsible for it. Of course, if any of the conditions are not fulfilled unintentionally in a way that the property falls short of the Nisab during the twelfth month, the property shall return to its previous owner, and the obligation for the payment of Zakāt shall be dropped. According to the stronger opinion, twelfth month shall be counted in the first year and not in the second.

As regards the eleventh month, so in the same way as the year is dropped due to the unintentional non-fulfillment of any of its conditions, it shall be permissible for him to make any change in the Nisab which may cause its non-fulfillment, in a way that he exchanges it with another kind of property even if it also belongs to the category falling under Zakāt, or of the same kind as, for example, he exchanges a sheep which has grazed in the pasture for six months with another sheep, or by a similar sheep as when he changes a sheep with a round, fat tail with another sheep of the same type or another type of sheep, rather apparently the year shall thereby be cancelled, even if a person has done it in order to escape payment of Zakat.

Problem #2: If a person is the owner of not more than a Nisāb, and several years have passed, while he has been paying Zakāt every year for something else, he shall be liable for the payment of the Zakāt continuously due to the subsistence of the Nisab all the time and without there being any decrease in it. Of course, if a person delays the payment of Zakāt at the end of the year, even for a short while, as it generally happens, the beginning of the next year shall be counted in consideration of the delay in the previous year. So the Nisab for the next year shall not begin unless he has taken out its Zakāt from some other kind. In case he takes out the Zakāt from the same kind, or he does not take it out at all, he shall not be liable for the payment of Zakāt except for a single year. If a person owns a property which exceeds the Nisab and several years have passed and he has not paid its Zakāt, he shall be liable to pay Zakat for one year in addition to the Zakāt for that period. If a person owns forty-one sheep, and several years have passed since he has not paid Zakāt for them, he shall be liable to pay Zakāt for two years. If a person has forty-two sheep, several years have passed since he has not paid their Zakāt, he shall be bound to pay Zakāt for three years, and so on. If the years exceed this number, he shall not be bound to pay Zakāt for them, due to the insufficiency of the Nisāb.

Problem #3: If, during the year, the owner of a Nisāb happens to receive some new property due to the birth of some new offspring, inheritance, purchase or the like, and it is upto an amount enjoying exemption, and does not form an independent Nisāb, nor one supplementing another Nisāb, he shall not be liable to pay anything, as, for example, he has forty sheep, and then forty other sheep are born, or he has five camels and four other camels are born. If, however, the new acquisition forms an independent Nisāb, as, for example, he had five camels at the beginning of the year, and after six months, he has had twenty-six camels. Or it may have supplemented another Nisab so that its amount is such that if it is added to the original one after deduction of what is obligatory it ceases to be a part of that Nisāb, and forms another (independent) Nisab, as, for example, when thirty-one cows beget ten, or thirty of them beget eleven. In the same way, if a person has five camels, and, after six months, he happens to have, for example, (another) five, then the latter five shall supplement the former five, and shall not be treated as an independent (Nisab) So five camels form one Nisab, while the ten camel form another single Nisāb, and are not treated to form two (separate) Nisab So also there is a separate single Nisab for fifteen camels, that is three sheep. So in the first case, for each old and new Nisab a year shall be counted separately, while in the preceding example, he (i.e. the owner) shall be bound to pay one sheep for five camels at the end of the year, while at the end of the new year, he shall pay a she-camel which has entered her second year (for twenty-six camels) at the end of the year. Then he shall give up counting five camels separately, and shall account for one year for all of them denovo.

The same shall be the case if a person happens to have an independent Nisāb during the year, as for example, he happens to have thirty-six or forty-six camels, and so on. In case of the birth of an offspring, or the acquisition of a new property, the basis for counting the year shall be the time since the Nisab is thereby completed, provided that the Nisab is completed in a different way, while in the latter case, (when the Nisab is completed by the acquisition of the new property), a single

year shall be counted for all after the completion of one original year, and the beginning of the year for all shall be the end of the original year. The year of the offspring is not counted from the time they start grazing, and no more depend on their mothers' milk, even in case their mother lives upon fodder.

IV - Detailed Rules Concerning the Last Condition

Problem It is also a condition (for the payment of Zakat) that the cattle (on which Zakāt is to be charged) should not have been employed for service throughout the year. In case they are employed for service, although for a short period of time, no Zakat shall be payable for them, even if they happen to be grazing (in the pasture). The criterion for determining whether they are employed for service is the prevalent or usual practice.

Rules Concerning Cattle Accepted as Zakāt (Contd.)

Problem #1: Neither sick cattle shall be accepted as Zakāt for healthy cattle, nor shall old cattle for the Zakāt of young cattle. Similarly, defective cattle shall also not be accepted as Zakāt for sound cattle, even if they fall under the Nisāb. In case, however, all the cattle in the Nisab are sick, suffering from a common disease, their owner shall not be required to buy healthy ones (for payment of their Zakāt), and it shall be sufficient for him to give the sick ones (as Zakat). If some of the cattle are healthy while others are sick, then according to the more cautious, if not stronger, opinion, the owner should take out the average cattle without taking into consideration their respective category (as to their being sick or healthy). Likewise, a sheep that has given birth to a young one shall not be accepted (as Zakat) until fifteen days of the delivery, even if the owner has paid her, except when the whole flock happens to be of the same type. Nor shall the fat sheep which is reared for food (be accepted as Zakat); nor a ram which is meant for copulation. Rather, according to the stronger opinion, such type of cattle shall not be counted among the Nisab, though, according to the more cautious opinion, they are counted as part of the Nisāb.

Problem #2: A sheep which is taken as Zakāt for sheep or camels or as a compensation, if it were a sheep with a large, round and fat tail, she should have completed one year and entered her second year. If it were a he-goat, it should have entered its third year. This is the minimum which is accepted (as Zakat) for sheep. A male cattle is accepted (as Zakat) for a female one and vice versa. So is a he-goat accepted (as Zakāt) for a sheep with a large, round and fat tail, and vice versa, as they are treated as belonging to the same category for the purpose of Zakāt, as is the case with a cow and a buffalo, or an Arabian camel and a non-Arabian one.

Problem #3: If an owner has different types of property in different places, he shall be at liberty to take out any of the property of his own accord, and he is not bound to pay Zakāt from the same Nisāb, or the same category falling under Zakat. Rather, he may even pay the market price of the articles in Dirhams and Dinars. So also, he may pay Zakāt from other categories, if it is better for the poor; otherwise, there is hesitation in doing so, though it is not devoid of force. The best thing is to take out Zakāt from the property itself. The criterion for the determination of the price is the market price of the article at the time of its payment, and the place in which it lies, if the property itself subsists. In case it was in compensation for the property destroyed, then the criterion shall be the price as on the day of its destruction and in its place (or situation). It is more cautious to opt for the higher of the two, namely the price as on the day of the destruction of the article and in its place and as on the day of its payment and in its place (or situation).

Chapter Three - Zakāt on Gold and Silver

Following are some conditions in addition to the general conditions already understood.

First: Nisāb

I - Nisāb of Zakat on Gold

In case of gold, the Nisāb of Zakat is twenty Dinars, whose Zakāt is ten Qirats which is equal to half a Dinar, and one Dinar is one Shar'i Mithqal which is equal to $\frac{3}{4}$ th of a Sayrafi Mithqal. So twenty Dinars come to fifteen Sayrafi Mithqals, and its Zakāt amounts to $\frac{4}{8}$ th of a Mithqal. There shall be no Zakat on less than twenty Dinars of gold, nor if it exceeds a little until the excess reaches four Dinars, and that is equal to three Sayrafi Mithqals whose Zakāt is two Qirats, as one Dinar = 20 Qirāts. The same amount shall be payable for each excess of four Dinars, and there shall be no Zakāt on any amount of gold which is less than four Dinars, but not in the sense that there shall be no Zakāt on it at all, as is the case when gold is less than twenty Dinars, but what is meant by exemption of whatever lies between two Nisabs is whatever exceeds the amount of Nisāb until it reaches another Nisab shall be supposed to belong to the previous one. So the first Nisab of gold begins from twenty Dinars until twenty-four Dinars, and it falls under the first amount of Zakāt that is half a Dinar.

Once the amount reaches twenty-four Dinars, two Qirats shall be added to the amount of Zakāt, and it shall remain so until it reaches twenty-eight Dinars, when another two Qirats shall be added to the amount of Zakāt, and so on.

II - Nisāb of Zakat on Silver

The Nisāb of Zakāt on Silver is two hundred Dirhams of which Zakāt is five Dirhams. Then on each amount exceeding forty Dirhams, there shall be an addition of one Dirham in the amount of Zakāt, whatever the amount may be. There shall be (initially) no Zakāt on silver of less than two hundred Dirhams, and so also there shall be no Zakāt on an excess of less than forty Dirhams, in the sense already explained under the rules relating to the Zakāt on gold. A Dirham is equal to six Dawaniq, which is equal to half of one-fifth Shar'i Mithqal, as each ten Dirhams are equal to seven Shar'i Mithqals.

Explanation: The general rule in the payment of Zakāt on gold and silver is that when each of them reaches the Nisab i.e. twenty Dinars in case of gold and two hundred Dirhams in case of silver, $\frac{1}{40}$ th of the amount of gold or silver, as the case may be, shall be paid as Zakāt, and so its owner shall be considered to have paid what was due. If a person pays a bit more than the due amount of Zakāt, there shall be no objection, rather it shall be better and shall add to the beneficence.

Second: For the obligation of payment of Zakāt on a gold or silver coin, it should bear the seal of a king or somebody like him of whatever time or place, belonging to Islam, or a non-believer, with writing on it or without it, even if the writing has been obliterated for some reason. In case a coin of gold or silver does not originally bear a seal or writing, payment of Zakāt shall not be obligatory on it, except when it was in currency, in which case, according to the more cautious opinion, it shall be obligatory to pay Zakāt on it. If a coin (of gold or silver) is used, for example, as an ornament for decoration, then it shall not be obligatory to pay Zakāt on it, regardless whether its value exceeds (the limit of Nisāb) or falls short of it, and whether it was used in a way as transaction or not.

Third: Completion of a year. It is also a condition that the whole Nisab should subsist for a full year. If, therefore, during the year it falls short of the required limit or it is changed in substance, etc., or by means of casting, even if in order to escape payment of Zakāt, it shall not be obligatory to pay Zakāt for it, though, in such case too, it is approved to pay Zakāt for it; rather, according to the more cautious opinion, Zakāt should be paid for it. If, however, after the turn of the year the coin is cast (into another one), the obligation for payment of Zakāt for it shall not drop.

Problem #1: Dirhams and Dinars are put together in a way that they may fall under the Nisāb, although they may differ in denomination and coins, rather even as regards their value or demand. So an Iranian coin shall be put together with a *Majidi* or (Indo-Pak)

Rupee; rather, a current coin shall be put together with one which is no more in currency. As regards taking out of Zakāt, if the owner himself pays it in the best and fullest way, it shall be better and raise its good reward; otherwise, according to the stronger opinion, Zakāt shall be taken out from each category and according to the required proportion, and it would not be permissible to suffice with the lowest kind.

Problem #2: It shall not be obligatory to pay Zakāt on impure (or counterfeit) Dirhams that cannot be considered pure silver even nominally, and even of a baser quality, except if when pure, they would fall within the Nisab. If there is doubt (as to the purity or impurity of a Dinar), and there is no way to determine it, it shall not be obligatory to pay Zakāt on it. It is more cautious to resort to refinement or the like in order to test it, although, according to the stronger opinion, it is not obligatory (to pay Zakat for it).

Problem #3: If a person pays Zakāt in impure (or counterfeit) coins for pure or impure coins, then if he knows that it contains pure silver upto the quantity on which payment of Zakāt is obligatory, well and good; otherwise, it shall be indispensable for him to obtain knowledge about it, even if the knowledge as to its content of pure silver being upto the required quantity and not less than that is obtained against some payment.

Problem #4: If a person owns an article falling within the Nisāb, but does not know whether it contains some alloy or not, then, according to the stronger opinion, it shall not be obligatory to pay Zakat on it, though, it is more cautious to pay the Zakāt.

Problem #5: If a person takes a loan amounting to Nisab of Zakat and keeps it with himself as it is until the completion of one year, then the borrower shall be required to pay Zakāt on it and not the lender. Rather, even if he has made it a condition (that the lender shall have to pay the Zakāt in such an event), even then the condition shall not be binding, though the tenor of the condition were also that the lender shall be liable for the payment of the Zakāt (in such a case). If, however, the borrower stipulates that the lender shall pay the Zakāt due on the loan voluntarily, the condition shall be binding. If the lender does not fulfill the condition, the condition shall not drop, and he shall be bound to pay the Zakāt (due on the loan)

Chapter Four - Zakāt on Grains (or Cereals)

It has already been mentioned that payment of Zakat is not obligatory except on four kinds of grains or cereals, namely, wheat, barley, dates and raisins (or currants) Payment of Zakāt is not applicable to “Sult” which is like barley in nature according to what is said about it and like wheat in softness and in not having a husk, and so Zakāt is not payable for it, though it is more cautious to do so. Caution should not be given up by affiliating “Alas” (a kind of pulse) with wheat, but payment of Zakāt is not obligatory on grains other than it, though it is approved to pay Zakāt for some things, as already mentioned. As regards the conditions relating to the amount falling under Nisab and the amount to be taken out of it as Zakāt, etc., in case of the articles on which payment of Zakāt is approved, they are the same as applicable to those on which payment of Zakat is obligatory.

Some Issues Concerning Zakat on Grains (or Cereals)

Following are some issues Concerning payment of Zakāt on grains (or cereals).

The First Issue:

Here are two conditions in the application of Zakāt on grains (or cereals).

First: Attainment of Nisāb The Nisab in case of grains (or cereals) is five Wasaq, which is equal to sixty Sā and a Sā’= 9 Iraqi Ratls and 60 Medinese Ratls, as it is equal to four *Mudds*, and a *Mudd* = 21/4 Iraqi Ratls and 11/2 Medinese Ratls. So the Nisab for the grains (or cereals) comes to one thousand seven hundred Iraqi Ratls and one thousand and eight hundred Medinese Ratls. An Iraqi Ratl = 130 Dirhams which is equal to 91 Shari Mithqals and 68 1/4 Sayrafi Mithqals, and according to Hiqqah of Najaf which is equal to 933 1/3 Sayrafi Mithqals it is 8 Wazns and 5 1/2 /-Hiqqahs minus 58 1/3 Mithqāls. According to the Istambuli Hiqqah that is equal to 280 Mithqals it comes to 27 Wazns, 10 Hiqqahs and 35 Mithqals. According to the Shāhi Maunds which is current in some parts of Iran and which is equal to 1280 Sayrafi Mithqals, it comes to 144 Maunds minus 45 Sayrafi Mithqals. According to the Tabrizi Maunds that is current in some parts of Iran, it comes to 288 Maunds minus 45 Sayrafi Mithqal. According to Kilograms, which is current today, it comes to 847 Kilograms and 207 grams approximately. There is no Zakāt on whatever falls short of the above Nisab even if a little, as it is obligatory on the Nisāb and whatever is in excess, though a little.

Problem #1: The criterion for the application of Zakat is the time when the grains become dry, though the time when the payment of Zakat becomes obligatory may be earlier. So if a person has five Wasaq of fresh dates but it falls short of Nisab when dried up, no Zakāt shall be payable for it. Even in case of “Barban” which is a variety of dates, and the like, which are eaten when still fresh, Zakāt becomes obligatory when they reach the Nisāb of dates, even if the dates are less than the fresh dates. In case when these varieties, when dried up, are not treated as dates, there shall be no Zakāt on them

Problem #2: If a person owns palm trees, vines or grain fields in different distant places whose fruits or grains become ripe earlier than one another, even if with the distance of one or two months or more, they shall be put together, provided that the whole produce belongs to one year, so that if the produce reaches Nisab, Zakāt shall be obligatory on it, and the obligatory Zakāt shall be taken out from the produce. If the produce does not amount to the limit, it shall be obligatory to pay Zakāt whenever it reaches the limit, whether it is a small amount or a large amount. If the amount of produce that has ripened does not reach the Nisāb, he shall wait for the other produce when ripened till it reaches the limit. If he has some palm trees or vines that bear fruits twice a year, he shall put the first crop together with the second one, though there is difficulty in accepting this opinion.

Second: Ownership by farming, even if what is cultivated, or farm or fruits with or without trees are transferred into his ownership before Zakat is applicable to them, yet, according to the stronger opinion, Zakāt shall be obligatory on him on what has been produced during the period they had been in his ownership despite the above fact, and according to the more cautious opinion, even what was produced before they were transferred to his ownership.

Problem #3: According to what has been prevalent among the later jurists, the time when Zakat becomes applicable is when the grains become ripe, or the beginning of suitability of production, or when the fruits on the palm trees become yellow or red in case of dates and when the unripe and sour grapes form into bunches. According to the stronger opinion, the criterion is the time when they may be called wheat, barley or dates. The caution obtained after consideration of the two opinions mentioned in the above Problem should not be given up in case of raisins (or currants).

Problem #4: The time when taking out of Zakāt becomes obligatory is when the grain has been duly sifted from the husk, the dates are picked and when the raisins (or currants) are ready. This is the when payment of Zakāt is delayed by a person, he shall be responsible (for any damage caused to the subject of Zakāt). The collector of Zakāt may demand it from the owner and the owner is bound to make a positive response. If the collector of Zakat demands Zakāt from the owner before the above time, the latter shall not be bound to make a positive response. There is difficulty in the permissibility of payment of Zakāt before the above time. Rather, according to the stronger opinion, it is not permissible if the subject of Zakāt is damaged due to its payment before time, even if we accept the opinion that the proper time when the payment of Zakāt becomes obligatory is from the time the subject of Zakāt becomes suitable for production.

Problem #5: If the owner intends to pick the grapes when they are unripe or ripe, or the dates when it is unripe or ripe, he shall be legally allowed to do so, and he shall be bound to pay Zakat, according to the more cautious opinion, from the produce itself or its value after determination of the time when the dates or the raisins have reached the Nisāb, though, according to the stronger opinion, it is not obligatory.

Problem #6: It is permissible for the owner to pay Zakāt while the fruit is still on the trees, in the form of the fruit or its value, before he has picked the fruit, but after its payment has become obligatory on it.

Problem #7: If a person owns a palm tree, vine or a corn-field before the time when payment of Zakāt becomes obligatory on it, then, according to the stronger opinion, he shall be bound to pay Zakāt on whatever grows in his property after he becomes its owner, and in other case too, according to the more cautious opinion, he shall be bound to pay Zakāt, as already mentioned. So it shall be obligatory on him to take out Zakāt after it becomes applicable provided that all the relevant conditions are there. This is contrary to the case when he becomes the owner of the property after Zakāt had become applicable to it, so that the person from whom the property has been transferred to the new owner and who had been the owner of the property before Zakāt became applicable to it. If a person has purchased the property before its owner had paid the Zakāt due on it, then the transaction shall be considered legally unauthorized in so far as it regards the portion of the Zakāt, and shall require the permission of the judge. So if the judge allows it, the buyer shall pay Zakāt to the judge, and the latter shall be entitled to have recourse against the seller. In case the judge does not permit, the buyer shall pay its Zakāt and have recourse against the seller. This is the case when it is established that the seller has not paid the Zakāt. In case, however, he has knowledge about its payment by the seller or there is its likelihood, then he shall be under no liability.

Problem #8: If a person disposes of his agricultural produce or fruits, and doubts whether the sale had taken place after it became obligatory on it in which case he would be liable to pay the Zakāt, or before it in which case Zakāt would be the liability of the buyer, and he would have no liability for it, except that he knows the time Zakāt became obligatory, but has forgotten the time of the sale; in that case, according to the stronger opinion, he shall, nevertheless, be bound to pay the Zakāt. In case the buyer has such doubt, then if he is certain that the seller has not paid his Zakāt, with the supposition that the sale has taken place after Zakāt had become obligatory on the property, then, according to the more cautious opinion, he shall be bound to pay the Zakāt in all circumstances, while there is likelihood that the sale has taken place at the time when the growth of the crop had been complete and it has not grown further since it became his property. In case there is no such likelihood, then, according to the stronger opinion, he shall be bound to pay the Zakāt. In case the buyer is not certain about it, but is certain about the payment of the Zakāt by the seller with the supposition that he might have paid it before the sale, or there is such likelihood, he shall not be liable to pay the Zakāt absolutely, according to the stronger opinion, even in case he has knowledge about the time of the sale, but doubts whether Zakāt became obligatory before or if it, though it would be more cautious for him to pay Zakāt.

Problem #9: If the owner dies after Zakāt became obligatory on the property, but before its payment, the Zakāt shall be taken out of the property itself on which Zakāt is due in case it subsists. In case, however, the property has been destroyed (before Zakāt is paid), the deceased shall be held responsible for it, and the Zakāt shall be paid out of the property left behind him. Of course, his

heirs may pay the value of the Zakāt even despite the subsistence of the property. If the owner dies before Zakāt has become obligatory on the property, then, according to the more cautious opinion, each of the heirs whose share has reached the Nisāb of the Zakāt, shall be bound to pay the Zakāt provided that all the relevant conditions are there, in case the property has been transferred to them after the completion of growth of its produce and before Zakāt has become obligatory on the property. According to the stronger opinion, the heirs shall be bound to pay the Zakāt even if the transfer of the property has taken place before the completion of the produce. In case none of the heirs' share has reached the Nisab or some of the relevant conditions are not fulfilled, there shall be no liability for Zakāt. If it is not known whether the owner's death has taken place before Zakāt became obligatory or after it, then, according to the stronger opinion, the heir or heirs whose share has reached the Nisāb shall be bound to pay Zakāt on his share in certain circumstances, and, according to the more cautious opinion, in certain (circumstances. As regards the heirs whose respective shares have not reached the Nisāb, they shall not be liable to pay any Zakāt for their respective shares, except in case the time when Zakat became obligatory on the property is known, but there is doubt as to the time of the owner's death then, according to the stronger opinion, they shall be liable to pay the Zakāt on their respective shares.

Problem #10: If the owner of the corn-field, palm tree or vine is dead, and he owed some debt, then if his death has taken place after the payment of Zakāt became obligatory on his property, it shall be obligatory to pay the Zakāt, as already mentioned, even in case the debt embraces the whole amount of the property left behind him, and the creditors shall not share it along with those entitled to receive the Zakat, except when the deceased had become liable for it during his lifetime due to destruction of the property on which Zakāt was due, or it had been destroyed due to his own fault, in which case the property shall be distributed among them like all other debts. If the owner's death has taken place before Zakāt became obligatory on the property, then, if it were before the appearance of the grains and fruits, then, if the debt would embrace the whole property left behind him and even exceed it in a way that it would also embrace even what has grown in addition on the property, the heirs shall not be bound to pay Zakāt. Rather, according to the stronger opinion, the additional growth on the property shall be treated as the principal inheritance being the property of the deceased owner from which the debt shall be repaid. In case the debt embraces the whole property left behind by the deceased and there is nothing left in excess, if the fruits have appeared after the owner's death, the amount of debt after the appearance of the fruits shall become a part of the principal inheritance as well as the growth thereon being the property of the deceased owner which will be divided between the creditors and the heirs, and there shall be no Zakāt on the amount equal to the debt, and the Nisāb shall be assessed on the principal property and the growth thereon after the payment of the debt. Later, if the share of the heir or heirs out of the growth of the property after its division happens to be in a considerable amount and reaches the limit of Nisāb, Zakāt shall be obligatory on it. If a part of the inheritance is destroyed and it transpires that it was not from what the debt is paid and that it was not a property of the deceased, and, in fact, his property happened to be other than what was destroyed, and from it, the actual position becomes clear when the death had taken place after the appearance of the growth and before Zakat became

obligatory. Of course, it would be cautious to take out the Zakāt along with the compensation paid to the creditors or obtaining their satisfaction. Particularly in case the owner's death took place before the appearance of the growth, and if the heirs have repaid the debts or have stood guarantee to their payment with the consent of the creditors before Zakāt has become obligatory, Zakāt shall be obligatory on every one whose share reaches the Nisāb provided that all the relevant conditions are there.

Problem #11: In case of a valid Muzāra'ah (or Metayage; a share cropping contract in agriculture) and Musaqat (or a sharecropping contract in orchard produce) where the produce is to be shared by the owner and his agent, payment of Zakāt shall be obligatory on both of them for their respective shares provided that all the relevant conditions are there in respect of the said contracts, contrary to the land leased for farming, in which case the payment of Zakāt is obligatory only on the leaseholder, provided that all the relevant conditions are there, and the lessor is under no liability, even if the hire is paid out of the money on which Zakāt is due.

Problem #12: In case of an invalid Metayage, the Zakāt shall be payable by the owner of the seed, and the hire of the land and the wages of the labor shall be treated as expenditures. In case of an invalid Musaqat, however, Zakāt shall be payable by the owner of the orchard, and the proper wages of the watering labor shall be treated as expenditure.

Problem #13: If a person has a variety of dates like the Zāhidi, Khastavi or Qintar, etc., they shall be put together while determining the Nisab, though, it is more cautious to pay the Zakāt from the share of each variety. According to the stronger opinion, it would be permissible to pay the Zakāt for all the varieties generally from the variety of superior quality, even if some better quality is also there. According to the more cautious opinion, it is not permissible to pay Zakāt from the variety of a lower quality for the variety of a superior quality. The same rule shall apply to the different varieties of grapes.

Problem #14: It is permissible for each of the owners or the government or their representative to accept the share of the other party according to the estimate of experts. Apparently the estimate in this case is like the estimate in case of Muzāraah on which subject traditions have come down. This is also a transaction itself based on reason, and its advantage is that the definitely determined joint property becomes definite, and in a general way it is determined in the property of the person accepting it. It is, however, an indispensable condition for its validity that it should take place between the owner and the ruling authority. By ruling authority is meant the government or its representative assigned the job of making the estimate. An owner is not permitted to behave arbitrarily in making an estimate and later make changes according to his sweet will. Of course, once the estimate has been accepted by the government, the owner is allowed to make whatever changes he likes without any need for further checking and accounts. In case of making estimate, it is a condition that its formal declaration (Sighah) should be made which may signify the said acceptance and the transaction. Apparently, (after the transaction), if the subject of the transaction is destroyed by an Act of God or the oppression of an oppressor, its liability shall be on the person

accepting it, except when the damage embraces the whole property, or it is to the extent that what is left undamaged falls short of the amount ascertained (as Zakāt), then it shall not be treated as compensation for what has been destroyed. If the accepting party is the owner and not the ruler, he shall be bound to return what is left undamaged to the ruler. Then, if something is left with the accepting owner out of what had been estimated, it shall belong to him. If, however, it falls short, the owner shall be liable to make good the deficit. The time for making the estimate is after the payment of Zakāt has become obligatory.

Zakāt becomes obligatory after the payment of what the government receives from the produce itself as its revenue and what it also receives in cash as tax, according to the more valid opinion, when the revenue is determined according to the land for which Zakāt is charged. If the revenue is determined according to the produce that is of a more general nature, it shall be ascertained accordingly. If the government officials, assigned the job of collecting the revenue, collect unjustly more than fixed by the government, then if they have forcibly collected it from the grain itself, then the amount so unjustly collected shall apply to the whole property and the owner shall not be responsible to pay the share of the poor (entitled to receive the Zakāt), and it shall be treated as government tax as Zakāt is determined after the deduction of the government tax proportionately. If the government officials have collected it from something else, then, according to the more cautious opinion, it shall not be accounted for against the poor, particularly when the injustice happens to be personal. Rather, its absence of permissibility is not free from force. Whatever is levied by the government as tax is done, keeping in view the amount of Zakāt (paid by the owner), so that it shall be paid from the average, and then the required Ushr (the tenth part) or half of the 'Ushr paid out of the remainder. As regards its payment in consideration of the Nisab if it happens to be what is charged on the land as land revenue, then there is no objection if the Nisāb is determined after its payment, in the sense that the owner's reaching the limit of Nisab in his share shall be the consideration and not the whole share of the owner and the government. If the tax is not in the form of land revenue, then it would be difficult to accept the above rule, and according to the stronger, if not more cautious opinion, the Nisāb shall be considered before the payment of the tax.

Problem #1: Apparently the rule relating to the tax is not exclusively meant to what the non-Shi'ah ruler receives and who claims to be the caliph and holder of authority on the Muslims without having such title, but also applies generally to the Shi'ah rulers who have no such claim. Rather it also applies to all those officials who are assigned the job of collecting the tax and even to the cases where there is no ruler, as is the case with some of the governments formed these days. There is also a sense in applying this rule to lands other than the taxable lands which is not devoid of force, as, for example, what is Collected by a tyrant and unjust ruler from settlement lands or the wastelands which have come to be owned as a result of developing them.

Problem #2: According to the stronger opinion, payment of all the expenditures is to be considered without any difference in their belonging to the period before the payment of Zakāt became applicable or after it. It is more cautious, if not according to the stronger opinion, that consideration is to be made of the Nisāb before deducting the expenditures. So if, after the fulfillment of all

conditions, the property reaches the Nisab it shall be charged Zakāt. Of course, the expenditures shall be deducted from the whole property, and then the ‘Ushr or its half shall be deducted from the residue, irrespective of its being large or small. In case, however, the expenditures embrace the whole produce, then there shall be no Zakāt. The expenditures here mean everything that is borne by the owner for the maintenance of the produce, and is spent by him for its growth, protection and collection, like the seed, cost of water obtained for irrigating the farm, or watering the trees as well as the wages of the ploughmen, cultivators, guards, irrigators, harvesters and threshers, including the remuneration paid to the agents who hire the fields for cultivation, and also the payment for hiring the land, even if it were usurped, and the person may not intend to pay it to the actual landlord. They also include the cost of drying the fruits (of dates and grapes), trimming the trees and levelling the land and repairing the canals, rather even the cost of digging the canals, if they are required for the farms, palm trees or vines. Apparently the expenditures shall not include what is spent by the owner on the garden, for example, on digging wells or canals, or getting water wheels or Persian wheels, or building the enclosing walls, or the like that are considered expenditures on maintenance and arrangement of the garden and not one on its fruits or crops. Of course, if a buyer of the fruits or the like makes such expenditure for the sake of the fruits he has purchased, or owns them by hiring the orchard; it shall be accounted for as expenditures. If the owner spends labor on his farm or orchard, it shall not be considered for payment as wages. Nor shall there be any wages for a person who has performed some job voluntarily. Nor shall there be any cost of hire for the land or the implements, if they belong to the owner. Rather, it shall be more cautious not to account for the cost of the implements and tools purchased by the owner for farming and watering which remain intact after the production of the crop. There is, however, some sense in accounting for the cost of the implements which are rejected due to some damage to them for being used in farming or watering, though it is more cautious not to do so. There is difficulty in accounting for the expenditure incurred on farming or fruit produce, though it not far from being likely, but it shall be divided between the husk and wheat proportionately.

Problem #3: Apparently, while accounting for the cost of the seed, its current price shall be taken into consideration, and not its proper price, regardless whether it belonged to the owner or he had purchased it. In case part of the seed belonged to the property on which payment of Zakāt was due, then apparently the poor (to receive the Zakat) shall share the owner in proportion to their share in the seed, and the rest shall be considered part of the expenditures.

Problem #4: If some other property is included in the property on which Zakāt is due, the expenditure shall be divided between them proportionately. The same rule shall apply to the tax collected by the government, if it is imposed on the land in consideration of the total produce, and not particularly in consideration of the property on which Zakāt is due. Apparently the expenditure shall be divided between the husk and grain proportionately.

Problem #5: If a labor spent on a crop for a number of years, then if it was initially meant for several years, it shall be divided into the number of years. The labor spent on the first year even if it is used for other years as well, shall be accounted for in the expenditure of the first year, and its cost shall not be accounted for in other years.

Problem #6: If a person doubts whether an item is accountable as expenditure or not, it shall not be accounted for in the expenditure.

The Third Issue:

Whatever is watered by running (or natural) water, whether by digging a canal or the like, or by natural water supply whose roots are fed by the underground or rain water, the Zakāt on it shall be one-tenth (or Ushr). Whatever is watered by means of manual labor through a bucket (of metal or leather), large leather bags, sprinklers, machines or other artificial means, the Zakāt on it shall be half of 'Ushr. In case of whatever is watered by both, the decision shall be in favour of the manner in which it is watered more according to the prevalent custom. If both the manners are employed equally in a way that neither of the methods can be attributed to it mainly, and it is said to be irrigated by both (equally or jointly), then half of it shall be charged 'Ushr and the other half- 'Ushr. Anyhow, caution should not be given up by charging 'Ushr when the greater part of it is watered without artificial means, though it is deemed to be irrigated by both the means. In case there is doubt, payment of the smaller (half-'Ushr) shall be obligatory, except when formerly it was irrigated without artificial means, and now there is doubt whether the past manner has been given up or not then the larger amount (i.e. 'Ushr) shall be charged. Rather, according to the more cautious opinion, the larger amount (i.e. 'Ushr) should be charged in all circumstances.

Problem #1: The normal rains during the year do not exclude from its relevant rules whatever is watered by metal or leather buckets (or artificial means), except when it no more needs the artificial means, or it becomes one watered by both means.

Problem #2: If a person supplies water to an ownerless land by means of metal or leather buckets with or without any personal interest, and another person tills it, and the roots of the farm are fed on that water, according to the stronger opinion, payment of Ushr shall be obligatory on it. The same rule shall apply in case a person supplies the water itself for some purpose other than farming, and then decides to till the land in a way that the roots of the farm are fed on that water. Likewise, (the same rule shall apply), if a person waters a farm and it happens to be in a larger quantity and extends to another land, and then he decides to till that land too in a way that the roots of its farm may be fed on that water.

Chapter Five - Categories of Those Entitled to Receive Zakāt, and its Uses

There are eight Categories of those entitled to receive Zakāt.

The First & Second Categories - The Poor (Fuqara') & the Indigent (Masakin). The First category, namely the Poor (or Fuqara) (consist of those who do not have the yearly expenses for themselves and their dependants, while) the Second Category (namely the Indigent or Masākin) are in a more wretched condition than those belonging to the First Category. Those belonging to these two categories are the ones who do not have the yearly expenses according to their position for themselves or their dependants at present nor the ability to earn their livelihood. So if a person has some means of earning through which he is able to maintain himself and his family in a way suitable for his position, he shall not be considered poor or indigent, and it is not lawful for him to receive Zakāt. The same is the case of a person having some industry or landed estate, etc. through which he can earn his livelihood. If a person is able to earn his living, but does not do so due to indolence, then he should not give up caution by abstaining from receiving or being paid Zakāt. Rather absence of its permissibility is not devoid of force.

Problem #1: It is the beginning of the year on which depends the decision about one's being poor or otherwise during the period of payment of Zakāt. So consideration shall be made for the sufficiency or otherwise (of the income to defray the expenses) during the period in question. So if a person has income sufficient to defray his expenses for some period during year, he shall be considered to be rich during that period. Then if after spending part of the income, it becomes insufficient to meet the expenses of the year, the person shall be considered poor.

Problem #2: If a person has capital sufficient to defray the expenses for a year, but its profit is not sufficient for the purpose, or he has some property whose value is sufficient to meet his expenses for one or more years, but its incomes is not sufficient to meet his expenses, he shall not be considered a rich person, and so it shall be permissible for him to let his capital or property remain as it is and make good the deficiency by receiving Zakāt.

Problem #3: According to the more cautious opinion, a person should not be paid more than his yearly expenses, as it is also more cautious for the poor not to receive more than that. For a worker whose earning is not sufficient or an owner of a property whose produce is not sufficient, or a businessman whose profit is not sufficient to meet his expenses, it is more cautious to confine the amount paid or received by them or paid to them to the extent that makes good their respective deficiency (to meet their yearly expenses).

Problem #4: If a person needs a house for residence, a servant (for service) or a horse for riding according to his position required for his honour and status, or garments for use in summer, winter on a journey or while staying within his town, even if they are meant for decoration, or beddings and utensils, etc., they shall not be a hurdle in the way of payment or receipt of Zakāt. Of course, if

a person has more than his normal needs in view of his position and status, so that if he spends it, it shall still be sufficient to meet his yearly expenses, then shall not be entitled to receive Zakāt.

Problem #5: If a person is able to work to earn his living even if by collecting fuel or grass, but it is below his dignity, or he is not able to bear heavy labor due to old age or sickness, or the like, it shall be permissible for him to receive Zakāt. Likewise, (the same rule shall apply), a person is a businessman, or has had some profession which he is not able to pursue anymore due to lack of means or absence of customers.

Problem #6: If a person has at present no business, profession or work according to his position, but he is able to learn it without much difficulty or hardship, then there is difficulty in the permissibility of his giving up learning the trade and receive Zakāt, and so caution should not be given up (in this case). Of course, there is no objection (in receiving Zakāt) during the training period once he starts learning the trade.

Problem #7: It is permissible for a student to receive Zakāt from what is reserved for spending in the way of Allah even if he is able to work according to his position to earn his living when the work obstructs in his studies or causes slackness in it, regardless whether his studies are necessary for him individually or as a collective duty, or are approved for him.

Problem #8: If a person doubts whether what he possesses is sufficient to meet his yearly expenses or not, it shall not be permissible for him to receive Zakāt, except when formerly he had no sufficient income, and then he got something about which he has doubt whether it is sufficient (to defray his yearly expenses) or not.

Problem #9: If a person has something due from a poor person, it is permissible for him to account it for in his Zakāt, even if the debtor is already dead, provided he has not left some property sufficient to set off his debt. In case otherwise, it shall not be permissible. In case, however, the deceased (debtor) has left some property, but it is not sufficient to set off his debt due to the restraint by his heirs, etc., then apparently it shall be permissible (for the creditor to account for the debt in his Zakat).

Problem #10: If a person claims to be poor, then action shall be taken according to the veracity or falsehood of his statement. In case his actual position is not known, he shall be paid the Zakāt without recourse to his oath, provided that previously he had been poor. Otherwise, his actual position shall be judged according to his present position, particularly when previously he had been rich.

Problem #11: It is not necessary to declare to the poor that what is given to him is Zakāt. Rather it is approved to pay Zakāt and show as if it is some reward or remuneration while, in fact, it is Zakāt, in case the person receiving the Zakat happens to be one of those who consider themselves above those receiving Zakāt and feel ashamed of receiving it.

Problem #12: If a person pays Zakat to a person under the impression that he is poor, but later he turns out to be rich, the Zakāt shall be taken back from him if the Zakāt itself still subsists with him. Rather, even in case it is lost, the person receiving Zakāt shall be held liable to repay it provided that he knew that it was Zakāt, and he also knew that it is forbidden for the rich to receive it. Rather even if there is likelihood of its being Zakāt, the person receiving it shall apparently be held liable to repay it. Of course, if the Zakāt is paid as something else, the liability of the person receiving it shall drop, in the same way when it shall drop if the person receiving it were sure that it was not Zakāt. There is no difference whether the Zakāt has been set aside or not. The same rule shall apply if a person pays Zakat to a rich person being ignorant that its payment to a rich person is forbidden. If in both the above cases it is not possible to get the Zakāt back from the person to whom it is wrongly paid, or it is lost without the recipient being liable to repay it, or when he is liable to repay it but it is not possible to get it compensated by him, the person paying the Zakāt shall be held liable to pay the Zakāt, except when he had paid it with due excuse, as when the person receiving it claims to be poor and he is considered reliable. In such case, according to the stronger opinion, the person paying the Zakāt shall not be held liable for its repayment. In case of a rational indication, as there being certainty (of the recipient being poor), the recipient shall be held liable for the repayment of the Zakat paid to him. If the person paying the Zakāt happens to be a Mujtahid or his agent, he shall not be held liable for its repayment when he has not committed any mistake. Nor shall the owner paying Zakāt be held liable, if he has paid it to the Mujtahid or his agent, in view of the impression that he is considered to be a general representative of the poor. If, however, Zakāt has been paid by the Mujtahid as the owner's representative, then apparently he shall be held liable for it.

The Third Category - The Collectors of Zakāt. They are the persons who work for the collection of Zakāt and are appointed on behalf of the Imam, PBUH, or his deputy for collecting, checking and maintaining the accounts of Zakāt. They are entitled to receive some remuneration for the service rendered by them, even if they happen to be rich. The Imam, PBUH, or his deputy is competent either to fix for them some remuneration or wages for the prescribed period or not and pay them according to their sweet will. According to the stronger opinion, this category is not to be dropped during the Occultation (*Ghaybat*, of Imam Mahdi, the Twelfth Imam), provided that it is within the power of the ruler, although it is limited to some of the areas.

Fourth Category - Winning the Hearts (of the Infidels or Weak Believers) This category consists of those infidels whose hearts are intended to be won in order (to incline them to help) Islam or the Holy War (or Jihād) or the Muslims whose belief in Islam is weak.. So payment is made to them in order to win their hearts. Apparently, this category has also not been dropped even today.

The Fifth Category-Those who are in Slavery. This category consists of “*the Mukātibun*”, who are unable to pay the sum agreed upon, or the slaves who are living in hardship, rather the emancipation of the slaves in general, regardless of whether they are found entitled to receive Zakat

or not. This is a general category meant for the emancipation of slaves. But in case of a *Mukatib*, there is a condition that he should have the inability mentioned.

The Sixth Category - The Debtors (The “Gharimun”), i.e., those who are under debt without having committed any offence or extravagance but are not able to repay it, even if they possess money enough to defray their yearly expenses.

Problem #13: By debt here is meant every liability under which a person happens to be, although it may be the dower of his wife, compensation due for something destroyed by him or for the loss of a thing in his charge for which he is held liable. According to the stronger opinion, it is not a condition that the debt should be one year old, though, according to the more cautious opinion, this condition is there.

Problem #14: If the debtor is an earner who is able to repay the debt gradually, but the creditors do not agree with it, and demand its early repayment, then there is no difficulty in the permissibility of the payment of Zakāt from this item, otherwise, according to the more cautious opinion, Zakāt is not to be paid.

Problem #15: If the debtor is one whose maintenance is a liability of the person liable to pay Zakāt, he may pay it to him for the repayment of the debt, though it is not permissible to pay it for his maintenance.

Problem #16: The procedure for the payment of Zakāt under this head is either to pay the Zakāt to the debtor for the payment of his debt, or to pay it (directly) to the creditor for setting off the debtor’s debt. If the debtor is indebted to a person liable to pay Zakāt, he may account it for against the Zakāt payable by him, as he may account it for the Zakāt he has with himself to set off the debt owed by the debtor and thereby free the debtor from his debt, even if it is not delivered to the debtor, nor has he authorised him to have it, rather, even if the debtor does not know about it.

Problem #17: If the person who is liable to pay Zakāt has a debt due from a person, and that person has a debt due from a poor person, it is permissible to account for what is owned by that person as Zakāt, and then account it for setting off what is owed to him by the poor, in the same way as the poor person may produce the person who owes the debt to the creditor, and thereby free the debtor from the debt of the person who is liable to pay the Zakāt, and also free the poor from the debt he owes to the debtor, and he shall be indebted to the person liable to pay the Zakāt. Then it will be permissible for him to account it for as the Zakāt he is liable to pay, as already mentioned.

Problem #18: It has already been mentioned that it is a condition in the debt that it should be free from offence. The criterion in it is that it should neither be spent for an offence, nor for obtaining the debt for that purpose. If a person obtains a debt not for an offence, but spends it on it, he shall not be paid from this head, contrary to what is otherwise.

The Seventh Category - “In The Way of Allah” It is not far from being likely to mean what is in the general interest of the Muslims and Islam, like construction of bridges, building roads and highways, or repairing them, and what serves as instrumental in establishing the homage and reverence for the Islamic institutions and elevation of the cause of Islam, or removal of the various kinds of sedition and corruption from the Islamic society and between the two groups of the Muslims, and such other things. It does not mean mere acts that bring closeness to Allah as conciliation between the spouses or the father and the children.

The Eighth Category - Wayfarer (Ibn al-Sabil.). By “Ibn al-Sabil’ is meant a person who becomes helpless while away from his home, even if he were rich in his hometown, provided that the purpose of his journey has been lawful. If the purpose of the journey were unlawful, he would not be paid anything out of Zakât. The same rule shall apply if he were able to borrow or arrange money in some other way. The traveller in dire need shall be paid Zakât to the extent that it may enable him to reach his native place in a way suitable to his position and status, or to a place from where he may obtain sustenance, even if by way of loan. If the person (after receiving Zakât) reaches his native place and there is something left out of what was paid to him, even if as a result of being economical in spending on himself, he shall be bound to return it, even if it were a beast of burden, garment or the like, so that it may reach the person paying it or his agent. In case of his inability, or if it were difficult for him, he shall return it to the judge, and it would be upon him to see that it reaches the payer of the Zakât or his agent, or, according to the cautious opinion, though not according to the stronger opinion, he may spend it after obtaining permission from the payer of the Zakât.

Problem #19: If, due to some vow or the like, a person is bound to pay his Zakât to a particular poor person, or spend it for a particular purpose out of the expenditures of Zakât, he shall be bound to do accordingly. In case, however, he commits some error, or pays it to a poor person other than the particular poor person, or spends it on a purpose other than prescribed for Zakât, it would be treated as sufficient, and it would not be permissible for him to demand its return from that poor person, even if the Zakât paid is itself intact. Rather this is the rule even if he pays or spends the Zakât with knowledge and intention, though he would be considered to have sinned due to the violation of the vow in this case, and so he shall be bound to expiate.

Chapter Six - Qualifications of Persons Entitled to Receive Zakāt

There are a number of qualifications required in persons entitled to receive Zakāt

They are as follows

First: Iman or Belief So Zakāt shall neither be paid to an infidel, nor to a person who opposes the true (Ithna ‘Ashari) religion, even if he were from among one of the Shi’ah sects. Nor to a Mustad’af (one rendered weak or poor) from among the opponents (i.e. the Sunnis), except out of the portion allotted for winning their hearts. Nor shall it be paid to an illegitimate child (i.e. a child born of fornication) from among the believers while still in tender age, not to speak of other than such persons. Zakāt may be paid to the children belonging to the true sect (i.e. the Shi’ah Ithna Ashari sect) irrespective of their being male or female, or discreet or otherwise; rather, even if born of a believer and a non-believer, provided that the child’s father is a believer. In case, however, the child’s father were not a believer, the child shall not be paid Zakāt, even if his/her mother were a believer. The Zakāt shall not be paid to the child personally, and shall be paid to his/her guardian, or shall be spent on the child by the person paying Zakāt, or through some trustworthy person. A lunatic is treated at par with a child. As regards an idiot, Zakāt may be paid to him/her, even if he/she is forbidden to receive it according to the conditions of interdiction.

Second - *Must not be a Drinker of Wine.* According to the more cautious opinion, the recipient of Zakāt must not be a drinker of wine, rather, according to the more cautious opinion; he must not be one committing such major sins openly and publicly. ‘Adalat, or sound moral character, is not a condition for a recipient of Zakāt, though it is so according to the more cautious opinion. So Zakāt may be paid even to those who are not ‘Adil (i.e.. those morally sound) from among the believers, provided that they do not commit major sins publicly, though there is difference of preference among individuals. Of course, it shall not be permissible in case payment of Zakāt would be help in the commission of sin or temptation for the commission of evil deeds, and in case Zakāt is not paid, it would mean preventing the commission of what is wrong. According to the more cautious opinion, there is a condition of ‘Adālat in the officials assigned the job of paying Zakat, while they are fulfilling the job of distribution of Zakāt, though it is not far from being sufficient if there is satisfaction and confidence in this respect. As regards those under debt, wayfarers and slaves, there is no condition of ‘Adalat in them, not to speak of the case of winning the hearts (of the enemies and opponents) or spending in the way of Allah.

Third: *Must not be a Dependant.* So the recipient of Zakāt must not be one whose maintenance is the duty of the owner of Zakāt, such as the parents how high so ever, or children how low so ever, or a permanent wife in whose case the obligation for maintenance is not dropped due to some stipulation or other legal reasons, so that it is not permissible to pay Zakāt to them for their maintenance, even if the obligation for their maintenance has been suspended, irrespective of the payment being for partial or entire maintenance which he is obliged to provide, as, for example, a person may be able to provide their food, but is unable to provide their garments, so he may intend

to provide it out of the Zakāt. Of course, it is not far from being permissible in case it is meant to provide affluence to them, though, according to the more cautious opinion, it would be otherwise. Zakāt may be paid to the persons in order to be able to spend it on the persons who are not dependent on them, as, for example, the wife of one's father or one's son, as others may pay Zakāt to them, even if it is meant for their maintenance. If, however, the recipient happens to be one whom the person paying Zakāt is obliged to maintain, then, according to the more cautious opinion, he should not pay Zakāt to them, though, according to the more cautious opinion, it would be permissible except in case of a wife. If a person pays for the expenses of another voluntarily, he or another person may pay Zakāt to him (or her), even it is meant for his (or her) maintenance, irrespective of that person being a close relative or a stranger. There is no objection in the payment of Zakāt by the wife to her husband, even if he spends it on her maintenance. The same rule shall apply in case of other persons whom the person is obliged to maintain for one reason or the other.

Problem #1: The Zakat that a person is forbidden to pay to the persons whom he is obliged to maintain is the Zakāt, which belongs to its portion of the poor paid to them for their poverty. But as regards its payment from other categories, such as the portions meant for the debtors, winning the hearts (of the enemies and opponents), spending in the way of Allah, emancipation of slaves or spending on the helpless wayfarer out of surplus paid to him as obligatory maintenance in his native town, there is no objection if he pays out of their portions, provided that they belong to the said categories, though there is difficulty in case of those belonging to the last category. So a father may pay out of the portion meant for spending in the way of Allah to his son engaged in studies for whatever books etc. he needs for the studies.

Problem #2: One may pay Zakāt to one's permanent wife the obligation for whose maintenance has been dropped due to some stipulation or the like, as already mentioned. If, however, the obligation has been dropped due to her Nushuz, then there is difficulty in its permissibility due to the likelihood of obtaining maintenance by giving up contumacy. Likewise, payment of Zakāt by the husband to his temporary wife is also permissible. If, however, her maintenance by the husband is obligatory due to some stipulation to that effect, the husband shall not pay Zakāt to her, nor another person despite husband's affluence, or when her husband is already providing her maintenance.

Fourth: Must not be a Hāshemite when Zakat paid by a non-Hāshemite.

A Hāshemite's Zakāt may be paid to a non-Hāshemite, a Hāshemite may receive Zakāt of a non-Hāshemite in a case of emergency, but, according to the more cautious if not stronger opinion, it should be confined to the amount needed for day to day expenses, as, according to the more cautious opinion, a Hāshemite must abstain from receiving the obligatory *Sadaqah* in all circumstances, even if the obligation is temporary, though, according to the stronger opinion, the rule is otherwise. Of course, there is no objection in the payment of the approved (*Mandub*) *Sadaqah* (of a non-Hāshemite) to a Hāshemite. A person whose being a Hāshemite is doubtful, when there is no evidence or general notoriety in favour of his being a Hāshemite, shall be treated

as a non-Hashemite. So he shall be paid (*Zakat and Sadaqah*). If the person claims to be a Hashemite, he shall not be paid either in view of his own admission of his non-entitlement, and not due to any proof in favour of his claim except his sole claim. So he shall not be paid any Khums too by his mere claim unless its veracity is proved from external sources.

Chapter Seven - Misc. Rules of Zakat

Problem #1: It is not obligatory to permeate Zakāt to all its eight categories, though it is approved to do so in case of its abundance and the existence of all the categories. So it is permissible to apply Zakāt exclusively to some of the categories. Likewise, it is also not obligatory to distribute Zakāt to all the persons included in a category. So it is permissible to distribute Zakāt to some of the persons in the category.

Problem #2: Niyyat is obligatory in Zakāt, and it is not obligatory to have in Niyyat more than seeking closeness (to Allah) and its specification, but it is not necessary to categorize its nature being obligatory or approved, though, according to the more cautious opinion, it is so. If a person is bound to pay, for example, Zakat and Kaffarah both, it is obligatory to specify either of them at the time of payment. Rather, according to the stronger opinion, it is necessary to specify with regard to the Zakāt on property or Fitrah. It is, however, not necessary to specify the species in which a person is paying Zakat whether it is in the form of a cattle, gold or silver or cereals, and its being merely Zakāt is sufficient. In case, however, what is being paid is of a kind different from on what Zakāt is being paid in value, then it shall be distributed proportionately. If the species being paid as Zakāt belongs to the kind for which Zakāt is being paid, it shall automatically be accounted for as Zakat, except when it is being paid in place of the kind on which Zakat is being paid in replacement or as its value. Of course, if a person has forty sheep, and five camels, and he pays a goat without specification, they shall be divided between the Zakāt on sheep and camels, except when there is hesitation whether they are meant for the Zakāt on sheep or camels, and apparently the payment shall be invalid. If a person impedes the payment of Zakāt, the judge shall make Niyyat on his behalf. If a person appoints an agent for Zakāt, the agent shall make the Niyyat on behalf of his principal when the property to be paid as Zakat is in the possession of the agent, and the agent is required to pay the Zakāt on the property. If, however, a person takes out the amount of Zakāt, and delivers it to another person to take it to its destination, it is obligatory on him to have Niyyat for what is being carried by the agent to the poor as Zakat. It is sufficient to have the Niyyat in his heart, even if he does not bring it to his memory in detail at the time of its payment. If a person pays some property to the poor without Niyyat, he may renew the Niyyat as long as the property subsists. If, however, the property is destroyed, and the person receiving it is liable for it for anything other than disobedience to Allah, the payer may account it for as Zakāt like other debts. But if the liability is due to disobedience (to Allah), then it would not be permissible to account it for as Zakāt, as is the case when it is destroyed any liability so that it would not be possible for him to intend it to be Zakāt.

Problem #3: If a person owns a property which is not presently in his possession, and he pays of his Zakāt to the poor, and he intends that that is the Zakāt for the property if it still subsists, otherwise it would be an approved Sadaqah (or charity) or, for example, one of the Mazalim, it would be valid and sufficient.

Problem #4: According to the more cautious, if not stronger, opinion, payment of Zakāt must not be delayed, even if it were due to setting aside with the possibility from the time of its becoming obligatory which is different from the time of its applicability, as in the case of grains, rather even where there is also a condition of the completion of a whole year, due to the likelihood of the time of its obligation being that of completion of the whole year. Rather it is more cautious not to delay the payment of Zakāt and also delivering it to the person entitled in case the latter is also there, though, according to the stronger opinion, it may be delayed particularly while waiting for a particular or more deserving person entitled to receive the Zakāt for two months or more within a year. It is more cautious not to delay it for more than four months. If (the property) is destroyed due to the delay without any due excuse, the person shall be held liable for it. Zakāt shall not be paid earlier than the time when it falls due, except as a loan to the person entitled to receive it, so that he may account it for as Zakāt at the time it falls due, provided that the person receiving it is still one of those entitled to receive Zakāt, and the person paying it as well as the property paid as Zakāt fulfills the relevant conditions for its obligation. It is permissible for him to take the Zakāt back from the person to whom he had paid and pay it to some one else, though, to be more cautious, it is better that he should account it for as Zakāt.

Problem #5: It is preferable, rather more cautious, to pay the Zakāt to a jurist during Occultation Period, particularly on his demand, as he knows better where and to whom it is to be paid, although, according to the stronger opinion, it is not obligatory, except when he issues the verdict that it should be paid to him in the interest of Islam and Muslims, he shall follow him, even if he is not one of his Muqallids.

Problem #6: It is approved to prefer close relatives, men of learning, jurists and intellectuals, and one who does not beg from among the poor over others.

Problem #7: Zakāt may be set aside and specified in a particular property, even if there is a recipient. It is, however, difficult to permit specifying it from another species, though it is not devoid of force. Zakāt is a trust in the possession of the master, and he shall not be held liable for its compensation (if destroyed), except in case of omission, transgression, or delay despite a recipient's presence. He is not entitled to change it once it is set aside.

Problem #8: If a person destroys the Zakāt which has been set aside, then if there is nothing that holds its owner responsible as, for example, delay (in its payment), the person destroying it shall be solely held liable for it; otherwise, the owner shall also be held liable, though its liability lies on the person destroying it.

Problem #9: If the owner of the property set aside as Zakāt does business with it, its loss shall be borne by him while its profit shall go to the poor (entitled to receive it), provided that it were in the interest of the Zakāt property, and so it was permitted by the man at the helm of affairs. The same applies to the case when the owner of the property does business with the Nisâb before it is taken out, according to the opinion closer to the traditional authority. If a person does business with the

Zakat or Nisab property for himself, and transacts it with some external capital asset, then there is difficulty in declaring both the cases with the permission of the official authority to be valid; rather, the transaction shall be totally void in the former case, while it would be void in relation to the Zakāt or Nisab property in the latter. If a person does business after accepting the responsibility, and he makes payment out of the Zakāt set aside or the Nisab he shall be liable for it, and shall be entitled to the profit accruing on it, except when he intends to make the payment out of Zakat or Nisab at the time of concluding the commercial agreement, in that case there shall be difficulty in accepting it as valid.

Problem #10: It is permissible for a person to shift the Zakat property from his town, regardless whether he has found a person entitled to receive the Zakāt in the town or not. If the property is destroyed he shall be held liable in the former case but not in the latter, as also the expenses for shifting the Zakat property shall be borne by him.

Problem #11: If the jurist takes the possession of the Zakat as the agent for its recipient, its owner shall be absolved of its responsibility

If the Zakat property is destroyed due to some omission, etc., while still in the jurist's possession, or the owner pays it by mistake to some one not entitled to receive it, even then the owner's shall cease to be responsible. If a jurist takes the possession of something as an agent of the owner, the owner shall not be absolved of its responsibility unless it is paid to the right person.

Problem #12: The charges of the measuring or weighing person or the measurement or the like shall be borne by the owner (of the Zakāt property)

Problem #13: If a person owes Zakāt, or there is Zakat due on his inheritance, and the person meets death, it shall be obligatory on him to make a will for taking it out from his inheritance. The same rule applies to all the other obligations. If the heirs of the deceased are the persons entitled to receive the Zakāt, it shall be permissible for the executor to pay it to them from the deceased's property. Similarly, it shall be permissible for the executor to receive it for himself, provided that he is entitled to receive it, and there is no indication in the will for its payment to some one else It shall be approved for the executor to pay something out of the Zakat to others than the heirs when he intends to pay it to the heirs.

Problem #14: It is disapproved on the part of the owner of the property to demand the return of the possession of the property from the poor once he has paid it to the poor as a Sadaqah, even if it were an approved one, regardless whether the property paid to the poor was with or without any consideration. If the poor person intends to dispose off the property after fixing its price, the owner shall have a better right for it, but the avoidance of the disapproval in this case is not known. Of course, if the Sadaqah is a part of an animal and the poor person is not able to use it, and no person other than the owner is willing to buy it or it would mean a damage to the owner in case it is purchased by some one else, the owner may buy it.

Problem #15: If a person pays Zakat to another to spend it on the poor, or his Khums to be spend on Sādāt, but does not specify any particular person, and the person to whom it has been delivered is himself entitled to receive it, while wordings do not indicate any intention otherwise, it would be permissible for him to have a share equal to one of those entitled to receive it, but not more. The same rule shall apply if the person to whom the Zakāt has been delivered spends it on his family, particularly when the owner says “ This (Zakat) is for the poor and (this Khums) is for the Sadat or This {Zakāt) is to be spent on the poor and (this Khums) on the Sādāt, though it would be more cautious not to receive it, except with the clear permission of its owner. The same rule shall apply if a person gives another a property belonging to a third person to spend it on a (particular) group of persons and the person to whom the property has been delivered happens to possess the qualifications of the said group.

PART TWO - ZAKAT OF BODIES (OR FITRAH)

Zakāt al-Abdan (or Zakāt of Bodies) is also called Fitrah . There are several traditions that have come down on this subject. Here are a few of them.

1. ‘Who so ever fails to pay Zakāt-i Fitrah runs the risk of meeting (an early) death.’
2. Verily, Zakāt-i Fitrah complements Fasting in the same way as the Salavat on the Prophet (May Allah send Blessings on him and his Progeny) complements Prayers.

Now, we shall discuss about those on whom its payment is obligatory, its commodity, its quantity, its time and its uses.

Chapter One - Those on Whom Payment of Zakat-i Fitrah is Obligatory

Problem #1: The payment of Zakāt-i Fitrah is obligatory on a person who is *Mukallaf*, free and rich, in deed or virtually. So it is obligatory neither on a minor, nor on a lunatic, even if he has fits of lunacy periodically, in case he has had a fit of lunacy on the beginning of the night of Eid (al-Fitr). It is also not obligatory on their guardian (or Wali) to pay the Fitrah on their behalf out of their property. Rather, according to the stronger opinion, there is exemption from its payment as regards its payment for a minor or a lunatic even by the person who maintains a minor or a lunatic. Nor is its payment obligatory on one who has been unconscious on the beginning of the night of Eid (al-Fitr). Nor is it obligatory on a slave. Nor is it obligatory on a poor person who has no expenses for himself and his family sufficient for the whole year, indeed and virtually, as a surplus after deducting the debts and other exemptions. It is more cautious to take into consideration the debts the person has to pay during the current year and others. Of course, according to the more cautious opinion, if a person has something surplus from the expenses of a day and night even to the extent of a Sā (a cubic measure of varying magnitude = about 3 kilos), it would be better for him to pay the Fitrah. Rather it is approved even for a poor person to pay the Fitrah in all circumstances even if he revolves a single Sa' throughout the members of his family until it comes back to himself, and then he should pay it to a stranger (poor person). This is the rule when there is no non-*Mukallaf* person among the members of his family, otherwise, he should confine the revolving process of the Sā among the *Mukallaf* members of his family only. If a Wali (or guardian) receives Fitrah from a non-*Mukallaf*, he should spend it on him alone and none else, and it is not to be paid to any one else.

Problem #2: It is a condition that the above conditions should be there at the beginning of the night of Eid (al-Fitr) i.e., before the beginning of the night even if for a moment, in a way that the person should fulfill all the conditions when the night falls, so that it is not sufficient to possess these qualifications earlier but losing it as the night falls. Likewise, it is not sufficient if a person did not fulfill these conditions earlier, but happens to fulfill them afterwards. So the payment of Fitrah shall be obligatory on a person, for example, who attains the legal maturity (or Bulugh) at the time of the nightfall or he recovers of his lunacy. But it would not be obligatory on a person who attains legal maturity after the fall of night, or one who recovers of his lunacy. Of course, it would be approved to pay the Fitrah if a person attains legal maturity or recovers of his lunacy before noon on the day of (Eid al-Fitr).

Problem #3: Payment of Fitrah for himself and for those who are maintained by him is obligatory on person who fulfils all the conditions mentioned above, regardless whether the person maintained is a Muslim or an infidel, free or slave, minor or adult, including even a child born before the sight of the moon for the month of Shawwāl even for a moment. Similarly, everyone who enters the list of persons maintained by him before the sight of the moon for the month of Shawwāl including even a guest, although he may have not eaten anything (in his house), provided he falls under the persons maintained by him, although he may not be treated as a member of his family, contrary to a

child born after the sunset. The same rule shall apply to a person who is included among the persons maintained by him after the sunset, so that he shall not be bound to pay their Fitrah. Of course, payment of Fitrah by him for them shall be approved if what is mentioned above takes place before noon on the day of Eid (al-Fitr)

Problem #4: A person the payment of whose Fitrah has become obligatory on another person due to his becoming the latter's guest or being included among those maintained by him shall himself be exempted from its payment, even if he happens to be a rich person and would have fulfilled all the conditions required for the payment of Fitrah had he not been included among those maintained by the other person. Rather, according to the stronger opinion, payment of Fitrah shall be exempted if the host or one having the liability of maintenance happens to be poor while the guests were rich. According to the stronger opinion, the guest should himself pay the Fitrah if he comes to know that the host has not paid it due to forgetfulness or deliberate violation (of the relevant rule), though, according to the stronger opinion, it shall not be obligatory on him to pay his own Fitrah. According to the stronger opinion, payment of Fitrah is obligatory on the guest if he does not fall under the category of those maintained by the host, but the host should not give up caution by also paying the Fitrah for such guest in addition to the one paid by the guest.

Problem #5: If a person is away from his family, it shall be obligatory on him to make the payment of the Fitrah for the members of his family, except when he has authorized them to pay it from his own property and they can be relied upon in the matter of payment (of the Fitrah).

Problem #6: Apparently the criterion for being a member of one's family is being included among those maintained by that person and not among those whom he is liable to maintain, though it is to be more cautious to take into consideration either of the two aspects. If the permanent wife of a person is included among those maintained by another, payment of the Fitrah shall be obligatory on that person, and not on her. If the wife does not fall under those who are to be maintained by any one else, payment shall be obligatory on herself provided that she fulfills all the relevant conditions. In case she does not fulfill the relevant conditions, payment of her Fitrah shall not be obligatory on any person. The same rule shall apply to the case of a slave.

Problem #7: If a person is to be maintained by two persons, payment of his Fitrah shall be the liability of both, provided that they are capable to do so. In case only one of them is able to maintain the person, it shall be obligatory to pay the Fitrah of his share to the exclusion of that of the other. Caution must not be given up in both the cases.

Problem #8: The receipt of Fitrah of a non-Hāshemite by a Hāshemite is forbidden, the criterion in this case being the maintainer and not the person maintained. It is more cautious to observe caution in both the cases.

Problem #9: Like all the other cases of Ibādāt, in Fitrah too, Niyyat is essential. It is permissible for a person on whom payment of Fitrah is obligatory to pay the Fitrah personally or authorize another to make its payment on his behalf. In such case, it is indispensable for the agent to make the

Niyyat of closeness (to Allah). If the principal authorizes another merely to take the Fitrah to the poor, the former shall be bound to have the Niyyat that what his agent is taking to the poor is the Zakāt (of Fitrah). It is sufficient to have such Niyyat in his heart, and it is not obligatory to bring it to his memory in detail. It is also permissible for a person to authorize another to make the payment of the Fitrah from his own property, and get its payment from him, so that the latter becomes an agent in payment of something from the property of his client. It is also permissible to authorize another to make payment of his Fitrah from his own property voluntarily without demanding its payment from him. Of course, there is difficulty in the permissibility of payment of Fitrah for another voluntarily without being authorized by that person to do so as his agent.

Chapter Two - The Commodity for the Zakāt of Fitrah

Problem #1: The general rule for the commodity of the Zakāt of Fitrah is what is usually used for food in each community or area, though they may not suffice with it, as wheat, barley and rice used in most of the parts of Iran and Iraq, rice most of the areas of Gilan and its suburbs, dates, cheese and yoghurt are used in Nejd and the plains of Hijāz, though, according to the stronger opinion, it is permissible to pay the Fitrah in the form of (any of) the four grains in all circumstances. If in an area the staple food is maize or the like, it is permissible to pay the Fitrah in the form of maize, as also it is permissible to pay it in the form of (any of) the four grains. In case a particular grain is not the staple food of an area, it is more cautious to pay Fitrah in the form of the four grains. It is also permissible to pay Fitrah in value of the commodity. There is, however, difficulty in the permissibility of the payment of Fitrah in the form of anything else that is not of the same commodity in value; rather, it is not far from being insufficient. It is also a condition to take into consideration the time of payment and the place at the time of paying the value of the commodity of Fitrah

Problem #2: It is also a condition in whatever is paid as Fitrah that it must be sound and without any defect, so that it is not permissible to pay it in the form of anything defective, as also it is not permissible to pay it in the form of a commodity mixed with something pardonable. Rather there is difficulty in the permissibility of paying something defective and mixed in value for something sound without defect and unmixed.

Problem #3: It is preferable to pay the Fitrah in the form of dates and then in the form of raisins (or currants). Preference is given to the more useful in consideration of the external preferences, as, in case the staple food of a person is wheat of superior quality, it is preferable for him to pay Fitrah also in the form of wheat of a superior quality and not of a lower quality, or in the form of barley.

Chapter Three - The Quantity of Zakât of Fitrah

The quantity of Zakât of Fitrah is a Sâ in case of each foodstuff, including even yoghurt. A Sa = 4 Mudds, which are equal to 9 Iraqi Ratls and 6 Medenese Ratis These 4 Mudds are equal to $614 \frac{1}{4}$ Sayrafi Mithqâls. According to the Hiqqah of Najaf, which is equal to $933 \frac{1}{3}$ Mithqals, it amounts to $\frac{1}{2}$ Hiqqah, $\frac{1}{2}$ Waqiyyah (a Waqiyyah being equal to $\frac{1}{2}$ Ratl) and 31 Mithqâls minus two grams; while according to the Hiqqah of Istanbul, which is equal to 280 Mithqâls, it amounts to 2 Hiqqahs, $\frac{3}{4}$ Waqiyyah and $1 \frac{3}{4}$ Mithqâls. According to the Shâhi Maund, which is equal to 1280 Mithqals, it amounts to $\frac{1}{2}$ Maund minus $25 \frac{3}{4}$ Mithqâls. According to the current measure in Kilograms, a Sa = about 3 Kilograms.

Chapter Four - The Time When Zakāt of Fitrah Becomes Obligatory

The time when payment of Fitrah becomes obligatory is the beginning of the night of Eid (al-Fitr) and continues till the noon (of Eid al-Fitr). It is preferable, rather more cautious, to delay the payment of Fitrah upto the day of Eid (al-Fitr). If a person offers the prayers of Eid (al-Fitr) he must not give up the caution by taking out the Zakāt of Fitrah before (offering) his prayers. If the time of payment of the Fitrah has already and he has set aside Fitrah, he must pay it to the person entitled to receive it. In case a person has not already set aside the Fitrah, then, according to the more cautious opinion, its payment shall not drop, and he should make its payment with the intention of seeking closeness (to Allah) without intending the payment being made on its due time or compensatory after the lapse of the due time.

Problem #1: It is not permissible to tender the Fitrah before the month of Ramadan, rather, according to the more cautious opinion, in all circumstances. Of course, there is no objection in its payment to a poor person and then accounting it for as Fitrah on the arrival of its time.

Problem #2: It is permissible to set aside Fitrah and specify it in the property of special commodities or set aside its value in cash. It is more cautious, rather more according to the guiding principles to confine to cash while setting aside the value of the commodity. If a person sets aside less than what is required, the rule shall be exclusively meant for that part, and the rest, shall remain unseparated. If a person sets aside more than required, then in setting it aside until the separated part is mixed with that belonging to Zakāt of Fitrah, there is difficulty. If, however, a person specifies the Zakāt of Fitrah in a property that is jointly owned by the master and another person, and his portion in it is equal to or less than Zakat, then apparently Zakāt may be set aside in this way. If the time for the payment of Zakāt of Fitrah has lapsed, but the person has set aside the Zakāt on its due time, it would be permissible for him to delay its payment to the person entitled to receive it, particularly in consideration of some preferences, though he shall be liable in case it is destroyed despite his capacity to pay it and the availability of the person entitled to receive it. On the contrary, if he were not capable, he shall not be held liable except in case of transgression of the rules or omission in the safeguard of the commodity like all other things deposited in trust.

Problem #3: It is more cautious not to shift the commodity specified as Zakāt of Fitrah from one place to another when the person entitled to receive it is also there.

Chapter Five - The Uses of Zakāt of Fitrah

According to the stronger opinion, the uses of Zakāt of Fitrah are identical with those of the Zakat for property, though according to the more cautious opinion, it should be confined to payment to poor Mu'mins (i.e. Shi'ahs) and their children, rather the indigent among them, even if they are not morally sound. It is also permissible to pay the Fitrah to the Mustad'afs (i.e. those who have been rendered weak or poor) from among the opponents (i.e. the Sunnis) in case of unavailability of the Mu'mins (i.e. the Shi'ahs).

It is more cautious not pay to the poor less than a Sa (which is equal to about 3 Kilograms) or its value, even if the number of the poor is such that distributing the Fitrah to all of them in that way is not possible.

It is also permissible to pay several Sa's (of Fitrah) to a single poor person, father even upto the extent of his yearly expenses.

According to the more cautious opinion Fitrah should not be paid or received more than required for the yearly expenses (of a poor person).

It is approved to pay Fitrah exclusively to the Dhawi al-Arham (relatives on the maternal side), neighbors, those who have migrated from their native places for the sake of (Islamic) faith, jurists, intellectuals, etc. who possess some preferences, and caution must not be given up by not paying Fitrah to one who drinks wine or commits such major sins in public.

It is not permissible to pay Fitrah to a person who spends it in the commission of a sin.

SECTION SIX - KHUMS

Khums (or one-fifth of one's income) is what has been ordained by Allah, the Exalted for Prophet Muhammad, May Allah send Blessings on him and his Progeny, and Prophet's Dhurriyyat (or Descendants), May Allah increase their blessed number, in place of Zakāt which is considered to be the filth of the people's hands, (i.e. the dirt of a person's earnings or belongings), in view of the veneration in which they are held. One who denies its payment, although a Dirham, shall be considered among the perpetrators of oppression on them and usurpers of their rights.

A Tradition has come down from Imam (Jafar) al-Sadiq, our Master, Peace be upon him, which says: "Verily Allah, (and) there is no god but He, when prohibited Sadaqah for us, sent down Khums for us. So Sadaqah is prohibited for us, and Khums which is obligatory and an honour for us is lawful for us." Similarly, there is another tradition that has come down from the same Imam, Peace be upon, which says: "No human being (lit "slave" of Allāh) who buys something with (the commodity of) Khums has the right to say 'O Lord, I have bought it with my own property, unless he is permitted to do so by those entitled to receive Khums.'" Likewise, there is a Tradition that has come from Imam Abu Ja'far (i.e. Imam Baqir), saying: "It is not lawful for anyone to buy anything with (the commodity of) Khums, unless our right has reached us"

Now here is a discussion about the things on which payment of Khums is obligatory, those who are entitled to receive it, and the procedure of its distribution among them, and Anfal (spoils of War).

Chapter One - Things on which Payment of Khums is Obligatory

Payment of Khums is obligatory on seven things:

First Whatever is taken by force, or even by way of stealing and deceit, when they have been during the war, and are included in the affairs of war, or from those who have waged war (against Muslims) and it is lawful to shed their blood or loot their property, make their women and children captives, when the war with them has been waged with the permission of the Imam, regardless of what has been gathered by the army or what has not been occupied by it as the land or the like, according to the more sound opinion. As regards the spoils of war which has been waged without the Imam's permission, if it were done in the presence of the Imam and the possibility of obtaining the Imam's permission, it shall be treated as part of Anfāl (spoils of war). As regards the spoils during the war during the (Twelfth) Imam's Occultation and without the possibility of obtaining his permission, according to the stronger opinion, payment of Khums shall be obligatory on it, particularly when the war has been waged for invitation to Islam. The same rule shall apply in case of the booty that has been collected from the enemies during defence when they have invaded the areas inhabited by the Muslims, even during the Imām's Occultation. The same rule shall apply to what has been collected from the enemies by theft or deceit other than what has already been mentioned.

Similarly, in case of Riba' and false claim or the like, the same rule shall apply. According to more cautious opinion, Khums shall be charged on them in view of their being booty and not profit. So there is no need of taking into consideration the yearly expenses in their case, though, the stronger opinion is in favour of the contrary. According to the more sound opinion, it is not a condition in case of Khums on booty that it should amount to twenty Dinars. Of course, it is a condition that it should not be usurped from a Muslim, Dhimmi (or a non-Muslim subject of a Muslim state) or one with whom the Muslims have a treaty, or the like, whose property has to be honoured, contrary to what they have got from the enemies at war, even if there has been no battle with them in that war. According to the stronger opinion, a Nasib is to be treated at par with the enemy at war in the lawfulness of whatever booty is seized from them and the application of Khums to that booty. Rather, apparently it is permissible to seize his property wherever and in whatever condition it is found and to charge Khums on it.

Second: the Minerals The criterion in their case is the prevalent custom. They include the gold, silver, lead, iron, copper, mercury, all kinds of precious stones, coaltar, petroleum, sulphur, brass, antimony, arsenic, salt, bituminous coal, rather, according to the more cautious opinion, including lime (-stone) red stone, clay for washing (head) and the Armenian clay. In case there is doubt as to its being a mineral, there shall be no Khums on it from this consideration. It is a condition in a mineral that, according to the more cautious opinion, after deducting all the relevant expenses on its mining and refining it should amount to twenty Dinars or two hundred Dirhams itself or in value. If there is difference in twenty Dinars and two hundred Dirhams in value, according to the more

cautious opinion, the one having lesser value shall be taken into consideration. The value shall be taken into consideration at the time of taking it out. According to the more cautious opinion, it is better to charge the Khums on it when it amounts to one Dinar (in value), rather in all circumstances, and this caution is not to be given up. According to the stronger opinion, it is not a condition that the mining of the mineral should take place at a time. If a mineral is mined many times in parts and reaches the Nisāb, it shall be obligatory to pay Khums on the whole. In case it is mined in a lesser quantity (than the Nisab), and then it is left, and again it is mined and completes the *Nisab* even then, according to the more cautious, though not according to the stronger opinion, (Khums shall be charged on it). If a group of persons is engaged in mining, then, according to the stronger opinion, it is a condition that the share of each of them should reach the Nisab (of Khums), though it is more cautious to charge the Khums when the total amount has reached the Nisab. If a single mine consists of two or more varieties, according to the stronger opinion, it is sufficient for them to reach the Nisāb collectively. If there are several mines, according to the stronger opinion, they shall not be merged with one another, even if they belong to the same variety, Of course, if they are counted as a single mine, though they are separated by some pieces of land, they shall be merged with one another.

Problem #1: There is no difference in the obligation of Khums on the mineral whether it lies in an ownerless land or in a land belonging to some one, though in case the mine lies in an ownerless land, its mineral shall belong to the one who has explored it, while in the latter case (when the mine lies in a land belonging to some one), the mineral contained in it shall belong to the owner of the land, even if the mineral has been mined by a person other than the owner of the land. In the above case, if the mineral has been mined by the order of the owner, the Khums shall be charged after deducting the expenses on it, which will include the wages of the miner if he has not done it voluntarily, If the mineral has not been mined by the order of the owner of the land, the mineral mined shall belong to the owner, and he shall pay the Khums without deducting the relevant expenses on mining, as he has not borne the expenses, and he shall not be bound to pay what the miner has spent on mining the mineral. If the mine lies in a land occupied by force (i.e. as a result of war), then if the land lies in an area which was developed at the time of its conquest and so belonging to the Muslims, and a person from among the Muslims happens to mine it, it shall belong to him, and he shall be bound to pay the Khums if it were mined with the permission of the ruler of the Muslims; otherwise, there shall be difficulty in declaring it as belonging to him, in the same way as when it is mined by a non-Muslim, and so there is difficulty in declaring as to whom it shall belong. If the mine lies in a land which was undeveloped at the time of its conquest by the Muslims, then it shall belong to its miner, and he shall be bound to pay Khums, even if he happens to be a non-Muslim, as is the case with all other ownerless lands. If a mineral is mined by a minor or a lunatic, according to the stronger opinion, he shall be bound to pay the Khums on it, and his guardian shall pay it.

Problem #2: It has already been mentioned that there is no difference in the application of Khums on what is taken out of a mine, whether the miner is a Muslim or an infidel, according to the details

already given above. So the mineral mined by infidels including those of gold, silver, iron, petroleum, bituminous coal, etc. shall be charged Khums, and it shall be collected by the ruler of the Muslims if it happens to be under his control. If the mine is transferred to the rightful group (i.e. the Shiah), they shall not be bound to pay its Khums, even if they know that Khums has not been paid on it. It is because the Imams, Peace be upon them, have legalized for their followers (i.e. the Shiah) the Khums of the property on which Khums has not been paid, when it is transferred to them from who does not believe in the payment of Khums, whether he is an infidel or an opponent (i.e. a Sunni), whether the object on which payment of Khums is obligatory is a mineral or something other than it as the profit on trade, or the like.

Of course, if something on which payment of Khums is obligatory has been delivered to the groups of Shiah from a person who does not believe by way of Ijtihad or Taqlid that payment of Khums is obligatory on some of the commodities which are believed by the Imamiyyah Shiah to be liable to Khums, or he believes that Khums is not obligatory in all circumstances under the impression that the Imams, Peace be upon them, have exempted their followers from its payment, payment of Khums shall be obligatory on them in case it has not already been paid.

Of course, in case of doubt about his belief, it is not obligatory on the person receiving something from him to make an inquiry about it, nor is he bound to pay Khums where it is likely to have already been paid. In case, however, there is knowledge about their holding an opposite belief, it is more cautious, rather according to the stronger opinion; he should abstain from making an inquiry, and should even pay Khums.

Third: A Hidden Treasure The criterion for deciding about it is the prevalent custom. When its owner is not known, regardless whether it lies in an area of the infidels, or in an undeveloped land or a wasteland in a Muslim territory, and irrespective of the fact whether it has some vestiges of Islam or not, in all these cases it shall belong to the person who explores it, and he shall be bound to pay Khums on it. Of course, if a person finds a hidden treasure in land belonging to himself after it has been purchased by him or any other way, he should inform about it to the previous owner in case it is likely to belong to him. In case the previous owner has also no knowledge about it, he should inform the owner to whom the land belonged before the previous owner till it reaches a person who is also ignorant of it or who is not likely to own it, then the treasure shall belong to the person who has explored it, and he shall be bound to pay Khums on it, if its value has reached twenty Dinars when it contains gold or two hundred Dirhams when it contains silver, or either of them when it contains something else. If a person buys, for example, a cattle and it has something in its stomach, according to the more cautious opinion, it shall also be treated at par with a hidden treasure, and payment of Khums shall be obligatory on it in case its seller is ignorant of it, and in its case it is not a condition of reaching the limit of Nisab. In case something is found in the stomach of a fish, then according to the more cautious opinion, it shall also be treated at par with a hidden treasure. Rather, except in rare cases, there shall be no need to inform the seller about it. Rather, besides a fish or cattle, even if something is found in the stomach of any other animal, it shall also be treated at par with a hidden treasure.

Fourth: Anything found by diving. Everything which is taken by diving like pearls, corals etc which is known to be obtained by diving shall be liable to payment of Khums when its value reaches a Dinar or above, regardless of whether they belong to the same category or not and whether they have been taken out in one attempt or many attempts, so that they shall be merged with one another, and once their total value amounts to one Dinar, payment of Khums shall be obligatory on them.

In case the things are found by a collective effort of several persons, it shall be treated at par with the identical case of minerals.

Problem #3: If the jewels are taken out of the sea with the help of some tools or machinery and not by diving, according to the more cautious opinion, they shall be treated at par with those taken out by diving. Of course, if they have come out themselves on the sea-coast or on the surface of the water, and a person obtains them without diving, they shall be treated like profits on trades and not the jewels taken out by diving, provided that it is his profession.. In such case, it is a condition to deduct his yearly expenses from its value. There is no condition of its value reaching the limit of Nisab. In case a person finds them by chance, they shall be treated generally as profits, and shall be governed by their relevant rules.

Problem #4: There is no difference in the rule whether the jewels are taken out from the sea, or big rivers like Tigris, Euphrates, or the Nile, in case it is supposed that they are found in them as in the sea.

Problem #5: If something falls into the sea and its owner shuns it, then a diver takes it out, it shall belong to the diver. If it were a jewel, it shall be governed by the rules relating the things taken out by diving. In case otherwise it shall not be governed by those rules.

Problem #6: If ambergris is taken out by diving, it shall be governed by the relevant rules. In case, however, a person obtains the ambergris on the surface of seawater or on the sea-coast, it shall be treated as the profits on business in case it has been obtained by a person engaged in that profession. In case, it is found by chance, it shall be treated as a general profit.

Problem #7: Payment of Khums in case of diving, minerals and hidden treasure shall be made after deducting the expenses on their excavation, smelting, diving, machinery or tools, or the like. Rather, according to the stronger opinion, it is a condition that their value should reach the Nisāb after the above deductions.

Fifth: The Saving after the Yearly Expenses for himself and his Family. The saving may be from the industry, agriculture or business profits or any other earning, even if by occupation of ownerless lands, growth or produce, rise in prices, etc. which fall under the denomination of earning. Caution must not be given up by taking out the Khums on every profit, even if it does not fall under the category of earning as gifts, presents, rewards, unexpected inheritance, or anything owned by an approved Sadaqah, although the absence of application of Khums to other than profits falling under

earnings is not devoid of force, as Khums does not apply to any inheritance, dower or ransom for Khul”, and so caution is better. So also Khums is not applicable to any property owned by payment of Khums or Zakāt, even if it exceeds the yearly expenses.

If, however, the property is kept with the intention of getting profit or growth on it, payment of Khums shall be obligatory on it, but not in all circumstances.

Problem #8: If a person possesses some assets on which Khums is not applicable, or on which Khums has already been paid, and then its market price rises, payment of Khums on that excess shall not be obligatory, in case the assets are not among the commercial commodities or commercial capital, as when the purpose of purchasing and keeping them is protecting them and benefit by their profit and growth.

If the purpose is to do business with them, then apparently payment of Khums shall be obligatory on the increase in their prices after the completion a year, if it is possible to sell them and get their price. In case it is not possible to do so except in the following year, apparently the excess shall be counted under the profits of that year and not of the previous year.

Problem #9: If some of the property with which he does business and whose price has increased exists with him after the end of the year, while part of it is lying as a debt with the people, then if he sells the property in his hand, or if it is possible to sell it or get its price, it shall be obligatory to pay Khums on its profit and increase in its price.

As regards the part of the property lying with the people if he is sure to get it whenever he wills in a way that it is as if lying with himself, he shall be bound to pay the Khums in the increase in the capital. As regards the property that he is not sure to get whenever he wills, he shall wait till he gets it. As soon as he gets it he shall consider the increase as part of the profits of the year when he got it.

Problem #10: In this category, Khums shall be payable after deducting the relevant expenses borne on getting the growth and profit.

The year on whose excess of the yearly expenses Khums is applicable is the one whose beginning has taken place from the start of the earning in case of a person whose profession is earning and getting profit gradually, for example, day by day. In case otherwise, it shall be accounted for from the time of earning the interest and profit.

So in case of a farmer, the beginning of his year shall be counted from the time of getting the profit and its reaching in his possession, and that is at the time of clearing the grain. In case of one who has an orchard, the beginning of his year shall be counted from plucking the fruits and their assortment. If a person has a forward purchase of a crop or fruits before they are harvested or gathered, the beginning of his year shall be counted from the time he receives their price or when their price is as if it is in his possession so that he may have it when demanded.

Problem #11: By expenses here is meant what a person spends on himself, on his family members whether their maintenance is his liability or not, as well as what he spends on pilgrimages (to holy shrines), Sadaqat (or charities), rewards, presents, feasts, large structures or establishments, his liabilities due to vows or expiations or the like, and also the quadrupeds, slaves and slave-girls, a house, carpets, or household goods (or furniture) and books required by him. As regards what he requires for the marriage of his children, their circumcision, death of a member of his family, or such other expenses that, according to the prevalent custom, are considered among his needs, they are, to be counted as part of the expenses already mentioned, provided that they are confined to what is suitable to his position except those considered foolishness and extravagance, so that if they are beyond such limits, they shall not be considered among the necessary expenses. It is more cautious to adopt the middle course as regards the suitable expenses as required by his equals, and not what is unsuitable for his position, or what is not usual among his equals. Rather, their being essential shall not be devoid of force. Of course, the customary increase in the expenses shall be counted among the (necessary) expenses. By expenses here is meant what has been currently spent and not its amount. So if a person spends on himself economically, or another person voluntarily bears his expenses, it shall not be counted as part of his (annual) expenses. Rather, even if he was required to spend on something during the year, such as Half or payment of a debt, or expiation, but he has failed to do it due to insubordination or forgetfulness, etc., according to the stronger opinion, its amount shall not be counted under his (annual) expenses.

Problem #12: If a person has various sources of income like trade, agriculture, handicraft, or the like, his total income from all the sources shall be taken into account, and Khums shall be charged on the total saving from his annual expenses. It is not necessary to take into account each income separately.

Problem #13: According to the more cautious, rather stronger, opinion the capital required by a person shall not be accounted for in his annual expenses. So its Khums shall be obligatory if it were from among the profits obtained by him from business, except when he needs the whole of it to maintain his honour or cater for his livelihood suitable to his position, as, suppose, due to the payment of Khums his business may deteriorate to the extent that it would not be suitable to his position, or he would not be able to make both ends meet.

So if a person has no money, and gets some profit by leasing etc., and intends to turn it into a capital for trade and does business with it, he shall be bound to pay Khums.

Same shall be the case with the property purchased by a person with profits earned by business in order to make some income out of it.

Problem #14: If a person has some goods of material value, for example, a garden or cattle, and no Khums has been charged on it, as when it has been transferred by inheritance, or it has been liable for payment of Khums but it has already been paid, then, he may keep it with himself, such as the

trees not bearing fruits that may not be of any use for him except their wood or branches and so he retains them with him due to those two uses.

Or when a person has a male sheep that he may retain it in order to make income out of its meat when it grows up and becomes fat. Or as a second alternative, a person may retain the commodity to make income out of the growth that takes place may make money. Or as a third alternative, the person may use its growth or fruits for eating by his family members or guests. In the first alternative, Khums shall be charged on its growth taking place as a part of it, not to speak of the growth taking place separately from it, as wool, hair and fur. In the second alternative, no Khums shall be charged on its growth as part of it, though it shall be charged on the growth taking place separately from it, in the same way as in the case of the third alternative, Khums shall be charged on saving from whatever he spends on his livelihood.

Problem #15: If a person does business of a single commodity with his capital during the year and buys and sells several times, incurring loss in some of the transactions and making profit in some other, in a way that the loss is made good by the profit, thus if the loss and profit are equal, he shall make no profit, but if he would get more profit, that would be his profit. If a person does business in different commodities in a single centre so that according to the normal practice business is not done independently by each with his capital as is customary in several towns and trades, rather if he does business in different commodities in several branches under a single centre, as, for example, there are several branches for a single trade as regards their office and income and expenditure, each branch being exclusively meant for a single type of business, all centralized in a single central branch or a single centre as regards their accounts and income and expenditure, the loss of each of them being set off against the profit of another.

Of course, if there are several centres without any connection with one another as regards their income and expenditure, offices and accounts, then apparently the loss of one would not be set off against the profit of another; rather, it may be said that their criterion is independence of trades and not merely difference of the types of trades.

Problem #16: If, out of his profits, a person buys some goods for his annual consumption, such as wheat, barley, edible oil, charcoal, etc. and there is some surplus out of it at the end of the year, Khums shall be charged on it, regardless whether it is a small or large quantity. If he buys a carpet, a utensil, a horse or the like that is used by him in a way that the object remains intact after its use, then apparently payment of Khums shall not be obligatory on it, except when he needs it no more, in which case, according to the more cautious opinion, payment of Khums for it shall be obligatory.

Problem #17: If, for instance, a person needs a house for residence, and it is not possible for him to purchase it except with the savings of several years, then, according the stronger opinion, it shall be considered part of his annual expenditure if he buys part of it every year, as for example, in one year he may purchase its land, in another its stones, and in the third year its timber, and so on. If, suppose, he purchases its land and pays its price in several years when this is the only possible way,

but if he keeps the saving for the payment of price for several years, it shall not be considered a part of his annual expenditure, and payment of Khums for it shall be obligatory, in the same way is when he collects the wool of his sheep for several years for weaving with it a carpet needed by him or his garments, when this is the only possible way, according to the stronger opinion, it shall be considered a part of his annual expenditure (for which no Khums is charged). Likewise, if a person buys a part of the dowry for his daughter out of his savings every year, it shall be considered part of his annual expenditure (of which no Khums shall be charged), but not when he keeps the savings for several years for the payment of price of the dowry.

Problem #18: If a person dies during the year of his income, no consideration shall be made for setting aside the expenditure for the rest of the year supposing him to be alive, and Khums shall be charged on the saving from his expenditure until the time of his death.

Problem #19: If a person has some property on which Khums is not charged, then, according to the stronger opinion, it shall be permissible to deduct his annual expenditure exclusively from his net profit, though, according to the more cautious opinion, his annual expenditure should be apportioned (on both his annual income as well as that property). If a person out of obligation or voluntarily accepts the liability for his annual expenditure, it shall not be accounted for in the annual expenditure, and Khums shall be charged on the person's total savings.

Problem #20: If, at the beginning of the year, a person borrows some money to meet his expenses or buys some things needed by him on credit, or spends some of his capital for that purpose before getting profit thereon, it shall be permissible for him to deduct that amount from his income (and pay Khums on the balance)

Problem #21: A forcible debts, like compensation paid for something destroyed, or the fine for the commission of crimes, to which are also added the vows and expiations, shall payable every year out of the expenses for that year, and shall be deducted from the profits and gains of that year like all other expenses. The same rule shall apply to the debts obtained or the things bought on credit, etc., if they fall under the expenses of the previous years, while their payment has been made in the year of saving, as, according to the stronger opinion, they shall be considered as part of the annual expenditure in case that year is the time for their payment. However, the debt obtained from the Valiyy-i amr out of the Khums property, called "Dast Gardan" (in Persian, or Revolving Fund, meant for giving Loans).It shall not be considered part of the annual expenditure even if the person has paid it during the year of saving, or the time of its payment be in that very year and he should have made its payment; rather, it is obligatory to pay Khums from the aggregate, and then pay the debt out of that Khums, or make its payment and account it for at the time of paying Khums, and also pay its Khums.

Problem #22: If a person becomes capable to pay Khums during a year of saving, and go for the performance of Hajj during that very year, the Hajj expenses shall be considered part of his annual expenditure (on which no Khums is charged). If he delays the performance of Hajj due to some

excuse or insubordination, he shall be bound to pay Khums for his saving. If a person becomes capable to pay Khums due to the savings of several years, he shall be bound to pay the Khums even for years preceding the one in which he has become capable to pay the Khums. If he spends the amount that has made him capable to pay Khums that year in the performance of Hajj, he shall not be bound to pay Khums for it. As already mentioned, it is allowed to spend the annual saving to meet his expenditure, and he is not bound to apportion it between the saving of that year and other things not liable to payment of Khums. So also it is permissible for him to spend the whole amount of saving of that year to meet the expenses on Hajj, and keep the savings of the previous years for which Khums has already been paid for himself.

Problem #23: Khums is charged on the property itself, and so the right of master's option for its payment from it or another property is not free from difficulty, although it is close to the stronger opinion, except in case the lawful and unlawful things are mixed up, in which case caution must not be given up by paying the property itself. A person has no right to transfer the liability for Khums to himself and make changes in the property belonging to Khums. Of course, the legal ruler or his authorized agent is entitled to enter into a conveyance with the owner in this respect and transfer the liability for the Khums to him, in which case the owner shall be entitled to make the change or changes in it, in the same way as the ruler is entitled to enter into a conveyance in respect of a property mixed up with unlawful property.

Problem #24: There is no condition of passage of a year for the obligation of Khums on the profits or incomes, etc., and it is permissible for the earner of the income to delay the payment of Khums on it until the end of the year, while it is permissible for him to make its payment earlier if he desires, but he shall not be entitled to demand its return from its recipient even if it has already perished without the latter's knowledge that it has been paid before time.

Sixth: If a Dhimmi purchases a land from a Muslim, he shall be bound to pay Khums for it that will be taken from him forcibly in case he is not ready to pay it willingly, irrespective of its being a farmland, a garden, a house, a public bath (or Hammām), a shop, a guest house, etc. provided that a sale and purchase transaction has taken place for its land independently. If, however, its concern with the land is secondary, as, for instance, the object sold was a house or a Hammām, then, according to the stronger opinion, its land shall not be charged Khums. Now, does the obligation for the payment of Khums apply exclusively in case a land is transferred through purchase, or it applies generally to other commutative contracts as well, is a question on which there is hesitation, it would be more cautious to incorporate a stipulation in the commutative contract regarding the amount of Khums of land payable on it, so that it may be enforced in case the payment of Khums (in such cases) is not established. Once the payment of Khums is established in a case, it is not lawful to incorporate a stipulation to drop it. So if a Dhimmi incorporates a stipulation in the commutative contract with a Muslim to the effect that Khums shall not payable by him or that it shall be payable by the seller, it shall be void. Of course, if the Muslim incorporates a stipulation in the agreement that he shall pay the Khums on behalf of the Dhimmi it shall be valid. If the Dhimmi sells it to another Dhimmi or a Muslim, payment of Khums shall not thereby be dropped, as also it shall not

drop if the Dhimmi embraces Islam subsequent to purchasing it. According to the more valid opinion, such type of Khums shall be spent like other types of Khums. Of course, according to the more valid opinion, there is neither any Nisab for it, nor any Niyyat even for the ruler, whether at the time of its receipt or at the time of its payment.

Problem #25: (In case of sale or purchase by a Dhimmi) Khums shall be charged on the land, and the rule with regard to the right of option for the Dhimmi is the same as has been mentioned above. If there is any plantation or construction on the land, the Khums collector shall not be entitled to remove or dismantle it. If the Dhimmi wants that they should remain intact, he shall have to pay the Khums for it. If he intends to pay the price of the land on which there is some cultivation, plantation or construction, it shall be calculated keeping into consideration the cultivation, plantation or building on it, so that Khums shall be charged in compensation thereof.

Problem #26: If a Dhimmi purchases a land which is conquered by force, if it has been sold its sale itself being lawful, as when the ruler (Wali) of the Muslims has sold it in their interest, then there shall be no difficulty in the obligation of payment of Khums on the Dhimmi. But if it has been sold as an adjunct to other things like the plantation or construction on it, or in the same way if an agricultural land is transferred to a Dhimmi through purchase from a Muslim to whom it had been transferred by the state as a result of which he would enjoy special right through its ownership belonging to the person to whom it was transferred, then according to the stronger opinion, there shall be no payment of Khums on it, though it is more cautious to incorporate a stipulation to the effect of payment of the amount of Khums to those entitled.

Problem #27: If a Dhimmi purchases from the Wali of Khums the Khums whose payment was obligatory on him as a result of the purchase, it shall be obligatory on him to pay the Khums of what he has purchased. Similarly, according to the more cautious opinion, the same rule shall apply in case the price of the land liable to payment of Khums is assessed, and the Dhimmi makes its payment, though, according to the stronger opinion, it is to the contrary. Of course, if the Dhimmi returns the land to the owner of the Khums or his agent, and then intends to purchase it, then apparently Khums shall be charged on it.

Seventh: If a lawful thing is mixed up with unlawful, while there is no knowledge about its owner at all, even if in a limited quantity, likewise without any knowledge about its exact quantity, in that case Khums shall be charged on it. If there is knowledge about its quantity as well as its owner, it shall be returned to the owner, and the person returning it shall not be charged Khums. Rather, if a person knows that it is in a limited quantity, to be more cautious, he should get himself exonerated. If it is not possible, then according to the stronger opinion, he should cast lots. If the person does not know about its owner, or it were in an unlimited quantity, he shall give it in charity with the permission of the ruler (or judge) to any one he likes when he does not suppose it to belong to a particular person. Otherwise, he should not give up caution by giving it in charity to that particular person, provided that he must be one entitled to receive it. Of course, it is of no use to suppose that it belongs to a particular type when it is in a limited quantity. If the person knows about its owner,

but is ignorant of its quantity, he should get himself exonerated by means of a conveyance with the owner. According to the more valid opinion, this type of Khums is also to be spent like other types.

Problem #28: If it is known that the amount of unlawful quantity (mixed with the lawful) is more than that of Khums, but its quantity is not known, then it is sufficient to take out Khums in order to legalize and purify it. Otherwise, along with taking out Khums it is more cautious to have an agreement with the ruler (or judge) on the unlawful thing in a way that thereby he may be certain of being absolved of the liability and there be a ruling about the thing being one whose owner is not known. Even more cautious than that is to deliver the sure amount to the ruler (or judge) and have agreement with him on the doubtful one, and it would be cautious on the part of the ruler (or judge) to make it conform to both the types in which it is spent.

Problem #29: If a person is indebted to another, but not in the property itself, in that case Khums shall not be applicable. Rather in such case when he knows about its amount, but not about its owner, not even in a limited number, he shall give it in charity on behalf of the owner with the permission of the ruler (or judge) or may deliver it to the latter. If he knows about the owner in a limited number, then, according to the stronger opinion, he should cast lots. If, however, he is ignorant of its quantity, and there is hesitation about its being in a lesser or larger quantity, decision shall be made in favour the lesser amount, and he shall deliver it to the owner, if he is known by specification. In case he is hesitant about its being in a specified quantity, then the same rule mentioned above shall apply. If its owner is not known or is known in an unspecified number, he shall give it in charity as already mentioned. In this case, it is more cautious to have an agreement with the ruler (or judge) on an average amount between the least and the highest, and shall dealt with in the same way as it is done in case there is knowledge about its quantity..

Problem #30: If the lawful thing mixed with unlawful belongs to Khums, Zakat or public or private endowment, then it shall be treated as a thing whose owner is known, and it would not be sufficient to take out its Khums.

Problem #31: If the lawful thing mixed up with unlawful happens to be one on which Khums has already been charged, it is obligatory to pay another Khums for the lawful thing in it after Khums has been paid on it for its legalization. The owner may suffice with payment of Khums for the amount he is sure about it being lawful it is less than the Khums of the balance left after payment of Khums for legalization. According to the stronger opinion, he may suffice with the payment of Khums of the balance if it is equal to its amount or more than that. It is more cautious to have an agreement (of Conveyance) with the ruler (or judge) in case he has hesitation about its being in a lesser or larger quantity.

Problem #32: If the owner appears after the payment of Khums, he shall be liable for it, and he shall have to pay the compensation. If, after the payment of the Khums, it transpires that the unlawful thing was less than that, the surplus shall not be returned to him. If it transpires that it was

more, then, to be more cautious to give the surplus in charity, though, according to the stronger opinion, it is not obligatory in case he was ignorant of the surplus amount.

Problem #33: If a person makes some changes in the (lawful) thing mixed up with unlawful by destroying it before the payment of Khums, he shall be held liable in respect of the unlawful (part), and apparently Khums on it shall drop. He shall be governed by the rule relating to compensation for unjust acts, and that means the obligation for making charity. It is more cautious for him to obtain permission from the ruler (or judge), as also it is more cautious to deliver the amount of Khums to a Häshimi with the permission of the ruler (or judge) intending thereby payment of what he was liable to pay. In case he makes the change by an act like sale, he shall be treated as an unauthorized person in relation to the unlawful thing whose quantity is not known. If the ruler (or judge) endorses it, the compensation, if already delivered, shall belong to Khums as it shall be treated as a thing mixed with unlawful thing whose quantity as well as its own is not known, and the whole thing paid in compensation belongs to the buyer. In case the ruler (or judge) does not endorse it, the compensation delivered is treated as something with which unlawful thing is mixed up while its amount is unknown, though its owner is known, and so it is governed by the relevant rule. As regards the thing paid as compensation, it is to be governed by its previous rule. So payment of Khums on it shall be obligatory. The Wali of Khums may have recourse against the seller, in the same way as he may have recourse against the buyer after the delivery of the thing to him.

Chapter Two - Division of Khums and Those Entitled to Receive It

Problem #1: Khums is divided into five shares. One share is meant for Allah, the exalted, another for the Prophet, Allah's Blessings be on him and his Progeny, and the third for the Imam, Peace be upon him. These three shares are now meant for the Master of Authority (Sahib al-Amr, or the Master of the Era, Sāhib al-'Asr, i.e., Imam Mahdi, the twelfth Imam, who is in Occultation), May our Souls be sacrificed for him, and May Allah hasten his Appearance. The other three shares are meant for the orphans, indigent and wayfarers whose paternal lineage goes back to Abd al-Muttalib, (Grand father of the Holy Prophet). If a person's lineage goes back to him through his/her mother, he /she shall not be entitled to receive Khums, and, according to the more valid opinion, it shall be lawful for him/her to receive *Sadaqah* (or charity, which is forbidden for the former class).

Problem #2:, *Imān* (literally meaning Belief, but in Shi'ah terminology meaning Shi'ah faith), or what is treated as such, is a condition for all those entitled to receive Khums, but, according to the more valid opinion, 'Adalat (moral soundness) is not a condition for them. According to the more cautious opinion, Khums should not be given to a person who shamelessly and publicly commits Major Sins. The prohibition is further invigorated if the award of Khums may serve as assistance in the commission of the sin and the aggressive attitude and inciting to commit evil, and, in case it is prohibited for him it would mean prevention of such abominable acts. It is better to observe preferential treatment among the individuals (according to their moral behaviour).

Problem #3: According to the stronger opinion, consideration of poverty must be made in case of orphans. But in case of a traveller whose purpose of journey is not vicious, it is not a condition that he must be poor while in his town, but it is a condition that he should be needy in the town where he is paid Khums, even if he were well-to-do in his own home-town, as has already been mentioned under the Section on Zakat.

Problem #4: According to the more cautious, if not stronger, opinion Khums must not be given by a person to another whose maintenance is his liability, particularly to his own wife when it is meant for her maintenance. But there is no objection in its payment to a person who needs it and whom he is not obliged to maintain, in the same way as there is no objection if a person pays the Khums of another to such person even if it meant for his/her maintenance, even to the wife of a husband who is in a straitened circumstances.

Problem #5: The claim of a person for being a Sayyid shall not be accepted merely on the strength of his claim. Of course, it is sufficient for its proof if he is well - known as such in his home-town without there being anyone denying it. A legal device may be found for giving Khums to a person whose exact position is not known once his moral soundness is established so that he may be treated as an agent for passing it one to the entitled to receive it whosoever he may be, even if it were that person himself But it is better not to adopt such a legal device.

Problem #6: To be more cautious, a person entitled to receive Khums must not be paid more than required for his annual expenditure, even if once, in the same way as it is more cautious that he must not receive it.

Problem #7: According to the stronger opinion, it is upto the ruler (or judge) to pay half of the Khums of the former three above-mentioned classes. So it is indispensable to pass it on to him or to spend it with his permission and order, in the same way as it is upto the ruler (or judge) to decide about the distribution of half of the share of the Imam, Peace be on him. So it is indispensable to pass it on to him so that he may spend it as it is fit in his view and opinion, or to spend it with his permission for the purpose prescribed for it. There is difficulty in the payment of the Khums by a person to a person other than whose Muqallid he is, except when the person receiving it may also spend on the same purpose in quality and quantity as required by the Mujtahid whose Muqallid the payer is, when the recipient would act according to his view.

Problem #8: According to the stronger opinion, Khums may be transferred to another town. Rather sometimes it is preferred in view of some preferential considerations even despite the existence of someone entitled in the town from where it is transferred. In that case, if it is destroyed in transit or in the town where it is transferred, the liability shall lie on the person who is responsible, contrary to the case when there is no one entitled to receive it in the town from where it is transferred in which case there shall be no liability (if it is destroyed in transit or in the town where it is transferred). Similarly, there shall be no liability if it is transferred with the permission or order of the Mujtahid in such circumstances, even despite the existence of someone entitled to receive it. Sometimes it is obligatory to transfer Khums (from one town to another) in case there is no one in a town entitled to receive it, and there is also no hope to find one later, or when the Mujtahid (whose Muqallid the payer is) orders for its transfer. It shall not be considered a transfer of Khums in case a person in the other town owes a debt that is set off against the Khums (transferred) with the permission of the legal authority.

Problem #9: If the Mujtahid possessing all the required conditions lives in a town other than the one to which the Khums belongs, Khums shall be transferred to him or the person liable to pay the Khums shall spend it after obtaining permission from him to spend it in his home - town. Rather, according to the stronger opinion, it would be permissible to transfer the Khums from one's own town despite the existence of a Mujtahid there, but he shall be held responsible for it, except when he was required to transfer it. Rather, it shall be better or more cautious to transfer it if the Mujtahid in other town is superior or there were some preferential considerations (in the other town), or when the Mujtahid whose Muqallid the payer of Khums is lives in another town and he has ordered him to transfer the Khums to him, except when he has permitted him to spend it in his own home town, or when the view of the Mujtahid of his own home town agrees with that of the one whom he follows, or he acts according to his view.

Problem #10: It is permissible for the owner of the Khums to pay Khums from another set, provided that it is of the same category. But is more cautious to do so with the permission of the Mujtahid even in case of the share of the Sadat.

Problem #11: If a person entitled to receive Khums owes some debt, according to the cautious, though not stronger, opinion, it is permissible to set it off against Khums the permission of the ruler (or judge), in the same way as allotment of the share of the Imam, Peace be upon him, depends on the view of the ruler (or judge).

Problem #12: It is not permissible for a person entitled to receive Khums to receive something as Khums and return it to its owner, except in certain circumstances, as when he owes a large amount of money, and is unable to repay it, and is in penury that he does not hope to end, and so he intends to discharge his liability, in which case there shall be no hindrance in his way to do so.

Problem #13: If an asset liable to Khums is transferred to a person who does not believe in the payment of Khums, such as the infidels or the opponents (i.e., the Sunnis), he shall not be under any obligation to pay it, as has already been mentioned, irrespective of its being some profit in business, or a mine, etc., and regardless whether it is from among the married women, houses or trades, etc., as the Imams of the Muslims have declared it legal for their Shiahs (or followers), as they have also declared it lawful to them to accept the taxable land from a tyrant ruler or have an agreement for a share in it or the gifts in general, as also to receive tax from him, or the other things passed on to them from him or his subordinates, to the extent that they have brought down their positions to those of the tyrants, and have endorsed their acts in order to save their Shiahs (or followers) in the trying situations from falling into prohibited acts, penury and discomfort.

Chapter Three - Anfāl (Spoils of War)

Anfāl means all those things to which the Imām, Peace be upon him, is entitled particularly due to holding the position of Imāmat in the same way as the Holy Prophet. May Allah sends Blessings on him and his Progeny, held due to holding the leader (of the Muslim Community) ordained by Allah. They include the following:

1. Everything that has not been trodden by horses and horsemen (i.e. which has not been conquered by the Muslims from the infidels by war), regardless of its being a land or anything else, whose inhabitants have evacuated from it or have surrendered it to the Muslims willingly.
2. A wasteland that yields no profit unless it is properly developed and repaired, that has turned into an uncultivated land due to being full of reeds (and shrubs), disconnection of water, or being submerged with water, or any other reason, irrespective of its having not been owned by someone as the wilderness, or having had an owner but whose owner is already dead and is no more known. To this category shall be added villages and places whose inhabitants have left them, and they have become ruined like Babylonia, Kufa, and such other places. All of them shall fall under Anfāl, as far as their land and remains e stones, etc. are concerned. As regards the wastelands lying in the lands, conquered by force, according to the stronger opinion, they shall belong to a category other than that (i.e. other than Anfāl). Of course, in case there is knowledge that it had been a developed and populated land at the time it was conquered, and subsequently became a wasteland, there would be hesitation and difficulty in its falling under the category of Anfāl or continuing to be the property of the Muslims like other places that are at present populated, though the latter alternative is not devoid of preference, (i.e. it should be preferred still to be the property of the Muslim Community).
3. The sea coasts and the river banks, rather, every land that has no owner, though there is difficulty in their generalization, although it is not free from being close (to the authority), even if they are not wastelands, rather, even if they can be utilized without any trouble, like the islands arising between Rivers Tigris and Euphrates, or the like.
4. The mountain tops and whatever vegetation and trees, stones, etc. are there on them, the inner portions of valleys and the *Ajām*, that are the lands covered by reeds and trees, without any difference in all these categories whether they are part of the lands belonging to the Imam, Peace be upon him, or lands conquered by force, or other than these two types. Of course, if a land was owned by a person and, later it became, suppose, a land covered by reeds and trees, then it shall continue to have status quo.
5. The exclusive royal property, movable or immovable.
6. Special booty, like horses of noble breed, costly garments, a cutting sword, rich armour, or the like.
7. Booties obtained during wars, not waged by the permission of the Imam, Peace be upon him.

8. A legacy having no heir

9. Mines that do not belong to a particular owner due to their being affiliated with a land or its development by the owner.

Problem #1: Apparently, during the Period of Occultation of the (Twelfth) Imam all the Anfal belong to the Shiah, in the sense that rule of ownership shall be applicable in their case, without there being any difference between the rich and the poor among them, except in the case of a legacies having no heir, in which case, according to the more cautious, if not stronger, opinion, it is a condition that the person must be poor. Rather, it is a condition that it must be distributed among the local poor people.

According to the stronger opinion, it must reach the legal authority. Similarly, according to the stronger opinion, if a non-Shi'ah occupies an Anfal property, like grass, hay, fuel (wood), etc., or develops a wasteland, he too shall become its owner like a Shiah.

SECTION SEVEN - HAJJ

Hajj is one of the Pillars of (Islamic) Faith, and abandoning it is one of the mortal sins. It is obligatory on every Muslim who fulfills the following conditions.

Problem #1: According to the Shariah itself Hajj is obligatory throughout one's life only once. It has an immediate obligation within the first year as soon as its conditions in respect of capability (*Istita'at*) are established, and it is not permissible to make any delay, so that if a person fails to perform it within the first year (of attaining the capability), he must perform it in the next year, and so on.

Problem #2: After attaining the capability, if its performance depends on some preliminaries, such as a journey and arrangement of its means, it shall be obligatory to make the arrangements in a way that he may be able to perform it in the same year. If there are several Hajj caravans, and he is able to undertake the journey in the company of any one of them, he shall be free to make the choice.

It is, however, better for him to select the one that is more reliable as regards the aptitude for undertaking a healthy and safe journey in case he finds such a group, and there is no hindrance in setting out with them, it shall not be permissible for him to make delay, except when he is certain of finding another such group.

Problem #3: In case he fails to set out on journey with the first group in the event of there being several groups or in the event of there being only a single group, and he happens to be unable to undertake the journey, or fails to perform Hajj due to late arrival, the obligation for the Hajj shall subsist, though he shall not be considered to have committed a sin.

Of course, if it transpires that had he accompanied the group, he would not have been able to perform Hajj, he shall cease to be under the obligation. Rather, even if their performance of Hajj is not known, he shall cease to be under the obligation.

Chapter One - Conditions for the Obligation of Hajj

There are a number of conditions for the obligation of Hajj. They are as follows:

First Condition: Full Maturity and Sanity. So Hajj is not obligatory on a child, even if he were an adolescent. So also it is not obligatory on an insane person, even if insanity is periodical, in case the period of his sanity is not sufficient to comprehend the whole of performance of all the rites of Hajj whose preliminaries have not yet been achieved. The Hajj performed by a discreet child is valid, but it is not sufficient for the Islamic Hajj, even if the child fulfils all the conditions required for Hajj except maturity. According to the stronger opinion, the permission of his guardian is not a condition for the validity of his Hajj, though there is a condition of obtaining the permission of his guardian in some cases.

Problem #1: It is approved for the guardian to clad an indiscreet child with *Ihrām* (the special attire for the performance of Hajj), and render him one tying *Ihrām* by tying two pieces of cloth meant for *Ihrām*, and express the *Niyyat* (or intention) on his behalf, and, if possible, teach him how to say “*Labbaik*”, or say “*Labbaik*” on his behalf, advise him to abstain from things that are forbidden after tying *Ihrām*, order him to perform all the rites of Hajj and, in case he unable to perform some of them, he must perform them on his behalf. He must let him perform the Circumambulation, *Sa’y*, Staying in ‘*Arafat*, *Mashar* and *Minā*, order him to perform *Ram’y* (i.e. throwing pebbles on the Satans), and if the child is not able to do it, he must perform it himself on the child’s behalf. He must order him to perform ablution and offer prayer for Circumambulation, and if the child is not able do it, he must offer the prayer on the child’s behalf. It is more cautious for the child to copy the performance of ablution and prayer. It is even more cautious than that for the child to perform ablution, and, if he is not able to do, he may copy it.

Problem #2: It is not necessary for the guardian to be tying *Ihrām* with the child. But it is permissible for him to make the child tie *Ihrām* even if he has not himself tied it.

Problem #3: According to the more cautious opinion, in the case of an indiscreet child’s tying *Ihrām*, they must confine it to the legal guardian, such as the father, grandfather, an executor of either of them, the judge, his representative, or an agent appointed by them, or the mother, though she is not a guardian. There is, however, difficulty in extending this authority to one who is not a legal guardian, like one who is incharge of the child’s affairs and has the responsibility to look after him, though it would be close to the rule.

Problem #4: The expenditure exceeding the amount of maintenance while within one’s town shall be borne by the guardian and not defrayed from the child’s property, except when the child’s protection depends on taking him along on journey. In that case, the expenditure on the journey itself shall be borne by the child, but not the expenditure on Hajj, in case it exceeds that on the journey itself.

Problem #5: The expenditure on sacrifice (of animal, a necessary rite of the Hajj) shall be borne by the guardian, as well as the expenditure on expiation for hunting, and so also the expenditure on other expiations.

Problem #6: If during the performance of Hajj, a discreet child attains puberty (or maturity) on reaching the Mash'ar (al-Haram), or sanity is restored to an insane person before reaching the Mash'ar, according to the stronger opinion, the Hajj of both of them shall be sufficient to be considered an Islamic Hajj, though, according to the more cautious opinion, they should perform it again in case of their capability.

Problem #7: If a discreet child sets out to perform Hajj, and before tying Ihram at the Miqät attains maturity, and also has capability (to perform Hajj), even if he has achieved it that very place, his Hajj shall be considered an Islamic Hajj.

Problem #8: If a person performs Hajj as an approved one under the impression that she has still not attained maturity, but after the performance of Hajj, it transpires to be otherwise, or performs Hajj under the impression that he/she has no capability (for performing Hajj), but later it transpires to be otherwise, according to the stronger opinion, it shall not be sufficient to be counted as an Islamic Hajj, except when there has been a misunderstanding in its application.

Second Condition: Freedom (i.e. the person must not be a slave).

Third Condition: Capability as regards pecuniary competence, physical health and strength, openness and safety of the passage, and adequacy and sufficiency of time (for the performance of Hajj).

Problem #9: Sanity is not sufficient for the obligation of Hajj, but legal capability is also a condition for it, and that means the availability of the travel expenses, transport and other things required, and in case of their unavailability, Hajj is not obligatory, and it would not be sufficient to be considered an Islamic Hajj, without there being difference whether or the person is able to go on foot and earn his living on the way, or the like, and whether it is against his honour and status or not, and whether his place is close to or far away (from the place of Hajj).

Problem #10: The possession of the travel expenses and transport themselves is not a condition, but the possession of so much of money is sufficient that may provide the required facilities, whether in cash or kind.

Problem #11: By travel expenses and transport is meant whatever is needed by a person during his journey in consideration of his particular position regarding strength or weakness, nobility or lowliness. It is not sufficient to possess less than that, and it all depends on what is required by the prevalent custom. If a person suffers inconvenience due to the lack of such facilities, it shall not be sufficient to consider his Hajj an Islamic Hajj as when a person is able to arrange the travel

expenses and transport through labor on the way, in which case Hajj shall neither be obligatory on him, nor shall it be sufficient (to be called an Islamic Hajj).

Problem #12: Capability in one's own town is not a condition (for the obligation of Hajj) So if an Iraqi or an Iranian attains capability while in Syria or Hijāz, Hajj shall become obligatory on him, though he may not be possessing capability while in his own hometown. Rather, if a person reaches before Miqat in a state of penury or for some necessary job, and there he attains the conditions imposing on him obligation of Hajj, it shall be obligatory on him, and it shall be sufficient to be considered an Islamic Hajj. Rather, even if a person ties Ihram in a state of penury, and later attains capability (to perform Hajj), and there is another Miqat before him, it is likely to say that it shall be obligatory on him (to perform Hajj), though it is not free from difficulty.

Problem #13: If a person finds a means of transport like a vehicle or a plane, but fails to find someone to share him. Then if he is not able to pay the transport expenses, Hajj shall not be obligatory on him. Otherwise, it shall be obligatory on him, except when payment of the transport charges may be inconvenient for him. Similar shall be the case if there is a rise in prices that year, or the travel facilities and transport are not available except against payment higher than the proper one, or the Hajj depends on the sale of his property on lesser than its proper value.

Problem #14: It is also a condition for the obligation of Hajj that the person must have sufficient money to defray the expenses for the return to his hometown when intended or to any other place where he intends to stay, provided that the expenses for the latter not be higher than the return to his home - town, except when necessity compels him to reside at that place.

Problem #15: It is also a condition for the obligation of Hajj that there must be the two way expenses for transport in addition to meet the expenses on his living. So the person may not be compelled to dispose of the house suitable to his position, his luxury garments, his household goods, tools and implements of his trade or profession, his horse for riding, his vehicle for transport or any of the other things required by him according to his position, honour and status, or even the scholarly books required by him in acquiring knowledge, irrespective of their being meant for religious learning or the lawful knowledge required by him for earning his livelihood or otherwise. It is not a condition for him to require these things presently. If, suppose, the things mentioned or some of them are in his possession without their being his own property, as by way of trust, or the like it shall be obligatory on him to dispose them of for Hajj, provided that it may not be pugnacious to his honour and the things mentioned may not be in a state of decay.

Problem #16: If the articles mentioned are not surplus than his position, as regards themselves nor their value, it shall be obligatory on him to dispose them of (even on cheaper rates) and spend the sale proceeds on the Hajj expenses or to supplement them, provided that it is not a source of inconvenience, harm or weakness for him, and the surplus may be equal to the Hajj expenses or supplementary to them, although in a small quantity.

Problem #17: If a person does not possess the necessities of life and job themselves, but has cash money or the like to purchase them, it shall be permissible for him to spend it for that purpose, without there being any difference whether he had the cash money initially or got it through the sale proceeds (of goods) intending thereby to change them or otherwise. Rather, if he spends it on Hajj, there shall be difficulty in declaring it sufficient for being considered an Islamic Hajj. Rather, it shall be forbidden. If a person possesses some (money), that is sufficient to meet the Hajj expenses, but his inner desire persuades him to marry, it shall be lawful for him to spend that money on marriage, provided that it is necessary for him either due to its giving up being a source of inconvenience or harm for him or out of fear of committing some prohibited act, or giving it up may be a source of loss or weakness for him. If a person has a wife whom he does not need, and it is possible for him to divorce her, and spend the money of her maintenance on Hajj, it shall neither be obligatory on him nor shall he be considered of having capability (to perform Hajj).

Problem #18: If a person does not have something for Hajj, but he has some debt on a person equal to the amount of Hajj expenses; or to supplement them, it shall be obligatory on him to demand it from that person if its time of maturity has already reached, even if he has to refer the case to an unjust judge in the absence of a Court of Law and his inability to do anything (to recover his debt). Of course, if it is a source of inconvenience, or the debtor is in straitened circumstances, it shall not be obligatory (to do so). Similar is the case when the person is not able to establish his debt. If the debt is fixed in time, but the debtor is willing to repay it before time, it shall be obligatory on the creditor to receive it and spend it on Hajj. In such case it is not obligatory on the creditor to demand the repayment of the debt, when he knows that the debtor shall pay it if he demands it from him. If a person is not capable but he may obtain loan for Hajj and pay it later easily, it shall neither be obligatory on him nor shall it be sufficient to be considered an Islamic Hajj. Similarly, if a person owns a property that at present is not in his possession and so it cannot be spent on Hajj at present, or he possesses a property of similar nature, or a debt of a fixed time which the debtor is not willing to repay before time, it is not obligatory on him to obtain loan and spend it on Hajj. Rather, its sufficiency to be considered an Islamic Hajj is also difficult; rather, it is forbidden.

Problem #19: If a person possesses some (money) that is sufficient to meet the expenses for Hajj, but he is under debt. Now, if the time of its repayment is fixed and he is sure to be able to repay it at time of its maturity despite spending what is in his possession, Hajj shall be obligatory on him. Rather, it is not far from its being obligatory despite the debt being prompt while the debtor agrees to its delayed repayment while the person is sure to be able to repay it when demanded. In cases other than these two, Hajj shall not be obligatory. There is no difference whether the debt is obtained before the person attains capability or after it, in a way that the property belonging to another perishes after his attainment of capability, while it was under his guarantee. If a person is liable to pay Khums or Zakat, and possesses so much (money) as could be sufficient to meet the expenses for Hajj had he not **been under the** liability to pay Khums and Zakat, So Khums and Zakat are like debts payable on demand. So the person is not to be considered capable. If a person is liable to pay a debt which is repayable after a long time like fifty years, or owes a debt which can be

subject to leniency or non-payment straightaway, or he is exempted from its liability about which he has full surety, in all these cases there shall be no hindrance in considering him capable (of performing Hajj).

Problem #20: If a person doubts whether his property has reached the limit of capability of performing Hajj or he has the knowledge about its quantity, but doubts about the Hajj expenses, and whether it would be sufficient to meet the expenses on Hajj in such case, according to the more cautious opinion, it shall be obligatory on him to make necessary inquiries.

Problem #21: If a person possesses so much (money) as is sufficient to meet the Hajj expenses, and also has some property that, if it subsists, it would be sufficient to meet his expenses on his return, but he has doubt about its subsistence, then apparently Hajj shall be obligatory on him irrespective of the property being in his possession or not.

Problem #22: If a person possesses enough (money) to meet the Hajj expenses, but he is not able to proceed for Hajj due to ill health or insecurity of the passage, in such case, according to the stronger opinion, it shall be lawful for him to make any changes in the property which would entail his incapability, If, however, he fails to proceed for Hajj due to unavailability of its means or absence of Hajj caravan, then if there is likelihood of the arrangement (of the means or caravan), it shall not be lawful for him, not to speak of the case when he is sure of it, Similarly, it is not lawful to make any changes in the property before the arrival of Hajj season, If he makes any changes in the property, and, suppose, in the first case, the excuse is removed later, and in the second case, the conditions subsist, the obligation for the performance of Hajj shall also subsist, If a person is not able to proceed in the year when he had the capability, then apparently it shall be lawful for him to make changes in the property, even if he knows that he shall be able to proceed for Hajj next year, it shall not be obligatory on him to keep his property for the next years.

Problem #23: If a person owns a property which presently is not in his possession and whose quantity is upto the amount enabling him to be capable of performing Hajj solely or in combination with another property, and he is also able to make changes in it even if through an agent, he shall be considered capable, otherwise not, If the property perishes in the first case after the passage of Hajj season, or it perishes by his mistake, then, if it perishes before the departure of the Hajj caravan, according to the stronger opinion, the obligation of Hajj on him shall subsist, The same shall be the case if his *Murith* (or Propositus) dies while he was in some other town.

Problem #24: If the property of a person reaches the limit enabling him to be capable, but he were ignorant of it or negligent about the obligation of Hajj on him, and came to know of it after the loss of the property by his mistake, if it were before the departure of the Hajj caravan or after the passage of Hajj season. If the loss of the property has been after the passage of the Hajj season without his mistake, even then the obligation on him shall be established provided that there were all the conditions for the obligation for Hajj while the property was still in his possession.

Problem #25: If a person believes that he is not capable, and so he performs Hajj as an approved one, then if there is likelihood of such a misunderstanding in the application, it shall be valid, and shall be considered an Islamic Hajj, but in case of his knowledge and awareness of the rule and the subject it shall be difficult. If he performs the Hajj with the intention of the Hajj being restricted to being approved, it shall not be sufficient to be considered an Islamic Hajj, and there shall be hesitation in the validity of his Hajj. The same shall be the case if he has knowledge about his capability, and later neglects it. If he considered that prompt performance of Hajj is not obligatory on him, and so he performs it as an approved one, it shall not be sufficient (to be considered an Islamic Hajj), and there shall be hesitation in its validity.

Problem #26: Wavering ownership of a property is not sufficient for the capability of the obligation of Hajj as in case a person enters into a contract of conveyance with the condition of having option (to rescind it) until a prescribed period of time, except when he is sure of its non-cancellation, But if the stipulation is supposed to be tantamount to cancellation, it shall denote his incapability (to perform Hajj).

Problem #27: If, after the performance of all the rites of Hajj the money meant to meet the expenses of his return to his hometown is lost, or the money which was sufficient to meet the expenses in his hometown is lost, then, if the rule of condition requiring sufficient funds for return in declaring one's capability is accepted, it shall not be sufficient to declare his Hajj an Islamic Hajj, not to speak of the case when the money is lost before the completion of all the rites of Hajj particularly when he has not enough money to meet his expenses during the remaining rites of Hajj.

Problem #28: If a person attains capability through a valid and incontrovertible transfer of property, Hajj shall be obligatory on him. But if a person bequeaths some property to another that is sufficient to make the latter capable. Hajj shall not become obligatory on him just after the death of the legator, as also it shall not be obligatory on him to accept the legacy

Problem #29: If, before attaining capability, a person vows, suppose, to go on a pilgrimage to the shrine of Imam Abu 'Abdillah al-Husain, PBUH, on every 'Arafah day, and later he attains the capability, Hajj shall be obligatory on him without any hesitation or difficulty. The same shall be the case if a person vows, suppose something that is in conflict with Hajj, or is opposed to obligatory Hajj, or necessitates the commission of something forbidden, he shall observe what is more important according to the holy legislator (i.e., Allah).

Problem #30: If a person has no travel expenses or transport, but someone promises to pay the expenses for him and his family, or offers some money to perform Hajj, and the amount were sufficient to meet the two expenses for him and his family, Hajj shall be obligatory on him, regardless whether the money is delivered to him or is allowed by transfer, whether it is paid in cash or kind, and whether it is repayable or not, and whether the offer is made by an individual or several persons. Of course, there must be surety that the person shall not fall upon his back. If a person has part of the expenses, and he is paid the rest, even then Hajj shall be obligatory on him. If

a person is not paid full expenses for him and his family, Hajj shall not be obligatory on him. In such case, a debt does not preclude the obligation of Hajj, If the debt has matured and the creditor demands its repayment, and the debtor would be able to repay it if he does go on Hajj, then whether the debt shall preclude the performance of Hajj, there are two opinions, It is not a condition to apply the rule of sufficiency in this case, Of course, it is a condition that Hajj should not upset the programs of his future life due to his absence.

Problem #31: If a person is offered freely so much as would meet his expenses of Hajj according to the stronger opinion, he shall be bound to accept it, The same shall be the case if he is made a free gift and given the option to perform or not perform Hajj If, however, Hajj is not mentioned while making the offer, then, apparently, Hajj shall not be obligatory, Similarly, if a person bequeaths something that is sufficient to meet Hajj expenses with the condition that the legatee must perform Hajj, then Hajj shall be obligatory on the legatee after the legator's death. If a person pays another Khums or Zakat and stipulates performance of Hajj, the condition shall be declared null and void, and Hajj shall not be obligatory on the recipient. If a person pays something out of the portion to be spent in the way of Allah, it shall not be lawful to spend it in any other way, but its acceptance is not obligatory on the person to whom it is offered, It is neither a case of pecuniary capability nor that of a capability for payment. If the person becomes capable subsequently, Hajj shall be obligatory on him.

Problem #32: It is lawful for the payer to withdraw from payment before tying *Ihram*. According to the stronger opinion, the same shall be the rule even after tying *Ihram*. If a person makes a free gift to another, and the latter accepts, it shall be governed by the same rules as applicable to other cases of free gifts, If the person offering the gift withdraws his offer on the way, he shall be bound to pay the person fare for his return. If the person making the offer withdraws his offer after tying *Ihram*, payment of the expenses for completing the Hajj shall not be far from being likely.

Problem #33: Apparently the person making the offer shall pay for the sacrificial animal, but not for the expiations, even if they have been due to emergency, ignorance or forgetfulness, as they shall be payable by the performer of Hajj himself.

Problem #34: A Hajj performed by a person whose expenses are borne by another is sufficient to be considered an Islamic Hajj regardless whether the expenses have been fully paid by another or they have been partly paid by him, If a person making offer withdraws his offer on the way, and the person performing Hajj is capable to perform Hajj with his own money from that place onward, Hajj shall still be obligatory on him, and it shall be considered an Islamic Hajj provided that it fulfils all the conditions required for Hajj before tying *Ihram*; otherwise, there shall be difficulty in considering it an Islamic Hajj .

Problem #35: If a person specifies an amount of money for another to perform Hajj who considers it sufficient for the purpose, but later it turns out to be insufficient, apparently it shall not be obligatory on that person to complete the Hajj regardless whether it is lawful for him to return or

not. If a person donates money to another for the performance of Hajj and after the performance of Hajj it turns out to be usurped money, according to the stronger opinion, it shall not be sufficient to be called an Islamic Hajj. Similar shall be the case when a person says to another: "Perform Hajj and your expenses shall be borne by me", and the money turns out to be usurped.

Problem #36: If a person says to another: "Borrow money, and perform Hajj and I shall pay your debt", the obligation of Hajj on the person (addressed) shall be open to question. If, however, a person says to another: "Borrow money on my behalf and perform Hajj with it", Hajj shall be obligatory on the person (addressed), provided that there is such a lender.

Problem #37: If a person engages himself to serve on the way to Hajj in a way that thereby he becomes capable (to perform Hajj), Hajj shall be obligatory on him. If, however, a person is asked to offer himself for service by which he becomes capable (to perform Hajj), its acceptance shall not be obligatory on him. If a person engages himself on behalf of another, becoming capable with that money, he shall prefer the Hajj for another if engaged for the first year. If, however, the capability subsists for the next year, Hajj for himself shall also be obligatory on him. If he performs Hajj by hire, or for himself or another person voluntarily, without his being capable (to perform Hajj), it shall not be sufficient to be considered an Islamic Hajj.

Problem #38: For capability, it is a condition there must be sufficient money for the maintenance of his family until his return. By family here is meant those whom he is obliged to maintain by custom, even if, according to the stronger opinion, he may not be obliged to support them as required by Shari'ah.

Problem #39: According to the stronger opinion, for capability on his return, it is a condition that he must own some object of trade, agriculture, industry, or (a source of) benefit, like a garden, a shop or the like, so that, on his return, he may not be forced to beg and may not face some trouble or discomfort, and it must be sufficient to enable him to earn something suitable to his position or engage in trade according to his dignity and honour, while it is not sufficient for him to live upon Zakat and Khums. The same shall be the rule if a person begs for help like the poor who have such habit and are not able to work. According to the stronger opinion, the same shall be the case with persons whose position does not change before and after Hajj so that even if they have the expenses required for return passage and maintenance of their family, they shall not be considered capable, and their Hajj shall not be sufficient to be considered an Islamic Hajj.

Problem #40: It is not lawful for a father or a son to take out the property of each other and perform Hajj with it. It is also not obligatory on either to donate it to the other. According to the stronger opinion, Hajj is not obligatory if a person is poor and his maintenance is another's liability, even if his maintenance during the journey is not higher than that within his hometown.

Problem #41: If a person attains capability, it shall not be obligatory on him to perform Hajj with his own money, so that if he performs it in penury, or with another's money, even if it were usurped, Hajj shall be valid and shall be considered an Islamic Hajj. Of course, according to the more

cautious opinion, it shall not be valid to offer the prayer for circumambulation with the usurped garments. If a person has purchased his garments or the sacrificial animal on credit intending to pay their price from the usurped money, there shall be difficulty (in its validity) otherwise not. There is difficulty in its invalidity in case usurped money is used in *Ihram* and Sa'y, though it is more cautious to abstain from it.

Problem #42: Physical capability is also a condition for Hajj. So it is not lawful for a sick person who is not able to ride, or riding is harmful for him, regardless whether it is on a camel's back, or in a vehicle or an aeroplane. Similarly, capability of time is also a condition, so that Hajj is not obligatory if time is so short that it is not possible to perform Hajj, or it is not possible without extreme hardship. Capability of the passage is also a condition so that there must neither be any hurdle on the way that may render arrival at the *Miqat* or performance of all the rites of Hajj impossible. Otherwise, Hajj shall not be obligatory. The same shall be the case if a person is afraid of damage to his person, body, honour, or property, or the dangerous route is the sole route, or all the routes were dangerous. If the farthest route were safe, it would be obligatory to go by that route. If all the routes are dangerous, but one may reach by roundabout passing through distant places that is not considered a Hajj route, according to the stronger opinion, in that case, Hajj shall not be obligatory.

Problem #43: If going to Hajj would mean a considerable wastage of money in his place that would be harmful for him, Hajj shall not be obligatory on him, or it would mean giving up something more important or committing something forbidden, he must prefer what is more important. If, however, he defies it and performs Hajj, it would be valid and shall except be considered an Islamic Hajj. If on the way there lies a tyrant who cannot be avoided except by payment of money, so if he obstructs the passage, and usually the passage is not clear, but it can be cleared by paying money, it shall not be obligatory. If it is not so, and he charges something from every passer-by, it shall be obligatory, except when the payment is troublesome for him.

Problem #44: If a person believes that he has attained maturity, and performs Hajj, but later it turns out to be otherwise, his Hajj shall not be considered an Islamic Hajj. The same shall be the rule, if a person considers himself having pecuniary capability, but later it transpires to be otherwise. If a person believes there is no harm or trouble (for him in Hajj), but later it transpires otherwise, then if it were a personal or pecuniary loss amounting to actual trouble, or the Hajj was troublesome, then there is difficulty in considering it sufficient (for being an Islamic Hajj), rather, contrary to it shall not be devoid of force. However, a monetary loss not amounting to actual trouble is not a hurdle in the obligation of Hajj. Of course, if a person bears a loss and trouble until he reaches *Miqat* and there both disappear, and he attains capability, then, according to the stronger opinion, it shall be sufficient (to be considered an Islamic Hajj). If a person believes there is no important legal hitch and so performs Hajj, but it turns out to be otherwise, his Hajj shall be valid. If he believes himself to be a minor, and so performs an approved Hajj but later it transpires to be otherwise, it has a detailed rule whose similar case has already been mentioned. If a person abandons Hajj despite fulfilling conditions for all its rites, its obligation shall be established on him. There is,

however, possibility of its subsistence until the time of his return to his native place, but there is difficulty (in accepting it). If a person believes that his money shall not suffice for Islamic Hajj and so he abandons it, but later it transpires to be otherwise, its obligation shall be established on him, provided that there are all the requisite qualifications. If a person believes that there is a hurdle created by the enemy, or some trouble or loss due to Hajj, and so he abandons it, but later it transpires to be otherwise, then apparently its obligation shall be established on him, particularly in case of belief about the existence of a real trouble. If a person believes that there is an important legal hitch, and so he abandons Hajj, but later it transpires to be otherwise, its obligation shall be established on him.

Problem #45: If a person deliberately abandons Hajj despite the fact that all its conditions are there, obligation for Hajj shall be established on him provided that the conditions subsist until the performance of all its rites, If he performs Hajj despite the absence of any condition, so that if it were the condition of maturity, it would not be considered sufficient (for being an Islamic Hajj), except when he attains maturity before reaching either of the *Mawqifain* (namely, 'Arafat or *Mash'ar*), in which case it would suffice (for being called an Islamic Hajj), Similarly, if he performs Hajj despite absence of pecuniary capability, absence of a safe passage, physical incapacity or existence of a distress, and attains capability before tying *Ihram* and the excuse is removed his Hajj shall be valid and suffice (to be called an Islamic Hajj), contrary to the case when he fails to fulfill a condition from tying the *Ihram* to the performance of all the rites of Hajj If Hajj itself is a source of distress, or some of its rites were a source of distress or harm for his person, then apparently it shall not be sufficient to be considered an Islamic Hajj.

Problem #46: If the clearance of the route amounts to declaration of war with the enemy, Hajj shall not be obligatory on him, even if there is surety of overcoming the enemy. If the passage is clear, but the enemy creates hurdles in his way to Hajj then a fight against the enemy is not far from being obligatory provided that there is surety, confidence and certainty of overcoming the enemy and maintenance of peace and security, though the Problem is not free from ambiguity.

Problem #47: If the sole Hajj route is by sea or air, it shall be obligatory to travel except for a reasonable fear of being drowned, plane crash or sickness or a sure disturbance in prayer itself, not by change in its conditions. But if it would require eating or drinking unclean things, even then it is not far from being obligatory (to travel) and as far as possible to abstain from (eating or drinking) unclean things and confine it to the amount needed, so that even if he fails to abstain from it, his Hajj shall be valid, but he shall be considered to have committed a sin, as if he rides some usurped means of transport upto the *Miqat*, rather upto Mecca, Mina or Arafat, in which case too he shall be considered to have committed a sin, but his Hajj shall be valid. Similarly, if obligation of Hajj is established on a person, but he was liable to pay Zakat or Khums, any other dues, the payment of which is obligatory on him, then if he proceeds on Hajj despite all that, he shall be considered to have committed a sin, but his Hajj shall be valid. If, however, the obligations are to be fulfilled from his property itself, then his case shall be similar to the case of usurpation, which has already been mentioned.

Problem #48: It is obligatory to perform Hajj personally, so that its performance by another person whether voluntarily or against hire is not sufficient. Of course, if its obligation is established on a person, but he is not able to perform it personally due to sickness from which he does not hope to recover, or is confined in the same way, or is too old to go for Hajj or it is troublesome for him, it shall be obligatory on him to perform it through an agent. If it is not established on him, and it is also not possible for him to perform it personally due any of the excuses mentioned, then there are two opinions on its obligation, while the second (favoring non-obligation) is not devoid of force. In case of obligation, a prompt appointment of an agent for Hajj is more cautious. The Hajj through an agent shall be sufficient, provided that the excuse subsists till his death; rather, even if it is removed after the performance, contrary to its removal during its performance, not to speak of its removal before it. Apparently, the hire shall terminate (in case the excuse is removed before or during the performance of Hajj). If a person is not able to appoint an agent to perform Hajj on his behalf, the obligation shall drop, and it has to be compensated (on his behalf). It is not sufficient to appoint an agent with the hope that the excuse shall be removed, and he shall be bound to perform if after the removal of the excuse. If, after the performance of Hajj through an agent, one loses hope (of removal of the excuse), apparently it would be sufficient. In case a person is bound to appoint an agent, a Hajj performed voluntarily on his behalf shall not be sufficient. There is difficulty in declaring the appointment of an agent from *Miqat* as valid, though, according to the opinion closer to the traditional authority, it is so.

Problem #49: If a person on whom obligation of Hajj is established dies, then, if he dies after tying *Ihram* and entering the *Haram*, his Hajj shall be sufficient to be considered an Islamic Hajj. If he dies before it, it shall have to be compensated, even if, according to the stronger opinion, he dies after tying *Ihram*, as it is not sufficient to enter the *Haram* before tying the *Ihram*, as when he forgets it and enter the *Haram* and dies. There is no difference in its sufficiency whether he dies while still tying *Ihram* or after he has untied it, as when he dies between the two *Ihrams* (namely, for Hajj and 'Umrah). If, after entering the *Haram* in *Ihram*, he dies outside the *Haram*, there shall be difficulty in declaring his Hajj sufficient (to be considered an Islamic Hajj). If a person dies during the performance of '*Umrah-i Tamattu*', apparently it shall be sufficient to be considered an Islamic Hajj. Apparently this rule shall not apply if a person dies during the performance of a votive Hajj or *Mufradah 'Umrah*. As regards an invalid Hajj, there are detailed rules concerning it. The rule mentioned above shall not apply to a person on whom Hajj is not established, so that, if he dies, it shall neither be obligatory nor approved for him to compensate.

Problem #50: Hajj is also obligatory on an infidel, but it is not valid in his case. If he embraces Islam, and he loses capability before it, it would no more be obligatory on him. If he dies while still an infidel, he shall not be bound to compensate. If he ties *Ihram* and then embraces Islam, his Hajj shall not be considered an Islamic Hajj, and he shall be required to repeat it from *Miqat*, if possible, or from his own place. Of course, if he were within the *Haram* when he embraces Islam, then it would be more cautious for him, if possible, to go outside the *Haram*, and tie *Ihram*. As regards an

apostate, Hajj is obligatory on him regardless whether he were capable while still a Muslim or after his apostasy, but his Hajj shall not be valid. If he dies before his repentance, he shall have (divine) punishment for not performing Hajj, though, according to the stronger opinion, he shall not be bound to compensate it. In case of his repentance, Hajj shall become obligatory on him, and, according to the stronger opinion, his Hajj shall be valid, regardless whether his capability (to perform Hajj) subsists or has been lost before his repentance. If he ties *Ihram* while still an apostate, then he shall be treated at par with a born infidel. If he performs Hajj while still a Muslim, and then apostatizes, then, according to the stronger opinion, he shall not be bound to repeat it. If he ties *Ihram* while still a Muslim, apostatizes, and then repents (while still tying *Ihram*), according to the more valid opinion, his *Ihram* shall not be declared invalid.

Problem #51: If an opponent (i.e., a Sunni) performs Hajj, and then becomes a Shi'ah, he shall not be bound to repeat Hajj provided that his Hajj was valid according to his own sect, though it may not be so according to the Shi'ah sect, as there is no difference among the sects (of Islam) in this respect.

Problem #52: There is no need for a wife to obtain the permission of her husband for Hajj provided that she possesses capability (to perform Hajj), and it is also not permissible for the husband to forbid her from Hajj. The same rule shall apply in case of a votive Hajj or the like, if the time is short. In case of an approved Hajj, there is a condition of husband's permission. According to the stronger opinion, the same rule applies in case of a *Muwassa'* Hajj (in which there is ample time) before its time becomes short. In case of an Islamic Hajj a husband may prevent his wife from proceeding with the first Caravan, provided that there is another Caravan available before the time for Hajj becomes short. A revocably divorced woman is at par with a wife as long as she has not completed her *'Iddah*, contrary to an irrevocably divorced woman or one observing the *'Iddah* for her husband's death, as the latter two are allowed to perform even an approved Hajj. Apparently a temporary wife is at par with a permanent one. There is no difference in the condition for (husband's) permission whether enjoyment of the wife is forbidden due to sickness or the like or not.

Problem #53: There is no condition of a *Mahram* to accompany a woman in Hajj regardless whether she is married or not, provided her life and honour are safe; otherwise, it shall be obligatory for her to be accompanied by a *Mahram* or a trust-worthy person even if hired. In case of unavailability of such a person, she shall not be considered capable (to perform Hajj). Similarly, in case of availability and her inability to pay for his hire, she shall still not be considered capable. If the woman has a husband who claims the existence of danger (on the way), while she claims otherwise; then it shall be a case of a mutual claim, and there are many solutions to it. (Briefly speaking), in the case mentioned, the husband shall have the authority to forbid her; rather he shall be bound to do so. If the case is decided by her oath, or she adduces the evidence of two witnesses, and the judge gives his judgment in favour of the wife, then the husband's right shall drop. If a woman performs Hajj despite absence of peace and security, her Hajj shall be valid, particularly when peace had been restored before her tying *Ihram*.

Problem #54: If Hajj is established on a person due to the completion of all the conditions, but he dilly-dallies until the cessation of all or some of the conditions, he shall be bound to perform Hajj how so ever possible. If he dies, it shall be compensated on his behalf, provided that he has left some legacy. It would also be valid if someone volunteers to do it on his behalf. According to the stronger opinion, the obligation of Hajj shall subsist until the time it becomes possible for the person to return to his hometown as regards his pecuniary, physical or passage capability. But as regards his capability of sanity, its subsistence until the last rites of Hajj is sufficient. If the obligation of only 'Umrah or Hajj is established on a person, as in case of a person who is liable to perform *Hajj al-Ifrad* or *Hajj al-Qiran*, and later loses its capability, then, as mentioned earlier, he shall be bound to perform how so ever possible, and if he dies, it shall have to be compensated on his behalf.

Problem #55: The Islamic Hajj shall be compensated out of the legacy itself if a person has not mentioned it in his will, regardless whether it were *Hajj al-Tamattu'*, *Hajj al-Qiran*, *Hajj al-Ifrad* or 'Umrah of either type. If he has mentioned it in his will without specifying whether it is to be compensated out of the (total) legacy itself or its one-third, action shall be taken in the same way. If, however, he has mentioned in his will that it should be deducted from one-third (of the legacy), it shall have to be extracted from it. It shall be preferred to his approved bequests, even if they have been mentioned subsequent to the former. If the one-third (of the legacy) is not sufficient, the rest shall be deducted from the legacy itself. The expenses on the votive Hajj shall also likewise be deducted from the legacy itself. If a person owes some debt, Khums, or Zakat, and the legacy falls short, then, if the property of Khums and Zakat exists, both Khums and Zakat shall be given preference, and it shall not be permissible to spend it except on both of them. If a person is liable to pay Khums and Zakat, according to the stronger opinion, the legacy shall be divided proportionately. If it suffices for the portion of Hajj well and good, if not, then apparently it shall be dropped. If the portion suffices only for any of the Hajj rites, like circumambulation, it shall be spent on the other items. If all the other items (namely, debt, Khums and Zakat) are there, it shall be divided among them. If, suppose, it suffices for only Hajj or 'Umrah, then in case of *Hajj al-Qiran* or *Hajj al-Ifrad* it is not far from being obligatory to prefer Hajj, but in case of *Hajj al-Tamattu'*, according to the stronger opinion, Hajj shall be dropped, and its portion shall be spent on the repayment of debt.

Problem #56: It is not permissible for the heirs to. make any change in the legacy before hiring for Hajj or payment of its amount to the deceased's representative, if its expenses overwhelm the whole legacy, rather, according to the more cautious opinion, in all circumstances, even if the legacy were quite extensive, and the heirs intended to pay for the expenses on Hajj from a source other than subject to the change, though legality of effecting change is not free from being close to traditional authority, nevertheless caution must not be given up.

Problem #57: If any of the heirs acknowledges the obligation of Hajj on the deceased while others deny it, only that much shall be bound to be paid as is his share after distribution of the legacy, in case it suffices for Hajj even if from the *Miqat*, otherwise, it is not obligatory to pay it. It is,

however, more cautious to keep his share with the hope that the other heirs may also agree or some one may be found who volunteers to complement it. Rather, if there is such a hope, according to the stronger opinion, it shall be obligatory to keep the share, and according to the more cautious opinion, it must be paid to the *Wali* of the deceased. If the deceased is liable only to perform Hajj and his legacy does not suffice its expenditure, then apparently, the legacy shall belong to the heirs. Of course, if subsequently it is likely to suffice for Hajj or there is a volunteer to complement it, it shall be obligatory to keep it. If a person has performed Hajj voluntarily on behalf of the deceased, the amount earmarked for hiring for that purpose shall revert to the heirs, regardless whether the deceased has specified it for that purpose or not. It is more cautious for the elders to spend their shares in charity.

Problem #58: According to the stronger opinion, if possible, it is obligatory to hire a person to perform Hajj on behalf of the (deceased from the *Miqat* nearest to Mecca; otherwise, the *Miqat* that is as close as possible. In case of a considerable property, the person hired must belong to the place of the deceased, otherwise, to a place as close as possible. However, whatever wages exceed the amount required for Hajj from *Miqat* shall not be charged from minor heirs. If the deceased has specifically mentioned in his will that the agent must be employed from his hometown, it is obligatory to do so, and whatever exceeds the wages for Hajj from *Miqat* shall be deducted from the one-third. If he has mentioned Hajj in his will, but has not specified anything, Hajj from *Miqat* shall be sufficient. If, however, there is an aversion to the agent being from his home - town, or the context so demands, then the excess shall be deducted from the one-third. If the amount mentioned in the will exceeds the amount required for Hajj from *Miqat*, but falls short of the one required from the hometown, then, according to the more cautious opinion, an agent shall be hired from a place as close as possible. If it is not possible to hire a person except from the place of the deceased, it shall be obligatory to do so, and the total expenses shall be defrayed from the full legacy.

Problem #59: If the deceased has mentioned hiring of the agent from his hometown, or we decide in favour of its obligation in all circumstances, but it is opposed and an agent is hired from *Miqat*, who performs Hajj, or someone volunteers to perform Hajj on behalf of the deceased, he shall be absolved of the liability, and the obligation of hiring an agent from his hometown shall drop. Similar shall be the case, if the money earmarked for this purpose does not allow hiring except from *Miqat*. If the deceased has specified hiring of the agent from some other town, it shall be binding and the excess over the Hajj from *Miqat* shall be paid from the one-third. If the executor or the heir hires an agent from the hometown of the deceased without there being anything to that effect in the will under the impression that the Hajj from *Miqat* would not be sufficient, the excess over the Hajj from *Miqat* shall be borne by the heirs or the rest of them.

Problem #60: If the legacy does not suffice for hiring from *Miqat* except an emergency one from Mecca or some other place from outside, it shall be obligatory to do so, If an option is to be made between the hiring in emergency or from the hometown, the latter shall be preferred, and the excess shall be paid out of the legacy itself, If it is not possible to hire an agent except from the hometown,

it shall be obligatory to do so. If the deceased owes some debt, Khums or Zakat, and the legacy does not suffice for their payment, it shall be divided proportionately.

Problem #61: It is obligatory to hire the agent on behalf of the deceased within the year of his death, and not to delay it, particularly when the deceased was at fault in its non-fulfillment. If it is not possible to do so except from his hometown, it shall be obligatory to do so, and defray the excess from the legacy itself, even if it were possible from *Miqat* in the following years. Similarly, if Hajj was possible from *Miqat* for more than usual in the year of deceased's death, it would be obligatory (to perform it within that year), and it must not be delayed. If the executor or the heir dilly-dallies it, and the legacy is destroyed, they shall be held responsible for it. If there were no legacy left by the deceased, his Hajj shall not be obligatory on his heir, though it shall be approved for his *Wali*.

Problem #62: If there is difference of *Taqlid* between the deceased and the one who has been assigned the job of deciding whether (hiring for) the Hajj should be from the *Miqat* or from the hometown, the criterion shall be as per *Taqlid* of the latter. In case of there being several persons and differences, the matter shall be referred to the judge. Similarly, if both of them differ in respect of the obligation of Hajj, or otherwise, the criterion shall be (the *Taqlid* of) the latter. If there are several persons and difference, the matter shall be referred to the judge. The same shall be the case if the verdict of the deceased's Mujtahid is not known, when it is not known as to who was his Mujtahid, when he was not a *Muqallid* (of any Mujtahid), when it is known whether he was a *~Muqallid* (of any Mujtahid) or not, or when the deceased was himself a Mujtahid, but his opinion differed with that of the person entrusted with the assignment, or when there is no knowledge about the deceased's opinion.

Problem #63: If there is knowledge about the pecuniary capability of the deceased, but not about other conditions, and there is no standard to establish them, there shall be no obligation for compensation on his behalf. If the obligation on him is established, but there is doubt about its fulfillment by him, compensation on his behalf shall be obligatory. Similarly, if there is knowledge about its invalid fulfillment, but there is doubt about its invalidity, it shall be considered valid.

Problem #64: In case of unwillingness of the heirs and the existence of a minor heir among them, it is obligatory to hire a person who demands minimum wages provided that there is satisfaction with regard to his performance. Of course, it is not necessary to make extraordinary inquiry in this regard, though it is more cautious.

Problem #65: In case obligation of Hajj is established on a person and he is able to perform it, it would not be permissible for him to perform Hajj through another voluntarily or against payment. Similarly, he must not perform an approved Hajj (through another person) he performs it in violation of the rule, there shall be difficulty in its validity; rather, it would not be far from being invalid, without there being difference whether he had knowledge about its obligation or not. If, however, he is not able to perform it personally, it shall be valid if performed through another. If a

person allows himself to be hired for another, despite his ability to perform it for himself, the hire shall be invalid, even if he were ignorant of it being obligatory on himself.

Chapter Two - Hajj for a Vow, a Pledge or an Oath

Problem #1: For the performance of a Hajj for a vow, a pledge or an oath, it is a condition that the person must have maturity, sanity and free will. So it shall not be permissible if performed by a minor, even if he has attained ten years of age, though offering prayers would be valid. So also it would not be valid if performed by an insane, fainted, absent-minded, drunk or forced person, but, according to the stronger opinion, it is valid if performed by an infidel who believes in Allah, the Exalted, or one who believes in the possibility of Allah's existence and intends closeness to Him in acts where it is a condition.

Problem #2: In case of a Hajj for oath by a wife or son, there must be the permission by the wife's husband and the son's father, a subsequent permission would not be sufficient. It is not far from there being no difference whether it regards the performance of an obligation or abstinence from a forbidden act, etc. But in both cases caution must not be given up; rather, caution is not to be given up. For the fulfillment of a votive offering by a wife her husband's permission is a condition, but in case of a votive offering by a son, apparently his father's permission is not a condition, as, according to the stronger opinion, fulfillment of a pledge does not depend on the permission of anyone. According to the stronger opinion, a temporary wife is to be included (in the rule relating to a wife), but the rule for the son does not include a grandson. There is no difference between a son and a daughter (in the application to the rule). But neither the mother is included in the rule relating to neither father, nor an infidel in (the rule relating to) a Muslim.

Problem #3: If a person vows to perform Hajj from a specified place, but performs it from some other, he shall not be absolved of the liability. If a person vows to perform Hajj in a specified year, but he performs it in some other year, he shall be bound to atone for it. If a person vows to perform the Islamic Hajj from a particular place, but performs it from some other place, it shall be valid, but he shall be bound to atone for it. If a person vows to perform Hajj in a particular year, it shall not be permissible for him to delay it, so that if he delays it despite his capability, he shall be considered to have committed insubordination, and he shall have to compensate and atone for it. In case he does not specify any time, it is permissible for him to delay it until he presumes its non-fulfillment. In case he dies (before fulfilling it) despite his capability, according to the stronger opinion, it shall be compensated out of his actual legacy. In case he dies without being capable to fulfill his vow, it shall not be obligatory to compensate on his behalf. If he makes a vow contingent on some thing that does not happen until his death, its compensation shall not be obligatory on his behalf. Of course, if he makes a vow to send someone to Hajj and makes it contingent on a condition, and dies before its fulfillment, though it is fulfilled after his death despite its being likely to be fulfilled even before his death, then apparently its compensation shall be obligatory on his behalf, as when he vows to send someone to Hajj in a specified year, but fails to fulfill it despite his capability, its compensation and atonement shall be obligatory on him and if he dies before sending him to Hajj its compensation and atonement shall both be performed out of his actual legacy, The same shall be

the case if he vows to send someone to Hajj without any condition or contingent on something that happens while he was capable, but he fails to fulfill it until his death.

Problem #4: If a capable person vows to perform Islamic Hajj it shall be established, and its performance shall be sufficient. But if he abandons it until he dies, its compensation and atonement shall be obligatory out of his legacy. If, however, an incapable person vows it, it shall also be established, and it shall be obligatory on him to attain capability, except when he vows for Hajj after capability.

Problem #5: In a votive Hajj *Shar'i* capability is not a condition; rather, mental capability is obligatory, except when it may cause some distress or some damage to his person, honour or property, and that may cause his distress.

Problem #6: If a person vows to perform a Hajj other than an Islamic Hajj in its year while having its capability, it shall be established, but the Islamic Hajj shall be given priority. If he loses capability, the votive Hajj shall be obligatory on him, so that if he abandons it, it shall not be far from entailing obligation of atonement. If, however, he vows to perform Hajj while not having capability, and later attains it, the Islamic Hajj shall be given priority, even if the time for the performance of his votive Hajj were short. Similarly, if he vows to perform Hajj promptly, he must still give priority to the Islamic Hajj and perform the votive one next year. If, however, he vows to perform Hajj without any specification while he was capable or attained capability later, without any reversion, then, according to the opinion closer to traditional authority, a single Hajj shall suffice for both, provided that he intends both. Nevertheless, he must not give up caution, in case he does not intend to include the Islamic Hajj by performing each of them separately, giving priority to the Islamic Hajj.

Problem #7: It is permissible to perform an approved Hajj before the votive Hajj having ample time for its performance. If a person contravenes the rule relating to a Hajj for whose performance time is short, and performs the approved Hajj it shall be valid, but he shall be liable to atone for it.

Problem #8: If there is knowledge about a deceased person owing Hajj without the knowledge whether it is an Islamic Hajj or a votive one, its compensation shall be obligatory on his behalf without specifying it, and he shall be under no obligation of atonement. If there is hesitation between the votive Hajj and Hajj for oath accompanied by atonement, (in that case), atonement shall also be obligatory, and it shall suffice to feed ten poor persons, though it would be more cautious to feed sixty of them.

Problem #9: If a person vows to perform Hajj on foot, it shall be established, even when it was preferred to perform by riding. Similarly, if a person vows to perform Hajj by riding, it shall also be established and it shall be obligatory even when it was preferred to perform on foot. The same rule shall apply, if he vows to cover part of the passage on foot. Similar shall be the case if he vows to perform Hajj barefooted. But, in both cases, the capability of the person vowing as well as their not causing harm or trouble is a condition, so that it shall not be established if it were there initially,

while its obligation shall drop if it happens to be so on the way. The starting point for going on foot or bare-footed depends on how he specifies, though it is subject to reversion, and its final point is (the place of) *Ram'y al-Jamar* (or *Ram'y al-Jamarat*, throwing pebbles on the three Satans in Hajj) in case of non-specification.

Problem #10: For a person who has vowed to perform Hajj on foot or walk on foot during Hajj it is not permissible to sail on the sea or the like. If, however, it becomes necessary due to some hurdle on the other ways, the condition shall drop. If it were from the outset, the condition shall not be established. If on his way there is a river or canal which cannot be crossed except by sailing (in a boat), according to the stronger opinion, it shall be obligatory on him to keep standing while aboard.

Problem #11: If a person vows to perform Hajj on foot, it would not suffice to go riding. If there is ample time for Hajj it must be performed, but if the time is short and he has violated the condition, he shall be bound to atone for it without compensating it. If he has vowed to perform a specified Hajj on foot, and performs its riding, it shall be valid, and he shall be liable to atone for it without compensating it. If he has been riding in part of the way, and not riding in another, it shall be treated as riding throughout

Problem #12: If a person is unable to go on foot after the establishment of his vow (to perform Hajj on foot), it shall be obligatory on him to perform Hajj riding in all circumstances, regardless whether it is confined to a year or not, and whether and he has lost hope of his capability later or not. Of course, he must not give up caution by repeating it if no condition has been made in the vow and he has not lost hope of regaining capability, and the inability were there before starting to go (for Hajj), while the capability has been attained subsequently. It is more cautious to traverse part of the way on foot as much as possible; rather, this caution is not devoid of force. On the question whether other impediments like sickness, fear, (presence of) an enemy, or the like fall under the category of inability, there are two opinions. It is not far from differentiating between sickness and an enemy, so that the former may be counted as inability but not the latter.

Chapter Three - Proxy (in Hajj)

Proxy in Hajj is absolutely valid in case of a deceased person, for an approved Hajj for a living person and in some cases of obligatory Hajj.

Problem #1: In an agent, the following conditions are obligatory.

First: Maturity, according to the more cautious opinion, without any difference whether he is hired or a volunteer, and with or without the permission of the *Wali*. There is difficulty in its validity in case of an approved Hajj.

Second: Sanity, so that it is not valid if he were insane, though having periodical insanity, during the period of insanity. But there is no objection in the proxy of an idiot,

Third: Faith (in Islam),

Fourth: Satisfaction regarding his performance of Hajj. But after this satisfaction, further satisfaction as his correct performance is not a condition. If there is surety of his performance of Hajj, but doubt regarding correct one, his proxy shall be valid, even apparently in case of knowledge prior to performance. But in this case, according to the more cautious opinion, there would be a condition of correct performance.

Fifth: Knowledge of the rites and rules of Hajj though under the direction of a *Mu'allim* during performance of each rite.

Sixth: Absence of his liability for the performance of an obligatory Hajj during that year, as already mentioned.

Seventh: Must not be excused for giving up some rites of Hajj. There is also difficulty in sufficiency of his volunteering (to perform Hajj).

Problem #2: For a person appointing an agent, Islam is a condition, so that it is not valid for an infidel to do so. If it is supposed that he might benefit by offering reward to another, then it is not far from being valid. If he dies while he was capable, it is not obligatory on his Muslim heir to hire someone (to perform Hajj) on his behalf. For an obligatory Hajj, there is a condition of his inability, regardless whether he is alive or dead, and in his case, there is no condition of maturity or insanity. If it is established on an insane person during the period of his sanity, and then he would die insane, it shall be obligatory to hire someone (to perform Hajj) on his behalf. There is no condition of identity of sex between the agent and his principal. Appointing an agent of either sex for a person of either sex performing Hajj for the first time is valid.

Problem #3: For the validity of a proxy Hajj intention of proxy as well as specifying the person to be represented, though briefly, is a condition, not mentioning his name, though it would be

approved in all places and positions. Proxy by *Ju'alah* is valid as it is valid by hiring or volunteering.

Problem #4: A person appointing another (to perform Hajj) is not absolved of his liability except by appointing a proper person. Of course, if the agent dies after tying *Ihram* and entering the *Haram*, it would suffice for him, otherwise not, even if he dies after tying *Ihram*. There is, however, difficulty in application of this rule in case of a volunteering Hajj. Rather there is difficulty (in the application of this rule) in case other than an obligatory Hajj.

Problem #5: If the hired person dies after tying *Ihram* and entering the *Haram*, he shall be entitled to full wages in case he was hired to absolve the liability in whatever way it may be, while in relation to the rites performed if he were hired for the performance of specified rites, while the preliminaries were not included in the (contract for) hire. In such case, if he dies before tying *Ihram*, he shall not be entitled to anything. As regards *Ihram*, it is included in the hired performance without any exception, not going to Mecca after tying *Ihram* and to *Mina* and '*Arafat*, for which he is not entitled to receive anything. If walking and the preliminaries were also included in the contract for hire, he shall be entitled to receive the wages in their respect in all circumstances, though they might have been required as a preliminary. This is so if it has been specifically mentioned in the (contract for) hire, but it shall be so even if it is left unmentioned, as he would be entitled to his full wages in such case if he performs the Hajj according to the usual correct form, even if there is some nominal deficiency. If it were a deficiency requiring compensation, apparently its liability shall be on the agent and not the principal.

Problem #6: If the agent dies before tying *Ihram*, the (contract for) hire shall stand cancelled if it were to be performed in a specified year personally or through another person provided it is not possible to perform it in that year. If its time were unspecified and without the condition of being performed personally in that year, and it was possible to send someone to perform Hajj in that year, its expenses shall be defrayed from the agent's legacy. In both the suppositions, if the contract for hire were for the performance of the Hajj itself, he shall not be entitled to anything for what he has performed.

Problem #7: It is obligatory to mention the type of Hajj in the contract for hire where there is option between the types, for example, like an approved or general votive Hajj. According to the more cautious opinion, it is not permissible to refrain from it, even if it were preferable, except with the permission of the principal. If it were a specified type, permission for refraining from it shall be of no avail. In case he refrains with the principal's permission, he shall be entitled to the specified wages in the first case, and his proper wages in the second when he has refrained by the principal's order.

If the agent refrains in the first case without the principal's consent, it shall be valid for the principal, and, according to the more cautious opinion, the matter relating to the wages for hire may be settled by mutual agreement, if the specification has been made by way of determination. But if

it were by way of a condition, then he shall be entitled to it, except when the principal declares it cancelled, in which case he shall be entitled to his proper wages, not the specified one.

Problem #8: It is not a condition in a contract for hire to specify the route, even if it were a Hajj where the agent is to be appointed from a specific town. But if the route were specified, it is not permissible to refrain from it, except when it is established that the principal did not mean it specially, and it was mentioned just as usual, and the principal were also consented. In such case, if he refrains from it, he shall be entitled to full wages.

The same shall be the case if the right of specification has dropped after the conclusion of the contract. If there was a condition of a specific route in the contract for hire, and the agent has refrained from it, the Hajj for the principal shall be valid, and he shall be absolved from his liability if it were not specified with a particular route, and the agent shall not be entitled to anything in case the route specified was specially meant, in the sense that the Hajj by a specific route was actually meant in the contract for hire, and the agent shall be entitled to the specified wages, and his wages in proportion to what he had refrained shall drop, if it was a portion of the contract, (the other portion having related to the performance of the Hajj itself, to which the agent shall be entitled in case it is mentioned as a separate item).

Problem #9: If a person contracts to perform *Hajj* personally on behalf of another in a specific year, and then contracts again to perform Hajj personally on behalf of yet another person in the same year, the second contract shall be declared void. If, however, he does not stipulate to perform it personally in one or both of them, both shall be valid. The same shall be the rule if the time of one or both is extensible, or one or both of them is unconditional (as regards the year of their performance), and if there is no aversion in both to prompt performance. If both the contracts are concluded simultaneously with the condition of simultaneous and personal performance, both shall be declared void.

Problem #10: If a person contracts to perform *Hajj* in a specific year, it shall not be permissible for him to perform it later or earlier Hajj the specific time except with the consent of the principal. If he delays the performance, then it shall not be far from the principal having the option of either rescinding the contract or demanding the specified wages and either not cancelling it or demanding proper wages without any difference whether the delay has been due to some excuse or not. This is the case when the contract has been concluded with a specification (as to the time, etc)

If, it contains a condition (as to its performance in a specific year), the principal shall have the option to rescind it, so that if he rescinds it, he may demand the specified wages. If he performs the Hajj later than specified in the contract, he shall not be entitled to anything in the first case, while the principal shall be absolved of his obligation (of performing *Hajj*, and shall be entitled to the specified wages in the second case, except when the principal opts to rescind it, in which case it shall revert to the proper wages. If it was in general terms and we decide in favour of its prompt

performance, it shall not be cancelled even in the event of disregard (on the part of the agent). As regards the establishment of option for the principal, there are detailed rules about it.

Problem #11: If the agent is detained or confined, his case will be similar to that of a person performing Hajj for himself as regards performance of the obligatory rites, and the contract shall be declared void if its performance were confined to that year, but the liability of performing Hajj on him shall subsist, provided that it were in general terms. If the contract contains a condition (about the performance of Hajj in that year), the principal shall have the option to rescind it for violation by the agent, and it would not be sufficient to (absolve the principal of his obligation), even if it were after tying *Ihram* and entering *Haram*. In case of a condition for its performance in that very year, and the undertaking by the agent to perform it in future, the principal shall not be bound to accept it, and shall be entitled to receive the wages in proportion to the rites performed by the agent according to the afore mentioned details.

Problem #12: The cost of two cloths for *Ihram* and the sacrificial animal shall be borne by the agent, except when stipulated otherwise. Likewise, the agent shall atone from his property for any act entailing atonement committed by him.

Problem #13: The unconditional conclusion of a contract demands promptness in the sense of maturity of its time of performance, not in the sense of immediacy except in case of an aversion to that effect. In such case, it would be similar to a contract for sale, and the principal shall be entitled to demand its performance, in which case it shall have to be expedited. Similarly it also demands personal performance, so that it shall not be permissible for the agent to hire another except with the (principal's) permission.

Problem #14: If the wages fall short (of the expenses on Hajj), the principal shall not be bound to complement it, as, in case it is more Hajj the expenses, he shall not be entitled to demand return (of the surplus).

Problem #15: The agent owns the wages by conclusion of the contract, but the principal is not bound to pay it but after the performance except in case of a stipulation to the effect of promptness or the tenor does not mean aversion, etc such as the existing position or the like There is no difference in its obligation whether it is a capital asset or a debt. If it were a capital asset, any growth in it shall belong to the agent, and it shall not be permissible for the executor or the deceased's representative to deliver it before the performance except with the permission of the legator or his representative. If they do so, they shall be held responsible in case of non-performance by the agent or his act being declared invalid. (Likewise) it is not permissible for the deceased's representative to stipulate prompt performance except with the permission of his principal. The executor, however, shall be entitled to stipulate if it becomes inevitable. In such case, he shall not be held responsible if he delivers it if the agent is not able to perform it; the principal shall be entitled to rescind the contract. In case of status quo until the expiry of the time, apparently the contract becomes ineffective. If it is usual to pay the wages or part thereof before departure, the

agent shall be entitled to demand it in case the contract were unconditional, and it would be permissible for the deceased's representative or executor to pay it without being held responsible for it.

Problem #16: For a person who owes *Hajj-al Tamattu'* it is not permissible to hire another whose time for the performance of *Hajj-al Tamattu'* is short and so he has been obliged to revert to *Hajj-al Ifrad*. If he hires him when he had ample time, but later the time became short, then, according to the stronger opinion, it shall be obligatory on him to refrain, and, according to the more cautious opinion, it shall not be sufficient for the person on whose behalf it is performed.

Problem #17: It is permissible to volunteer performance of all types of obligatory and approved Hajj on behalf of the deceased; rather, it is permissible to volunteer an approved Hajj, though the deceased owed an obligatory Hajj even before a person is hired on his behalf. Similarly, it is permissible to hire a person to perform an approved Hajj of any type. The rule relating to a live person in case of an obligatory Hajj has already been mentioned. As regards an approved Hajj, it is permissible to volunteer to perform Hajj on his behalf, as it is also permissible to hire someone to perform Hajj on his behalf if he owes an obligatory Hajj and he were not presently able to perform it; rather, even in case of his ability, So permission to hire a person to perform an approved Hajj before an obligatory Hajj provided that it does not obstruct the performance of the obligatory Hajjis not devoid of force, in the same way as, according to the stronger opinion, it is valid to volunteer to perform it on his behalf.

Problem #18: It is not permissible for a single person to perform obligatory Hajj on behalf of two or more persons in a single year, except when both of them shared the obligation, as, when both of them should vow to share with each other the performance of Hajj. It is also permissible to do so in case of an approved Hajj as it is permissible for offering reward (to another).

Problem #19: It is permissible for a group to perform an approved Hajj on behalf of a deceased or live person in a single year voluntarily or against payment. Rather it is also permissible in case of an obligatory Hajj as when the deceased owed two different types of Hajj like an Islamic Hajj and a votive Hajj or two Hajjs of the same type, as two votive Hajjs. As regards hiring a person to perform a votive Hajj on behalf of a live person who is unable to perform it himself, it is difficult (to declare it valid), as already mentioned. Similarly, it shall be permissible if it were obligatory for one and approved for another. Rather, it is also permissible to hire two agents for the performance of a single obligatory Hajj like an Islamic Hajj in a single year. So it shall be valid to have the intention of performing an obligatory Hajj in each case, even if one of them were ahead of the other in starting it, but both of them must finish it simultaneously.

Chapter Four - Making a Will for Hajj

Problem #1: If a person makes a will for Hajj its expenses shall be defrayed from his actual legacy, if it were an obligatory one, except when he has himself clarified that it is to be defrayed from the one-third, in which case it shall be defrayed from the one-third. If it does not suffice, the deficiency shall be met from the actual legacy, without any difference whether it is an Islamic, votive or an unsound Hajj. If it were an approved Hajj its expenses shall be defrayed from the one-third. If it is not known whether it is an obligatory or approved one, then it shall be decided in the light of the tenor or aversion; otherwise, they shall be ed from the one-third, or when it is known to be obligatory previously, but now there was doubt as to its performance, in which case they shall be defrayed from the actual legacy.

Problem #2: Hajj from *Miqat* is sufficient, whether the deceased has made a will for the obligatory or approved Hajj but the expenses for the former shall be defrayed from the actual legacy, while for the latter from the one-third. If he has made will for Hajj to be performed from his hometown, then the expenses exceeding those for Hajj from *Miqat* shall be met from the one-third in the former and from the actual legacy in the latter.

Problem #3: If the deceased has not specified the wages (in his will), then it is necessary for the executor to confine it to the proper wages, provided that the heirs do not agree or there is some incapable person (*Qasir*; like a minor or insane person) among them. Of course, as regards one who is not incapable, it is up to him to contribute as much as likes from his share. If there is anyone among the heirs who agrees with less Hajj the proper wages, the executor shall be bound to hire him on the afore-said condition. In case of disagreement of the heirs or the existence of an incapable person among them, according to the more cautious opinion, the executor shall be bound to search for such a person. Rather, its obligation is not devoid of force, particularly in case of a presumption of the existence of such a person. Of course, he is not bound to make extra-ordinary search. If there is a volunteer to perform Hajj on behalf of the deceased, it shall be permissible to suffice with him in the sense that he shall not need to resort to hiring someone, Rather, it is obligatory in case there is an incapable person among the heirs. If the person performs Hajj correctly, it shall be sufficient; otherwise, hiring someone shall be obligatory. If no one is found to agree with the proper wages, then payment of extra wages shall be obligatory, if the Hajj were an obligatory one. It is not permissible to delay it for the following year, even despite the knowledge about finding one who would agree with the proper or lesser wages. The same shall be the case if the deceased has willed to expedite the approved Hajj. If the deceased has specified the amount of wages, it shall be confined to that amount, and it shall be deducted from the actual property in case of an obligatory Hajj, provided that it does not exceed the amount of proper wages; otherwise, the excess shall be paid from the one-third, In case of an approved Hajj it shall be paid entirely from the one-third, If what has been specified by the deceased does not suffice, then it shall be obligatory to complement it from the actual property in case of an obligatory Hajj while in case of an approved Hajj there are detailed rules.

Problem #4: It is obligatory to hire a person agreeing with the least wages from among the people in case of disagreement of the heirs or the existence of an incapable person among them. It is more cautious for the elders among the heirs to hire someone suitable for the position of the deceased.

Problem #5: If the deceased has specified whether the Hajj is to be performed once or in a specific number, action shall be taken accordingly. In case he has not specified, a single Hajj shall suffice, except when the tenor demands repetition. If the deceased has specified one-third of the property, but has not mentioned anything other than Hajj, it shall not be far from likely to spend it exclusively on Hajj. If he has willed for repeating Hajj twice shall be sufficient, except when the tenor demands more. If he has will for an obligatory Hajj, and has also specified a particular person to be hired, action shall be taken accordingly. Now, if the person does not agree except with higher Hajj the proper wages, the excess shall be defrayed from the one-third, if possible; otherwise, the will shall be cancelled, and another person shall be hired against proper wages, except that the heirs agree (with the former arrangement). The same rule shall be applied in cases similar to this Problem. If the deceased has willed for an approved Hajj its expenses shall be defrayed from the one-third. If the person (specified by the deceased) does not accept except more Hajj that, it shall be cancelled. If the will contained several demands, another person shall be hired; otherwise, it shall be cancelled.

Problem #6: If a person wills the expenditure of a specific amount for Hajj in a specified number of years, and specifies a particular amount for each year, and incidentally the amount does not suffice for each year, for example, the portion of two years shall be spent on one year, or that of three years on two years, and so on. If there is some residue out of the expenses for the specified number of years which, however, does not suffice for a single Hajj even if from *Miqat*, it shall be spent on some charitable purpose. If what is willed, is a Hajj from the hometown of the deceased, and there is an alternative either to spend the wages for two years for that of one year or hire with that amount for Hajj from *Miqat* for each year, the former shall be chosen. This is the rule when there is no knowledge about the intention of the deceased for that particular amount for Hajj exclusively; otherwise, the will shall be cancelled if there is no hope of its performance by delay, or it were specified for a specific number of years.

Problem #7: If a person makes a will and specifies a particular amount for wages, then if it were an obligatory Hajj and it did not exceed the proper wages, or exceeds it, but one - third of his property suffices to meet the excess, or the heir should agree (to its payment) action shall be taken according to his will; otherwise, it shall be cancelled, and action shall revert to the proper wages. If the Hajj were an approved one, such action shall be taken, provided that the one-third suffices for it; otherwise to the extent of its sufficiency, when the specification were not in the form of a stipulation. If the amount does not suffice even for a Hajj from *Miqat*, and the heirs also do not permit it, or it were in the form of a stipulation, it shall be cancelled.

Problem #8: If the deceased has specified an amount for Hajj which is not accepted by anyone even for a Hajj from *Miqat*, and the Hajj were an approved one, the will shall be cancelled, if there is no one to accept it, and the money shall be spent on charitable purpose, except there is knowledge

its being in the form of a stipulation, the amount shall revert to the heirs, without a difference between the following inability or otherwise, or between his will for one-third and its specification for particular purposes or otherwise.

Problem #9: If a person wills that Hajj should be performed on his behalf on foot or barefooted or on a particular means of transport, it shall be valid, and, if it were an approved one, its expenses shall be defrayed from the one-third, and, if it were an obligatory one, the excess upon the Hajj from *Miqat* or the difference between the Hajjs mentioned and ordinary Hajj (shall also be defrayed from the one-third). If he owed a votive Hajj on foot or the like, its expenses shall be deducted from the actual legacy, regardless whether he has willed for it or not. If there were a condition in his vow for the personal performance of the Hajj, then apparently it shall not be obligatory to hire another person for it, except when it is established that there were several things required (in the vow).

Problem #10: If a person wills for two Hajjs or more, and states that he owes them, necessary inquiry shall be made about it, (and if it is established after the inquiry), their expenses shall be defrayed from the actual legacy, except when his affirmation is made during the sickness resulting in his death, and he is charged with making a wrong affirmation, in which case the expenses shall be defrayed from the one-third.

Problem #11: If a person wills that the property owned by him must be spent on an approved Hajj, and it is not known whether it is to be taken out from the one-third or not, it shall not be permissible to spend the entire amount (on the approved Hajj). If the deceased claims that the heirs own twice his property, or that he has willed for it, and the heirs have permitted it, his claim shall be heard as one advocated as a claim and not as one to be enforced. .

Problem #12: If the *Wasi* dies after receiving the wages for hiring from the legacy, and there is doubt whether before his death, he had hired someone with that money or not, then if there is still ample time for performing Hajj and it were an obligatory Hajj, it shall be obligatory to hire someone for the purpose with the rest of the legacy. The same shall be the rule if so much time has not elapsed in which it was possible to hire someone. Rather, apparently it shall be obligatory, if the obligation were prompt and so much time has elapsed in which it was possible to hire someone. If the Hajj were an approved one, its expenses shall be deducted from the rest of one-third. According to the stronger opinion, he shall not be held liable for what he had received. If the money received by him is still there, it shall be taken back from him. Of course, if the *Wasi* had made some property transaction with it during his lifetime, or his heirs have done so, it is not for from being not permissible to take it back from him, though there is some ambiguity in this rule, particularly in the former case.

Problem #13: If the *Wasi* receives the wages a it is destroyed while in his possession without his mistake, he shall not be held responsible for, and it shall be obligatory to hire someone with the rest of the legacy, or rest of the one-third. If it were divided, it shall be taken back. If there is doubt whether what has been destroyed was by his mistake or not, even then he shall not be held

responsible for it. If the hired person dies before fulfilling his assignment, and there is no legacy left by him, or it is possible to get it from his heirs, (another) person shall be hired from the rest of the legacy or the one-third.

Problem #14: It is permissible to perform an approved circumambulation on behalf of the deceased, and, likewise, on behalf of a live person if he were away from Mecca or present in Mecca but unable to perform it. But in case he is present and there no excuse for him, it shall not be permissible. As regards the other rites (of Hajj), whether their personal performance is approved or it is permissible to perform them on behalf of others, it is not certain, including even the *Sa'y* (Running or moving quickly between *Safa* and *Marvah*), though its approbation is apparent from some of the traditions.

Problem #15: If a person has something entrusted to him, and its owner has died, and he owed an Islamic Hajj, and he was sure or suspected that his heirs would not perform it on his behalf if he pays it to them, it shall be obligatory on that person to perform Hajj with it on behalf of the deceased, and if there is any surplus out of the wages of the Hajj, he must return it to his heirs. It is more cautious to take the permission of the judge, if possible. Apparently it is not particularly in case the heirs have nothing. Nor is it particularly related to the trustee's performing Hajj personally. There is difficulty in affiliating with it kinds of obligatory Hajj other Hajj the Islamic Hajj, or other obligations like Zakat or the like. The same is the case with affiliating things other Hajj trust like a real property which has been rented out, or a loan, or the like. It is more cautious to refer the matter to the judge, and not act arbitrarily. The same shall be the case if the heir refutes (the obligation of Islamic Hajj on the deceased), or refuses to contribute (for Hajj of the deceased), but it is possible to establish it before the judge or it is possible to compel him. So in all these cases reference shall be made to the judge, and arbitrary action shall not be taken.

Problem #16: It is permissible for the agent to perform circumambulation for himself or on behalf of someone else after having performed the rites of Hajj for his principal. Similarly it is also permissible for him to perform an individual *'Umrah* for himself or on behalf of someone else.

Problem #17: If a person pays some money to another to hire someone for Hajj, it shall be permissible for him to perform the Hajj himself unless he knows that the principal intended hiring someone other Hajj that person even as expressed by words. In case of expression by words, it shall not be permissible to contravene it except when he has satisfaction to the contrary. Rather, it is more cautious for him not to perform it himself except when he is certain that the intention of the principal was just the performance of Hajj. If, however, the principal has appointed some particular person for the job, action shall be taken accordingly, except when there is certainty about that person's incompetence and the principal had been mistaken in his case, or he had mentioned him just as one of the several persons.

Chapter Five - An Approved Hajj

Problem #1: For a person not fulfilling the conditions of maturity, capability, etc., it is permissible to perform Hajj whenever possible. Likewise, (it is approved), for a person who has performed his obligatory Hajj. Rather, it is approved to perform it every year, and is disapproved to abandon it for continuous five years. It is approved to have the intention of returning while leaving Mecca, and it is disapproved to intend otherwise.

Problem #2: It is approved to perform Hajj on behalf of close relatives, living or dead. Similarly, (it is approved) to perform Hajj on behalf of the *Ma'sumin* (i.e the Infallibles, the Prophets and the Imams), Peace be upon them, living or dead, and to perform circumambulation on their behalf, or on behalf of others Hajj them, living or dead, provided that they are not present in Mecca or are unable (to perform Hajj). It is also; approved to send others for Hajj regardless whether they are capable or not. It is permissible to pay Zakat for performing Hajj to a person who is incapable.

Problem #3: It is approved for a person who has no travel and other expenses for Hajj to borrow money and perform Hajj with it if he is sure to be able to repay it.

Problem #4: It is approved to spend lot of money on Hajj. Performance of Hajj is preferable to payment of charity for Hajj.

Problem #5: It is not permissible to perform Hajj with unlawful money. It is, however, permissible to perform Hajj with doubtful money, like the rewards from tyrant (rulers) without the knowledge about their unlawfulness.

Problem #6: It is permissible to offer the reward of Hajj to others after its performance, as also it is permissible to do so with its intention before its performance.

Problem #7: It is approved to perform Hajj for a person who no money for its performance even if he has to let his services be hired by another person.

Chapter Six - Kinds of 'Umrah

Problem #1: Like Hajj, 'Umrah is also divided into three kinds: Initially obligatory, incidentally obligatory and approved. Initially Hajj is obligatory on every *Mukallaf* (adult and sane) person once in lifetime on the condition of fulfillment of the relevant qualifications for Hajj. Like Hajj, its prompt performance is also obligatory. For the obligation of 'Umrah, the capability to perform Hajj is not a condition, but the capability to perform 'Umrah shall suffice, even if he has no capability to perform Hajj, as is the case vice versa, so that if a person is capable to perform Hajj without being capable to perform 'Umrah, it shall be obligatory on him to perform Hajj without the obligation of 'Umrah.

Problem #2: 'Umrat-al Mufradah is sufficient for 'Umrat-al Tamattu'. Whether 'Umrat-al Mufradah becomes obligatory on a person who has its capability and who is bound to perform *Hajj-al Tamattu'*, but has not its capability? According to what is prevalent among the jurists, it is not obligatory, and that opinion is stronger. Therefore, it is not obligatory on an agent after performance of assignment of Hajj, even if he has its capability and happens to be in Mecca. Similarly, it is not obligatory on a person for whom 'Umrat-al Mufradah is possible, though due to some impediment, Hajj is not possible, but it is more cautious for him to perform the former.

Problem #3: Sometimes 'Umrah becomes obligatory by vow, oath or pledge, or a stipulation in an agreement, being hired or invalidating an (obligatory) 'Umrah, though according to the confirmed opinion, the application of obligation to all the cases except the last one is to be forgiven. 'Umrah also becomes obligatory by entering Mecca in the sense that entering Mecca without it is forbidden, as it is not permissible to enter Mecca without tying *Ihram*, except in a few cases, as for one whose trade requires repeated entry into and departure from Mecca, like a fuel seller, a vegetable (or hay) seller. But granting general exemption to everyone who repeats the said act is difficult. There are some more persons (who are granted exemption) like a sick person or a person suffering from gastric or intestinal ailment, which have been mentioned in their relevant sections. In cases other Hajj mentioned here, 'Umrah is considered approved, and it is approved to repeat it like Hajj. There is difference of opinion over the distance allowed between the performances of two 'Umrahs. In case of a distance of less Hajj a month, it is more cautious to perform it with the hope (that it shall be desirable to Allah).

Chapter Seven - Kinds of Hajj

There are three kinds of Hajj: *Tamattu'*, *Qiran* and *Ifrad*.

Hajj-al Tamattu' is obligatory on persons living away from Mecca, while *Hajj-al Qiran* and *Hajj-al Ifrad* are obligatory on those are living in Mecca and not away from Mecca. According to the stronger opinion, the minimum distance from Mecca on all the four directions is forty-eight miles. Apparently such distance is obliged to perform *Hajj-al Tamattu'*. In case a person doubts whether his residence lies within or beyond such limit, he is bound to make necessary inquiry, and if it is not possible, he must observe caution. Now what has been mentioned here relates to Islamic Hajj. In case of a votive Hajj or the like, one may vow to perform any kind of Hajj he likes. The same rule shall apply to the other two similar types of Hajj, (namely, the Hajj for an oath or a pledge). As regards an invalidated Hajj, it is governed by its own kind, (so that if the invalidated Hajj were a *Hajj-al- Tamattu'*, he shall be bound to perform *Hajj-al Tamattu'*, and so on).

Problem #1: If a person has two residences, one of them being at a distance less Hajj the prescribed limit, while the other beyond it or on its frontier, it is necessary that he must observe the kind of Hajj according to the one where he stays longer, provided that he has not stayed in Mecca for two years. If both the times are equal, then if he has the capability for both, he may opt either of them, though it would be preferable to opt for *Hajj-al Tamattu'*. If he has the capability to perform only one of them, he must perform the kind of Hajj whose capability he possesses.

Problem #2: If a person is an inhabitant of Mecca, but left for some other place and then returned to Mecca, then he shall be bound to perform the kind of Hajj obligatory on a Meccan. Rather it is not devoid of force.

Problem #3: If an *Afaqi* (i.e. an inhabitant of a place outside Mecca) starts residing in Mecca. If it were after his capability and obligation of *Hajj-al Tamattu'* on him, then there is no difficulty in the subsistence of the obligation of *Hajj-al Tamattu'* on him, regardless whether his residence were with the purpose of permanent residence or proximity to Mecca, even for more Hajj two years. But if he were not capable, and has attained capability after residing in Mecca, then he shall be governed by the rule relating to the inhabitants of Mecca after entering the third year of residence in Mecca, provided that the stay in Mecca were with the intention of having proximity to it. If it were with the intention of permanent residence, then the rule shall change from the beginning. In case of change, he shall also be governed by the rule relating to capability as applicable to a Meccan. In the obligation of Hajj, it is sufficient that it should have been attained during the stay in Mecca, and it is not a condition that he should have such capability from his hometown. If he has attained the capability after staying in Mecca before the passage of two years, but with the condition that had he expedited the performance of Hajj before the passage of two years, then apparently it would be like attaining capability in his own hometown, and so *Hajj-al Tamattu'* shall be obligatory on him, even if the capability subsists upto the third year or longer. If a Meccan leaves Mecca for some other town with the intention of proximity to it, he shall not be governed by the rule of obligation of *Hajj-*

al Tamattu' except when he resides there permanently and attains capability subsequently, in which case the obligation of *Hajj-al Tamattu'* shall apply to him even in the first year.

Problem #4: If a person residing in Mecca has the obligation for *Hajj-al Tamattu'* as he had capability in his hometown (before residing in Mecca) or he had attained capability in Mecca before the change of his obligation, it shall be obligatory on him to leave Mecca for Miqat for tying the *Ihram* for '*Umrat-al Tamattu'*. It is more cautious for him to go to his hometown and tie *Ihram* from there; rather, this rule is not devoid of force. If it is not possible for him, it shall be sufficient for him to return to some nearer place outside the limits of Mecca. It is more cautious to go as far as possible outside the *Haram* before Miqat. If it is not possible for him to go out upto the nearest place outside Mecca, he must tie *Ihram* from his place of residence. It is more cautious to go out as much (farther) as possible.

Chapter Eight - Brief Form of Hajj-al Tamattu'

Its form is that a person should tie *Ihram* for '*Umrat-al Tamattu'* in the months of *Hajj* from one of the *Miqats* of *Hajj*, enter the holy Mecca, perform circumambulation seven times, offer two *Rak'at* prayer at the *Maqam-i Ibrahim*, perform *Sa'y* (running or moving quickly) between *Safa* and *Marvah* seven times, perform *Tawaf al-Nisa'* by way of caution seven times, then offer two *Rak'ats* prayer for it, though, according to the stronger opinion, the *Tawaf al-Nisa'* and its prayer are not obligatory, and then perform *Taqsir* (cutting or trimming the hair of one's head). Then everything that had become forbidden for him by tying *Ihram* shall become lawful. This is the form of the '*Umrat-al Tamattu'* that is one of the two parts of *Hajj*.

Then he should tie *Ihram* for *Hajj* anew from Mecca at the time when he knows that he shall reach '*Arafat* for staying there. It is preferable to tie *Ihram* after the *Zuhr* prayer on the *Yowm-i Tarviyah* (8th of *Dhu'l Hijjah*). Then he should set out for '*Arafat*, and stay there from afternoon to sunset. Then he should set out from there and go to *Mash'ar (al-Haram)* and pass the night and stay there from the dawn of the Day of Sacrifice (i.e., *Eid al-Adha*) upto sunrise. Then he should go to *Mina* to perform the rites of the Day of Sacrifice {or *Eid al-Adha*). Then he should perform the *Ram'y al-Jamrat* (or throwing pebbles on the Big Satan). Then he should perform sacrifice by piercing a spear in the neck of a sacrificial camel (*Nahr*) or slaughter a sacrificial animal by cutting its throat (*Dhabh*). Then he should shave the hair of his head, according to the more cautious opinion, if he were performing *Hajj* for the first time, while the others (who are not performing *Hajj* for the first time) shall opt between shaving the head or trimming its hair. It is necessary for women to trim (some of) the hair of their head. Thereafter everything shall be lawful for him except having sexual intercourse with women or using perfumes. To be more cautious, one should also abstain from hunting, though, according to the stronger opinion, it shall not be forbidden for him due to *Ihram*. Of course, it shall be forbidden as a mark of respect for the *Haram*. Then, if he likes, he may come the same day to Mecca, perform the circumambulation of *Hajj*, offer two *Rak'ats* of prayer, and then perform *Sa'y* (between *Safa* and *Marvah*), after which it shall be lawful for him to use perfumes. Then he shall perform *Tawaf al Nisa'*, and offer two *Rak'ats* of its prayer, then his wife or wives shall become lawful to him. Then he shall return to *Mina* to perform *Ram'y a/-Jamrat* (throwing pebbles on all the three Satans) pass the *Tashriq* nights, that is, the 11th, 12th and 13th (of *Dhu'l Hijjah*) there. As regards passing the 13th night, in some cases, its rule is as follows. During the (three) days, he shall throw the pebbles on the three Satans.

If he likes, he may not come to Mecca the same day, but stays in *Mina*, in order to throw pebbles on the 11th and also on 12th and then, if he has abstained from enjoying women sexually and hunting, he may set out in the afternoon (on 12th from *Mina*). It shall be permissible, if he stays in *Mina* until the second departure that is on 13th even if it were earlier than afternoon, but after throwing the pebbles. Then he shall return to Mecca to perform the two circumambulations (for *Hajj* and *Nisa*) and *Sa'y* (between *Safa* and *Marvah*). According to the more valid opinion, it shall suffice to perform circumambulation and *Sa'y* (between *Safa* and *Marvah*) until the end of *Dhu'l Hijjah*. It is

more preferable and more cautious to go to Mecca on the Day of Sacrifice (*Eid al-Azha*). Rather, one should not delay going to Mecca till the next day, let alone delaying it until the *Tashriq* days, except due to some excuse .

Problem #1: There are a few conditions in *Hajj-al Tamattu'*. They are as follows:

First: Intention. It means that at the time of tying the Ihram *al-'Umrah*, the person must intend to perform this kind of *Hajj*. If he fails to have such intention, or intends to perform any other kind of *Hajj*, or hesitates between the intentions of this kind of *Hajj* and any other kind, it shall not be a valid *Hajj*.

Second: His entire *'Umrah* and *Hajj* must take place in the months of *Hajj*, so that if he performs his *'Umrah* or part of it in a month other (than those of *Hajj*), it shall not be permissible for him to perform *Hajj-al Tamattu'*, the whole months of *Hajj*, according to the most proper opinion, being *Shawwal*, *Dhu'l Qa'dah* and *Dhu'l Hijjah*.

Third: The *Hajj* and *'Umrah* must be performed in the same year, so that if a person performs *'Umrah* in one year, and *Hajj* in another, it shall not be valid, and shall not sufficient for *Hajj-al Tamattu'*, regardless whether he stays in Mecca until the next year or not, and whether he had untied his Ihram *al-'Umrah* or remained tying it until the next year.

Fourth: The *Ihram* of his *Hajj*, if possible, must be from within Mecca. As regards the *Miqats* for tying *Ihram* for *'Umrah*, they are as follows. The most preferable place for it is the *Masjid al-Haram*, and the most preferable portion it is the *Maqam-i Ibrahim* or the *Hajar-i Ismail*. If he is not able to tie *Ihram* from Mecca, he may tie from where he can. If he ties *Ihram* from a place other than Mecca deliberately and voluntarily, his *Ihram* shall be declared invalid. If he fails to tie it again, his *Hajj* shall be void, and it shall not be sufficient to return to Mecca without tying it. Rather it shall be obligatory on him to tie it again in Mecca, as tying it in a place other than Mecca shall be tantamount to not tying it at all. If he ties it from a place other than Mecca out of ignorance or forgetfulness, he shall be bound to return and, if possible, tie it again. In case it is not possible, he must tie it again wherever he is.

Fifth: The entire *'Umrah and Hajj* must be performed by a single person and for a single person. If two persons are hired to perform them on behalf of a deceased person, one for *'Umrah and the other for Hajj*, it shall not be sufficient for him. If a person performs *Hajj- al Tamattu'*, and then performs *'Umrah* on behalf of one person and *Hajj* on behalf of another, it shall not be valid.

Problem #2: It is more cautious for a person not to leave Mecca after untying the *'Umrat-al Tamattu'* unnecessarily. If there were some necessity, it would be more cautious for him to tie *Ihram* for *Hajj* from Mecca and go out for fulfilling the necessity, and return tying *Ihram* for the performance of the rites of *Hajj*. But if he goes out without any necessity and without tying *Ihram*, and then returns and ties *Ihram* and performs *Hajj*, his *Hajj* shall be valid.

Problem #3: There is plenty of time for tying Ihram for *Hajj*, and so it is permissible to delay it until he finds ample time for staying in 'Arafat, but it not permissible to delay it farther. It is approved to tie Ihram on the Day of *Tarviyah* (i.e. 8th of Dhu'l Hijjah). Rather, it is more cautious (to do so)

Problem #4: If a person forgets tying Ihram , and sets out for 'Arafat, he shall be bound to return to tie it from Mecca. If it is not possible for him to do so due to insufficiency of time or some excuse, he shall tie it from wherever he is. If he does not recollect it throughout the performance of the rites of *Hajj*, his *Hajj* shall be valid. A person ignorant of the rules shall be treated as a forgetful person. If a person deliberately abandons tying Ihram until the lapse of the time for staying in 'Arafat and Mash'ar, his *Hajj* shall be declared void.

Problem #5: It is not permissible for a person who is bound to perform *Hajj-al Tamattu'* to revert to any of other two kinds of *Hajj* of his own accord. Of course, if the time for completion of 'Umrah and arriving for *Hajj* is short, it shall be permissible for him to shift to the intention for *Hajj-al Ifrad*, and perform 'Umrah after *Hajj*. The minimum time for the limitation of time, according the more proper opinion, is when there is fear of missing voluntarily staying in 'Arafat. Apparently the rule has a general application even to an approved *Hajj*, so that if a person intend to perform an approved *Hajj-al Tamattu'*, and the time for the performance of 'Umrah and arriving for *Hajj* is short, it shall be permissible for him to revert to *Hajj-al Ifrad*. According to the stronger opinion, 'Umrah shall not be obligatory on him.

Problem #6: If a person who is bound to perform *Hajj-al Tamattu'* before embarking on 'Umrah knows that the time for the performance of the 'Umrah and arriving for *Hajj* is short, it is not far from being permissible for him at the very outset to revert to *Hajj-al Ifrad*. Rather if he knows at the time of tying *Ihram* about the time being short, it shall be permissible for him to tie *Ihram* for *Hajj-al Ifrad* and perform it, and then perform *Umrah-al Mufradah* subsequently, So his *Hajj* shall be considered complete, and it would suffice for an Islamic *Hajj*. If a person embarks on 'Umrah with the intention of performing 'Umrah-al *Tamattu'* when there was ample time, and then deliberately delays the performance of circumambulation and *Sa'y* (between Safa and Marvah) until the time becomes short, then there shall be difficulty (in permissibility and) sufficiency for reverting (to *Hajj-al Ifrad*). It is more cautious for him to revert (to *Hajj-al Ifrad*), and in case the *Hajj* were obligatory on him, he must not suffice with it.

Problem #7: If a menstruating woman or one having puerperal blood has an insufficient time for purification (*Tuhr*) and completing the performance of 'Umrah, she shall be bound to revert to *Hajj-al Ifrad* , and complete it and then perform the 'Umrah after *Hajj*. If she enters Mecca without tying *Ihram* due to an excuse, and the time (for 'Umrah) were short, she shall tie *Ihram* for *Hajj-al Ifrad*, and shall perform the 'Umrah-al *Mufradah after Hajj*, and it shall be valid and sufficient for being an Islamic *Hajj*.

Problem #8: The form for *Hajj-al Ifrad* shall be similar to that of *Hajj-al Tammattu'*, except in one respect, namely, that sacrifice (of an animal) is obligatory in the latter, while it is approved in the former.

Problem #9: The form of *'Umrat-al Mufradah* is identical with that of the *'Umrat-al Tamattu'*, except in the following respects:

Firstly, in an *'Umrat-al Tamattu'* there is the condition of trimming the hair of the head, and it is not permissible to shave the hair of the head, while in an *'Umrat-al Mufradah* one is free to opt for either.

Secondly, in an *'Umrat-al Tamattu'* there is no *Tawaf al-Nisa'*, though it is more cautious, while in an *'Umrat-al Mufradah* it is obligatory to perform *Tawaf al-Nisa'*.

Thirdly, the Miqat for an *'Umrat-al Tamattu'* is one of the following Miqats, while that for an *'Umrat-al Mufradah* it is the closest place outside *Haram*, though it is permissible to tie *lhram* in one of those Miqats.

Chapter Nine - Miqats

Miqat is a place specified for tying *Ihram*. They are five for 'Umrah for Hajj.

First: Dhu'l Halifah. It is the Miqat for the inhabitants of Madinah, or those coming via Madinah. It is more cautious to confine it to the *Masjid al-Shajarah* itself, and not any other place near it, and this rule is not free from significance.

Problem #1: According to the stronger opinion, one must not delay tying *Ihram* (from *Masjid al-Shajarah*) upto Juhfah that is for the Syrian people. But it is permissible to delay it if necessary due to ailment, weakness or any other excuse.

Problem #2: For a polluted person, a menstruating woman or one having puerperal blood, it is permissible to tie *Ihram* while passing through the mosque, in case it is not necessary for them to stay there. Rather they are bound to do so in such circumstances. If, however, it is not possible for them to do so - without staying in the mosque, then a polluted person, in absence of water or in case of being unable to use it due to some excuse, shall perform *Tayammum* for entering the mosque and tying *Ihram* in it. The same rule shall apply to a menstruating woman or one having puerperal blood after having been clean of blood (but before having washed them). But in case of being unclean of the blood, if they cannot wait upto their becoming clean of the blood, then it is more cautious for them to tie *Ihram* outside the mosque at a place near it, and renew it at Juhfah or a place in its suburbs.

Second: Al-'Aqiq, It is the Miqat of the inhabitants of Nejd, Iraq or those coming via aforementioned regions. Its first end is Maslakh, middle Ghamrah and the last end Dhat al-'Irb. According to the stronger opinion, it is permissible to tie *Ihram* from any of these places as desired, the most preferable being Maslakh and then Ghamrah. If Taqiyyah demands that one should not tie *Ihram* from the first end, (namely, Maslakh) and delay it until Dhat al-'Irb, then it shall be more cautious to delay it. Rather, its non-permissibility is not free from significance.

Third: Al-Juhfah. It is the Miqat for the people of Syria, Egypt, Morocco and those coming via these countries.

Fourth: Yalamlam. It is the Miqat for the people of Yemen, and those coming via that country.

Fifth: Qarn al-Manazil. It is the Miqat for the people of Ta'if, and those coming via Ta'if.

Problem #3: In case there is no knowledge about these places of Miqat, they are established through legal evidence or notoriety producing satisfaction, and, in case of their unavailability, through the statement of informed persons by which one may attain certitude, let alone reliability. So if a person intends to tie *Ihram*, for example, from Maslakh, but he is not sure about that place, he shall have to delay it until he is sure of having entered the Miqat.

Problem #4: If a person does not pass through any of the (afore-mentioned) Miqats, it shall be permissible for him to tie *Ihram* from any place parallel to any of them. If there are two Miqats on the way, according to the more cautious opinion, he shall be bound to tie *Ihram* from the more distant one from Mecca. It shall be better to tie *Ihram* again from the last end.

Problem #5: By parallel (*Mahadhat*) is meant that on his way to Mecca, he must reach a place where the Miqat may be on his right or left in a straight line in a way that if one proceeds from there the Miqat shall be on his back. The criterion is to call it parallel according to the prevalent custom and not according to the rational exactitude. There is difficulty in the sufficiency in case of being parallel from above as may be attained by one who flies in a plane; if it is supposed that it is possible to tie *Ihram* in it observing the rule of being parallel. So caution must not be given up by considering it insufficient.

Problem #6: The establishment of being parallel is attained by the same means as Miqat, as mentioned before rather it may be attained by means of the statement of experts based on scientific methods, provided that certitude is obtained thereby (Other Miqats)

Problem #7: What has been mentioned here relates to the Miqats of the '*Umrat-al Hajj*'. There are some other Miqats as well. They are as follows.

First: the holy Mecca. It is for *Hajj-al Tamattu'*.

Second: The Dwellings of the inhabitants (of Mecca). It is a *Miqat* for one whose residence lies after the Miqat towards Mecca. Rather, it is the Miqat for the inhabitants of Mecca. Similarly, it is the Miqat for the immigrants (who have come from outside and have settled in Mecca and) whose conditions for Hajj have shifted to those meant for Meccans, though it is more cautious for them to tie *Ihram* from Ju'ranah. All these people shall tie *Ihram* for *Hajj- al Ifrad* and *Hajj-al Qiran* from Mecca. Apparently tying *Ihram* from their homes by the two types of persons, (namely, the Meccans and immigrants, or those who have migrated to Mecca and settled down there) is allowed by way of special permission (*Rukhsat*); otherwise, it is permissible for them to tie *Ihram* from one of the Miqats.

Third: The closest place from the *Haram*.. It is the Miqat for every '*Umrat-al Mufradah*', regardless whether it is performed after the *Hajj-al Qiran* or *Hajj-al Ifrad* or not. It is preferable if it were from Hudaibiyah, Ju'ranah or Tan'im, Tan'im being closer to Mecca than the other places.

Chapter Ten - Rules Concerning *Miqats*

Problem #1: It is not permissible to tie *Ihram* before *Miqats*, (and if tied), it shall not be valid. It is also not sufficient to pass from the *Miqats* after having already tied *Ihram*. Rather it is indispensable to start it from the *Miqat*. There are two exceptions to this rule. They are as follows.

First: If a person has vowed to tie *Ihram* before *Miqat*, in which case it is permissible and valid, and the person is bound to fulfill it. In such case, the person is not bound to renew the tying of *Ihram* at the *Miqat*, nor is he bound to pass from it. It is more cautious to specify the place in his vow, so that, according to the more cautious opinion; it is not valid to vow tying *Ihram* before *Miqat* without specifying the place. It is not far from being valid in case of hesitation between two places, as when he says. "For the sake of Allah, I am bound to tie *Ihram* either from Kufah or Basra, though the caution is contrary to it. There is no difference (in this rule), whether the *Ihram* were meant for an obligatory or approved Hajj or for '*Umrat-al Mufradah*'. Of course, if it were meant for a *Hajj-al Tamattu'* or '*Umrat-al Tamattu'*', it is a condition that it must be performed in the months of Hajj.

Problem #2: If a persons vows an violates it deliberately or out of forgetfulness, and fails to tie *Ihram* at the place vowed, his *Ihram* shall not be declared void if he ties the *Ihram* from the *Miqat*. He shall, however, be liable for expiation, in case he has defied it deliberately.

Second: If a person intends to arrive for the '*Umrah* of Rajab, and is afraid of missing it if he delays it upto the *Miqat* vowed, in which case it shall be permissible for him to tie the *Ihram* before *Miqat*. This '*Umrah* shall be considered to relate to Rajab even if its rites are performed in Sha'ban. It is better to be more cautious by renewing it at *Miqat*, as it is also more cautious to delay it till the last time, though apparently it is permissible before the time becomes short in case he is sure he would not arrive if he delays it till the *Miqat*. Apparently there is no difference (in the application of the rule) whether the '*Umrah* were an approved, obligatory or votive one, or the like.

Problem #3: It is not permissible to delay tying *Ihram* at *Miqat*. It is not permissible for a person who intends to perform *Hajj* or '*Umrah* or enter Mecca to pass from the *Miqat* of his own accord without tying *Ihram*. Rather it is also not permissible to pass from a place in the vicinity of the *Miqat*, even if there were another *Miqat* before him. If he has not tied *Ihram* there, he shall be bound to return to that place. Rather it is more cautious for him to return, even if there were another *Miqat* before him. If, however, he intends neither to perform Hajj nor to enter Mecca, as when he has some job outside Mecca, even if it were within *Haram*, he shall not be bound to tie *Ihram*.

Problem #4: If a person delays tying *Ihram* from the *Miqat* knowingly and intentionally, and is not able to return due to the shortage of time or some other excuse, and there is also no other *Miqat* before him, his *Ihram* and Hajj shall be rendered invalid, and he shall be bound to perform it next year if he is capable to do so. If, however, he was not capable (next year), it shall not be obligatory on him, though he shall be considered to have sinned by having abandoned tying the *Ihram*.

Problem #5: If a person is sick, and cannot take off his garments and wear the two pieces of cloth (of *Ihram*), intention and *Talbiyah* (saying, "*Labbaik Allahumma Labbaik*" (Here I am. O Allah! Here I am)) shall be sufficient for him. When the excuse is removed, he must put on the two pieces of cloth (of *Ihram*), but he shall not be bound to go back to Miqat.

Problem #6: If a person is unable to have initiating *Ihram* at Miqat due to ailment, unconsciousness or the like, and passes from the Miqat, and then the excuse is removed, he shall be bound to return to Miqat, if possible; otherwise, he shall tie *Ihram* wherever he is. It is more cautious to return towards Miqat as much as possible, though, according to the stronger opinion, it is not obligatory to do so. If, however, he were within the limits of *Haram*, he shall go out of the limits of *Haram*, if possible. In case it is possible, he shall tie *Ihram* wherever he is. It is better to be cautious by returning towards outside the *Haram* as much as possible. The same rule shall apply in case he had abandoned it due to forgetfulness or ignorance of the rule or the subject. The same shall be the rule in case he does not intend to perform *Hajj* or enter Mecca, and passes from Miqat, and then decides to perform *Hajj*. Then he shall return to Miqat according to the details already mentioned. If a person forgets *tying Ihram*, and does not recollect it until the last rites of *'Umrah*, but is not able to compensate it, then it is more cautious to consider his *'Umrah* to be invalid; though its validity is not far from being likely. If he fails to recollect it until the end of the rites of *Hajj*, his *'Umrah* and *Hajj* shall be valid.

Chapter Eleven - Conditions for Tying *Ihram*

There are five conditions to be observed essentially at the time of tying *Ihram*.. They are as follows:

First: Intention. It is not in the sense of intending to tie *Ihram*; it is rather in the sense of intending any of the kinds of *Hajj* or '*Umrah*. For example, when a person intends to perform *Umrah*, and utters *Talbiyah*, he shall become *Muhrim* (i.e. one tying *Ihram*) and all its relevant rules shall apply to him. As regards the intention of tying *Ihram*, there is no sense in executing it in its own name. If the person fails to intend any of the kinds of *Hajj* or '*Umrah*, his *Ihram* shall also not be executed, regardless whether the omission has taken place deliberately, erroneously or out of ignorance. The *Hajj* or '*Umrah* whose intention has been omitted shall also become void if the abandonment has been done deliberately, In case, however, it has been done due to mistake or ignorance, it shall not be rendered void. The person shall, however, be bound to tie *Ihram* anew, if possible; otherwise, he shall tie the *Ihram* wherever he is, according to the details already mentioned.

Problem #1: Closeness (to Allah) and sincerity of purpose are conditions required in Intention (of *Ihram*) as required in other '*Ibadat* as well. In case of absence of either or both of them, *Ihram* shall be rendered invalid. It is also essential that Intention must be simultaneous with its start, so that it is not sufficient to have intention in the middle. If a person has abandoned it, he shall be bound to have it renewed.

Problem #2: It is also a condition in intention to specify the *Hajj* or '*Umrah* intended, whether it is a *Hajj-al Tamattu'*, *Qiran* or *Ifrad*, whether it is for himself or on behalf of someone else, and whether it is *Hijjat al-Islam*, a votive *Hajj* or an approved *Hajj*. If he intends to perform it without specifying it, or leaves its specification to be done later, it shall be rendered void. But he is not bound to specify its nature, (being obligatory or approved), except when the specification of the above things depends on the specification of its nature. It is neither a condition to express the intention in words nor to pronounce it in the heart.

Problem #3: It is not a condition in intention to intend renouncing forbidden things briefly or in detail. Rather even if a person intends to do some of the forbidden things, it would not have any adverse effect on his *Ihram*. Of course, the intention to do something that would invalidate *Hajj* cannot be combined with the intention of *Hajj*.

Problem #4: If a person forgets whether he had specified *Hajj* or '*Umrah*, then if its validity actually depends on specifying either of them, he shall make another intention anew about what is valid, in which case it shall take place validly. If it is permissible to revert from one of them to the other, he may revert (from one of them to another), in which case it shall be considered valid. If both of them are valid, and it is not permissible to revert (from one of them to another), he shall act according to the rules of Brief Knowledge, if it is possible and without any harm; otherwise, whatever is possible without any harm shall be considered likely.

Problem #5: If a person in his intention says, for example, the *Hajj* of such a one, then if he knows the nature of his *Hajj*, it shall be valid; otherwise, it would be more proper to declare it void.

Problem #6: If a person initially owes a particular kind of Hajj Of '*Umrah*', but he intends some other kind of it, it shall be declared void. If he owed what has become obligatory on him by a vow or the like, it shall not be declared void if he intends some other kind of it. If he intends one kind but expresses another in words, the criterion shall be what he actually intended. If during the performance of a kind of it, he doubts whether he had intended that particular kind or some other one, the decision shall be in favour of its being what he actually intended.

Problem #7: If a person makes an Intention of performing '*Umrat-al Tamattu*' instead of '*Hajj-al Tamattu*' out of ignorance, then his intention were the performance of what was being performed by others too, and presumed that what is performed first is named *Hajj*, apparently it shall be valid, and he shall be considered to have performed '*Umrah*'. But if he presumed that '*Hajj-at Tamattu*' is precedent to its '*Umrah*', so he made the intention of Hajj in place of '*Umrah*' in order to go to 'Arafat and perform the rites of *Hajj* and then perform '*Umrah*', then his Ihram shall be rendered invalid, and he shall be bound to tie it again at *Miqat*, if possible. Otherwise he shall act according to the details mentioned under the rule relating to abandoning Ihram

Second: The four Talbiyahs, the form of which, according to the more proper opinion is to say "*Labbaik Allahumma Labbaik Labbaik la Sharika lak Labbaik*". If he sufficed with it, he shall be considered to be one having tied Ihram, and his Ihram shall be valid. To be more cautious, it is better to add to what has been mentioned before: "*innal Hamda van Ni'mata laka val Mulk La Sharika lak Labbaik.*" It is more cautious than that to add the following after it. "*Labbaik Allahumma Labbaik Innal Hamda van Ni'mata laka val Mulk La Sharika lak Labbaik.*"

Problem #8: It is obligatory to express the above formula in the proper manner observing the pronunciation of the words according to the Arabic Grammar, So ungrammatical Arabic is not sufficient if a person is able to express it correctly, even if through prompting or correction. If a person is not able to do so, then it would be more cautious to adopt both the courses of expressing it in whatever way one can and translate it into his own language. Besides this, it is better to have someone else to do it on his behalf. In case of ability to express the original, it shall not be valid to translate it. A dumb man shall make signs with his fingers along with the motion of his tongue. Besides this, it is better for him to have someone else to express it on his behalf. Talbiyah shall be pronounced on behalf of an indiscreet child.

Problem #9: No Ihram is executed for '*Umrat-at Tammatu*' '*Hajj-at Tamattu*', '*Hajj-al Ifrad* or '*Umrat-al Mufardah* except by expressing Talbiyah. But in case of '*Hajj-al Qiran*', one is free to opt Talbiyah, '*Ish'ar*' (marking the sacrificial animal with a wound) or '*Taqlid*' (Hanging a footwear in the neck of a sacrificial animal). '*Ish'ar*' is exclusively meant for a camel, while '*Taqlid*' is common between a camel and other sacrificial animals. It is better to adopt both '*Ish'ar*' and '*Taqlid*' in case of a camel. So Ihram for '*Hajj-al Qiran*' is executed by any of these three alternatives, but while opting

for *Ish'ar* and *Taqlid*, it is more cautious to add *Talbiyah* as well. To be more cautious, it is obligatory on the person performing a *Hajj-al Qiran* to express *Talbiyah* personally, though the execution of his *Ihram* shall not depend on it, so that, according to the more cautious opinion, it is obligatory on him by itself.

Problem #10: If a person forgets pronouncing *Talbiyah*, it shall be obligatory on him to return to *Miqat* to make amends. In case it is not possible for him to do so, he shall follow the rule already mentioned with regard to the case of forgetting tying *Ihram*, according to the more cautious, though not stronger, opinion. If, before pronouncing *Talbiyah*, a person commits something entailing expiation, the expiation shall not be obligatory on him, as *Ihram* is not executed without *Talbiyah*.

Problem #11: It is obligatory to pronounce *Talbiyah* once. Of course, it is approved to pronounce it to repeat several times and as many times as one can particularly after offering every obligatory or supererogatory prayer, or while ascending a high place or descending a valley, at the end of a night, while walking or riding, in the afternoon, or while meeting someone riding and in the early mornings.

Problem #12: A person performing '*Umrat al- Tamattu'* shall discontinue pronouncing *Talbiyah* at the sight of the dwellings in Mecca. It is more cautious to discontinue it on the sight of the dwellings of Mecca at the time of his offering the '*Umrah* in case of expansion of the town (of-Mecca). A person offering '*Umrat al-Mufradah* shall discontinue pronouncing *Talbiyah* at the time of entering *Haram* if he has come from outside, and at the sight of the *Ka'bah* if he had left Mecca for tying its *Ihram*. A person offering any kind of *Hajj* shall discontinue it in the afternoon of '*Arafat Day*. To be more cautious, discontinuation of *Talbiyah* is done by way of its being obligatory.

Problem #13: Apparently it is not necessary while repeating *Talbiyah* to adopt the form required at the execution of *Ihram*. Rather it is sufficient to say: "*Labbaik Allahumma Labbaik*", and rather it would suffice to say merely: "*Labbaik*".

Problem #14: If, after pronouncing *Talbiyah*, a person doubts whether he has pronounced it correctly or not, the decision shall be in favour of its being correct. If a person makes intention and puts on the two pieces of cloth (of *Ihram*, and then doubts with regard to pronouncing *Talbiyah*, the decision shall be in favour of absence of it as long as he is in *Miqat*. But after the departure from *Miqat*, apparently the decision shall be in favour of having pronounced *Talbiyah*, particularly when he was busy in the performance of some of the later rites (of *Hajj*).

Problem #15: If a person commits something entailing expiation, and doubts whether he had done it after *Talbiyah*, in which case the expiation would be rendered obligatory, or before it, expiation shall not be obligatory on him, without there being any difference in case of ignorance about the dates of both or about the date of either of them.

Third: Putting on two pieces of cloth after putting off what is forbidden to wear for a person in *Ihram*, and treating one of them as a loin-cloth (or trousers, *Izar*) and the other as a cloak (*Rida*). According to the stronger opinion, putting on both the pieces of cloth (of *Ihram*) is not a condition for the execution of *Ihram*; rather, it is obligatory by way of *Ta'abbud*. Apparently there is no particular manner of putting on both the pieces of cloth. It is sufficient to make one of them a loin-cloth and the other a gown, or cover one of the shoulders with it and leave other bare, or any other form, but it is more cautious to put them on in the customary manner. Similarly, it is also more cautious not to tie the two pieces, even with each other, or to stitch them with a needle or the like. But according to the stronger opinion, all these things are permissible as long as the two pieces do not cease to be a loin-cloth and a gown. Of course, caution must not be given up by avoiding tying the loin-cloth with the neck. It is sufficient for them to be called a loin-cloth and a gown, though it is more cautious that the loin-cloth may cover the navel and the knees and the gown may cover the two shoulders.

Problem #16: It is more cautious not to suffice with a single piece of long cloth, making a loin-cloth with a portion of it and a gown with the rest, except in case of necessity. If the necessity is removed during the performance of the rites (of *Hajj*) the person must put on two pieces of cloth.

Similarly, it is more cautious to put on the pieces of cloth before making intention and pronouncing *Talbiyah*. In case he makes the intention and pronounces *Talbiyah* before putting on the pieces of cloth, he shall repeat the intention and *Talbiyah* anew. At the time of putting on the pieces of cloth (of *Ihram*), it is more cautious to intend the attainment of closeness (to Allah). But at the time of putting off the pieces of cloth (of *Ihram*), intention is not a condition, though it is more cautious and better to treat it as a condition.

Problem #17: If a person ties *Ihram* while wearing a shirt, he shall be considered to have committed a forbidden act, but he shall not be bound to repeat tying *Ihram*. The same rule shall apply if he wears a shirt over or under the two pieces (of *Ihram*), though in this case it would be more cautious to repeat the process of tying *Ihram*, and put it off immediately.

If a person ties *Ihram* while wearing a shirt out of ignorance or forgetfulness, he shall be bound to put the shirt off, while his *Ihram* shall be intact. In case he puts on the shirt after *Ihram*, it shall be necessary to tear it off and take it out from below, contrary to the case if he ties the *Ihram* while putting on the shirt, in which case he shall be bound to put it off and not tear it off.

Problem #18: It is not obligatory to continue putting on the two pieces of cloth (of *Ihram*). Rather, it is permissible to change them, or put them off to wash them for removing filth from them or making them clean. Apparently, it is permissible to put off both of them at a time.

Problem #19: There is no objection in wearing more than two pieces of cloth (of *Ihram*), observing the necessary conditions, even if there is no compulsion.

Problem #20: It is a condition for the two pieces of cloth (for *Ihram*) that they must be of the type that is allowed to put on while offering prayer. They are, therefore, not permissible if made of silk, skin of an animal forbidden to eat, usurped or soiled with an unclean matter not exempted for offering prayer. Rather, it is more cautious even for women not to put on clothes of their *Ihram* made of pure silk. It is more cautious for them avoiding to wear such clothes as *Ihram* until the end of *Hajj*.

Problem #21: It is not allowed to make *Ihram* of thin cloth so that the body could be seen behind it. It is better that the *Rida* should also not be such.

Problem #22: It is not obligatory for women to wear two pieces of cloth for *Ihram*. They are allowed to wear their stitched garments as *Ihram*.

Problem #23: It is more cautious to clean or change the two pieces of *Ihram* if they become unclean inexcusably (for prayers), regardless whether it occurs during the performance of the *Hajj* rites or not. It is more cautious to expedite cleaning even the body (in case of pollution) while tying *Ihram*. In case of his failure, neither the *Ihram* shall be vitiated nor shall he be bound to expiate.

Problem #24: It is more cautious not to make *Ihram* with skins, though it is not far from being permissible if the word garment applies to them, as also it is not obligatory for them to be stitched. So a felt is allowed to be used as *Ihram* if the word garment is applicable to it

Problem #25: If a person is obliged to wear a gown or shirt for cold or the like, he shall be allowed to wear them, but he must turn the gown from front and middle, and use it as a loin - cloth, but should not put it on; rather, it is more cautious to turn it from inside and back, and he must also not put on a shirt and use it as a loin-cloth.

Of course, if the necessity is not fulfilled except by putting it on, he shall be allowed to put it on.

Problem #26: If a person fails to wear two pieces of cloth as *Ihram* deliberately and knowingly, or wears a stitched garment while intending to tie *Ihram*, he shall be considered to have committed insubordination, but his *Ihram* shall remain intact.

If it were due to some excuse, he shall not be considered to have committed insubordination too.

Problem #27: It is not a condition for *Ihram* to be clean of minor or major pollution. So it is allowed to tie *Ihram* even in a state of *Janabat*, menses and puerperal blood.

Chapter Twelve - Things Forbidden During *Ihram*

There are certain things that are forbidden during the period a person has tied *Ihram*. They are as follows:

First: Hunting on land, as regards hunting or eating, (even if it is hunted by a person who has not tied *Ihram*), pointing towards the prey, guiding in hunting, fastening or slaughtering the prey, as well as the chicken and eggs of the prey are forbidden (for a person who has tied *Ihram*). If a person slits the throat of a prey, it shall be treated as dead, according to the prevalent opinion, and this is also a more cautious opinion. The birds, including even locusts, are governed by the rule relating to hunting animals on land. It is more cautious to avoid killing ants and honeybees, even if the intention is not to hurt them. There are several rules relating to hunting. We are not mentioning them, as they are not usually required.

Second: Women (are forbidden), as regards having sexual intercourse with them, or kissing them, touching them or looking at them lasciviously; rather, all sorts of enjoyment with them (are forbidden, after having tied *Ihram*).

Problem #1: If a person, while having tied *Ihram* for '*Umrat al- Tamattu*', has sexual intercourse in a natural way or unnatural way with a male or female, with the knowledge of its being forbidden and deliberately, then apparently his '*Umrah*' shall not thereby be invalidated, and he shall (merely) be liable for expiation. But to be more cautious one must cancel the '*Umrah*' and execute it again, if the act has been performed before *Sa'y*. If the time is short, he must perform *Hajj al-Ifrad*, and later *Hajj al-Mufradah*. It is more cautious to perform *Hajj* again next year. If he has committed the act after *Sa'y*, he shall be liable merely to expiation, i.e. sacrificing a camel, without there being any difference in the person being rich or poor.

Problem #2: If a person, having tied *Ihram*, commits the said act deliberately and knowingly, his *Hajj* shall thereby be rendered void without any hesitation, if it were before staying in 'Arafat. If it were after it, and before staying in Mash'ar (al-Haram), then, again, according to the stronger opinion, it shall be rendered void. In both cases, he shall be bound to complete the rites (of *Hajj*) and perform *Hajj* (again) next year, and shall also be liable for expiation, that is (sacrificing) a camel. If it were after staying in Mash'ar al-Haram, but before completing half of *Tawaf al-Nisa'*, his *Hajj* shall be valid, and he shall be liable for expiation. If it were after completing half of it, according to the more proper opinion, his *Hajj* shall be valid, without expiation.

Problem #3: If a person, (after having tied *Ihram* for *Hajj*) kisses a woman lasciviously, its expiation shall be (sacrificing) a camel. If it were without lust its expiation shall be (sacrificing) a sheep, though it would be more careful to sacrifice a camel. If a person looks at his wife lasciviously and his semen is discharged, then according to the prevalent opinion, he shall be bound to sacrifice a camel. But if it were without lust, then he shall not be liable for anything. If he looks at a woman other than his own wife and his semen is discharged, if possible he shall be bound to

sacrifice a camel; otherwise, a cow, (and in case of inability), a sheep. If a person touches a woman lasciviously, and his semen is discharged, then he shall be liable for expiation, and it is more cautious to sacrifice a camel, though sufficiency of sacrificing a sheep shall not be devoid of force. If his semen is not discharged, then his expiation shall be sacrificing a sheep.

Problem #4: If a person has sexual intercourse with his wife who has already tied *Ihram*, then if he has forced her, she shall be under no liability, and he shall be liable for two expiations. If she were willing each of them shall be liable for expiation.

Problem #5: If anything entailing expiation happens out of ignorance about the rule, negligence or forgetfulness, it shall neither invalidate a person's *Hajj* or *'Umrah* nor shall he be under any liability.

Third: (It is forbidden) to contract a marriage for oneself or for another, even if the other person had not tied *Ihram*, and so also testifying to or against a contract (of marriage), even if it were done while he had not tied *Ihram*, though its permissibility is not far from being valid. If a person contracts a marriage having already tied *Ihram*, the wife shall be rendered permanently forbidden, provided that he had knowledge about its being forbidden. If it were done out of ignorance, the contract shall be void, but she shall not be rendered permanently forbidden. It is more cautious to declare her permanently forbidden, particularly in case he has had sexual intercourse with her.

Problem #6: It is permissible to ask the hand of someone in marriage having already tied *Ihram*, though it is more cautious to avoid it. So also it is permissible to recall one's wife in case of a revocable divorce.

Problem #7: If a person not having tied *Ihram* contracts a marriage with a woman who has already tied *Ihram*, it is more cautious for him not to have sexual intercourse or the like with her and separate her by divorce. If he had knowledge about the relevant rule (of its prohibition) he must divorce her and never marry her again.

Problem #8: If a person, having already tied *Ihram*, contracts a marriage and consummates it, then if it was done with the knowledge of both about the relevant rule (of its prohibition), each of them shall be liable for expiation, i.e., sacrificing a camel. But if the marriage were not consummated, neither shall be liable for expiation, irrespective of what has been said about the person contracting the marriage and the woman having already tied *Ihram* or not, and whether one of them had the knowledge about the relevant rule (of its prohibition) excluding the other, in which case, the party having knowledge shall expiate excluding the ignorant one.

Problem #9: Apparently there shall be no difference in what has been mentioned under the rules between a permanent and temporary marriage.

Fourth: Masturbation by one's own hand or by any other means (is forbidden), so that if a person's semen is discharged, he shall be liable to sacrifice a camel. To be more cautious, it shall also

invalidate everything invalidated by sexual intercourse according to what has been mentioned before

Fifth: (During *Hajj*, it is forbidden to use) a perfume of any kind including even camphor for dying, rubbing or incensing on one's body or garments, or use a thing having its perfume, or eat anything having perfume like saffron. According to the stronger opinion, use of ginger and cinnamon is not prohibited, though it is more cautious to avoid it.

Problem #10: It is obligatory to avoid the use of aromatic plants, i.e. any plant having good aroma, except some of its land varieties, like lavender, which is a plant whose flower, according to what is said, is one of the most aromatic flowers, southernwood, *Shih* (an oriental variety of wormwood), and *Idhkhir* (a kind of aromatic grass) *Khuluq al- Ka'bah* (a perfume whose major ingredient is saffron) is also an exception to the forbidden perfumes. It is unknown among us, but it is more cautious to avoid the use of perfumes used in Ka'bah.

Problem #11: It is not obligatory to avoid eating or smelling the good smelling fruits like apples and citron, but it is more cautious to avoid smelling them.

Problem #12: Smelling the scents in the shops of the perfumeries between Safa and Marvah is exempted from prohibition So it is permissible.

Problem #13: If a person is compelled to wear, eat or drink anything containing scent, it shall be obligatory to close ones nose (to avoid smelling it), but it is not permissible to close ones nose upon a bad smell. Of course, it is permissible to escape and keep away from it.

Problem #14: There is no objection in buying, selling or looking at perfumes, but it is obligatory to avoid smelling them.

Problem #15: The expiation of smelling perfume, according to the more cautious opinion, is sacrificing a sheep. If a person repeats smelling it, if he has expiated between smelling twice, the expiation shall also be repeated. If, however, he has repeated smelling on different occasions, he must expiate. If he has smelled repeatedly at one and the same time, a single expiation shall not be far from being sufficient.

Sixth: (It is forbidden) for men to wear stitched garments like shirts, trousers, gowns or the like. Rather it is not permissible to wear what resembles a stitched garment like a woven shirt or one made of wool. It is more cautious to avoid using anything stitched, even if little like a cap or a waistband. Of course, tying a stitched bag for keeping money is exempted from the stitched garments.

Problem #16: If a person is compelled to fasten something with a stitched object, it shall be permissible, but it is more cautious to expiate. If a person is compelled to wear something stitched like a gown or the like, it shall be permissible, but he shall be liable to expiate.

Problem #17: Women are allowed to wear stitched garments of every type Of Course; it is not permissible for them to wear *Qaffazin* (cotton stuffed object into which Arab women would put their hands to keep them warm against cold)

Problem #18: The expiation for wearing a stitched garment is sacrificing a sheep. So if a person wears several stitched garments, he shall be liable to sacrifice a sheep for each of them. If he puts some of the garments into one of them and then wears all of them at a time, then to be more cautious there must be a separate expiation for each of them. If it is necessary for him to wear several garments, it shall be permissible, but the expiation shall not drop.

Problem #19: If a person wears, suppose, - a shirt, and expiates, then puts it off, and wears it again or wears another shirt, he shall be liable to expiate again. If he wears several garments of the same type, like a shirt and a gown, to be more cautious there shall be several expiations (according to the number of garments), even if it were done on a single occasion.

Seventh: Applying black collyrium usually meant for make-up (is forbidden), though done without the intention of make-up. It is more cautious to avoid applying collyrium absolutely that is meant for make-up. If there is some perfume in it, then, according to the stronger opinion, it shall be prohibited.

Problem #20: The prohibition of applying collyrium is not applicable exclusively to females, so that it is equally applicable to males as well.

Problem #21: The application of collyrium does not entail expiation, but if it contains perfume, then it would be more cautious to expiate.

Problem #22: If a person needs the application of collyrium, it shall be permissible.

Eight: Looking into the mirror (is also forbidden) without any difference between males and females, but it does not entail any expiation. It is, however, approved to pronounce *Talbiyah*. It is more cautious to avoid looking into the mirror, even if it is not meant for make-up.

Problem #23: There is no objection in looking into glazed bodies or clear water in which objects are reflected. Likewise, there is no objection in using spectacles, if they are not meant for adornment; otherwise, they shall not be permissible.

Ninth: Wearing what covers the whole of the apparent part of foot such as stockings or socks, etc. (is forbidden). This prohibition is applicable exclusively to males, and not to females. Wearing it does not entail expiation. If a person needs to wear it, he must tear it back.

Tenth: Profligacy. It is not confined to untruthfulness, but also includes abusiveness and vainglory. It does not entail expiation, but requires repentance. It is approved to expiate through giving something in charity. It is preferable to slaughter a cow.

Eleventh: *Jidal* (is also forbidden). It means saying, "No, by Allah" or "Yes, by Allah", or whatever carries the same meanings in any language, when it is used to assert or deny anything. If it occurs by using any of the word carrying the sense of "Allah", the Glorified, or its equivalent, it shall be called "*Jidal*". It is more cautious to affiliate with it all the Attributes of Allah, the Exalted like "*Rahman, Rahim*", "Creator of the Universe" or the like. But swearing by any holy thing other than Allah, the Exalted shall not fall under the category of "*Jidal*"

Problem #24: If a person is truthful in "*Jidal*" he shall not be liable for expiation, even if he repeats it twice, but if he repeats it thrice, he shall be bound to expiate, and that is sacrificing a sheep. If he were lying, then he shall be bound to sacrifice a sheep even for pronouncing it once, and, in case of repeating it twice he shall be bound to sacrifice a cow, and in case of repeating it thrice, he shall be bound to sacrifice a camel. Rather this rule is not devoid of force.

Problem #25: If a person pronounces "*Jidal*" falsely, and expiates, then pronounces it again, it shall not be far from entailing expiation of a sheep, not a cow. If he pronounces it again, he shall be bound to expiate by sacrificing a cow. If he commits it again, apparently his expiation shall be sacrificing a sheep. If suppose, he commits it twice again apparently he shall be bound to sacrifice a cow and not a camel.

Problem #26: If a person pronounces "*Jidal*" truthfully more than thrice, he shall be bound to sacrifice a sheep. Of course, if he expiates, and then pronounces it thrice or more again, he shall be liable for another expiation. If he pronounces it falsely ten times or more, his expiation shall be a camel. Of course, if he expiates after committing it thrice or more, and then commits it again, expiation shall be repeated according to the order mentioned before.

Problem #27: In unavoidable circumstances, it is permissible to swear by Allah, the Glorified in order to establish a truth or deny a falsehood.

Twelfth: Killing worms living on the (human body), such as lice, fleas, or the like,(is forbidden). The same rule applies to killing the worms of animals. It is not permissible to throw them from the body, or shifting them from their place to another place from where they may fall down. Rather it is more cautious not to shift them to a place from where they may fall down. To be more cautious it is better not to shift them to another place while the former one was safer. It is not far from absence of expiation in case of killing them, though it is more cautious to give a handful of food in charity.

Thirteenth: Wearing a ring for decoration (is also forbidden). If it is for being approved or in view of its efficacy, and not for decoration, there shall be no objection in wearing it. It is more cautious to give up using henna for decoration purpose. Rather if it is meant for decoration, it shall be more cautious to avoid it, even if it is not the intention. Rather prohibition in both the cases shall not be devoid of significance. If it is used before tying *Ihram* for decoration or otherwise, there is no harm in it, even if its impression is left at the time of tying *Ihram*. The use of a ring or henna does not entail expiation, even if he is considered to have committed a forbidden act.

Fourteenth: Wearing of jewellery for decoration by women (is also forbidden). If it is meant for decoration, it is more cautious to avoid it, even if it is not intended to be so. Rather, it shall not be free from prohibition. There shall be no objection if she were in the habit of wearing it before tying *Ihram*. She shall not be bound to remove it, but it shall be prohibited to display it to men, including her own husband. Wearing jewellery does not entail expiation, though she is considered to have committed a prohibited act.

Fifteenth: An ointment (is also forbidden), even if it is not scented. Rather, it is not permissible to use perfumed oil even before tying *Ihram*, if its scent subsists at the time of tying *Ihram*. There is no harm in anointment in case of an emergency. Nor is there any harm in eating oil without any odor. If the oil contains an odor, its expiation shall be sacrificing a sheep, even one in emergency; otherwise, there shall be no liability whatsoever.

Sixteenth: Removing hair in a small or large quantity, even a single hair, from the head, beard or any other part of the body by shaving, picking, or in any way what so ever, even by a depilatory agent, regardless whether the removal is from one's own body or another, even if the other person has not tied *Ihram*.

Problem #28: There is no objection in removing the hair in case of emergency as, for example, removing lice or curing eyesore. So also there is no harm if the hair falls during ablution or bath without intending to remove it.

Problem #29: According to the more cautious opinion, the expiation for shaving the head without any emergency is sacrificing a sheep. Even in case of emergency, it shall be feeding six persons with ten *Mudds* of food in a way that each of them should get two *Mudds*, slaughtering a sheep, or fasting for three days. The expiation for removal of hair from the head without shaving it is equivalent to that for shaving the head.

Problem #30: The expiation for shaving both the armpits is sacrificing a sheep. It is more cautious to make such expiation even in case of shaving a single armpit. If a person touches his hair, resulting in falling of a single or more hair, it is more cautious for him to give a handful of food in charity.

Seventeenth: Covering the head by a man with anything that may cover it (is also forbidden), even with (what contains) grass, henna or mud. Rather it is more cautious for him not to put anything on his head that may cover it. The same rule shall apply even if a part of the head is covered. Apparently the ears are also treated at par with the head, and so it is not permissible to cover them too. A band of water-skin or a handkerchief fastened round the head in case of headache are exempted from this rule.

Problem #31: It is not permissible to dip into water or any other liquid. Rather, it is not permissible to dip even a part of the head or even the ears in a way that they may be submerged under it. It is also not permissible to cover the head while sleeping. If he does it out of negligence of

forgetfulness, he must give it up immediately. At such time, it is approved to pronounce *Talbiyah*. Rather, it is more cautious to do so. Of course, there is no objection in putting the head on a pillow or the like while sleeping. There is also no objection in covering the entire face.

Problem #32: The expiation for covering the head, in whatever way it may be, is sacrificing a sheep. The same shall be the expiation even in case of covering a part of the head.

It is more cautious to repeat it in case of repeating the act of covering the head, though it is not far from being otherwise in case of an expiation intervening between two repetitions, although caution is very much desired in such case.

Eighteenth: Covering the face by women by a mask or veils or the like, or even a fan (is forbidden). It is more cautious not to cover it with what is not usual like grass or mud. The rule for a part of the face is the same as for the entire face. Of course, it is permissible for her to put her hands on her face. So also there is no objection in her placing her face on a pillow or the like for sleeping.

Problem #34: A woman is bound to hide her head while offering prayer, and to cover part of both the sides of her face while preparing to offer it. But as soon as she has finished her prayer, she is bound to uncover her face.

Problem #35: It is permissible for a woman to let her cloth hang so that it may reach from her head to her face up to her nose, rather up to her neck, in order to hide it from aliens. To be more cautious, it is better that she must let her cloth hang on her face in a way that it may not stick to it, even if she does it by holding it with her hand.

Problem #36: There is neither any expiation for covering the face, nor for absence of distance between the cloth and her face, though it is more cautious to expiate in both the cases.

Nineteenth: Men (are not allowed) to keep their head under shade, but not women. It is permissible for women to put their head under shade in whatever way, and so it is also permissible for children. There is no difference in the shade whether the person is in a litter (*Mahmil*) giving shade, or is riding a vehicle, a train, a plane, a ship or the like with a roof giving the shade. It is more cautious not to receive shade from what is not above his head as walking beside a litter or sitting near the wall of a ship or utilise their shade, though the rule of its permissibility is not devoid of force.

Problem #37: Prohibition of seeking shelter is exclusively meant for while one is walking or is on a journey, regardless whether he is riding or not. But if he has alighted somewhere like Mina, 'Arafat, etc, it shall be permissible to go under a shade of a roof or a tent, or take an umbrella while walking, So for a person who is in Mina, it is permissible to go to the *Madhbah* (slaughtering place) or the place for throwing pebbles (on the three Satans), though it is cautious to give it up.

Problem #38: It is contrary to caution for a person having tied *Ihram* to travel in a litter etc having a roof while on a journey during night, though the rule for its permissibility is not devoid of force, so it is permissible for a person having tied *Ihram* to travel by a plane flying during night.

Problem #39: If a person, while walking, needs shade against cold, heat, rain or the like, it shall be permissible, but he shall be liable to expiate.

Problem #40: According to the more cautious opinion, the expiation for seeking shade is sacrificing a sheep, even if it were due to some excuse. According to the stronger opinion, sacrificing a sheep would be sufficient during *Ihram* for *'Umrah* and a sheep during *Ihram* for Hajj, even if he has repeated seeking shade during *'Umrah* and Hajj.

Twentieth: (It is forbidden) to emit blood from one's body, even if as a result of scratching or using a toothbrush. But there is no objection in causing someone else to emit blood as a result of extracting a tooth or cupping, in the same way as there is no objection in emitting blood from his own body whenever a need arises or in case of an emergency. There is no expiation for emitting blood, even without any need or emergency.

Twenty First: (It is also forbidden) to clip or trim nails of the hands or feet entirely or partly without being any difference in the tools like scissors, knives or the like. It is more cautious not to remove them even by biting or the like. Rather it is more cautious not to clip the nails of an extra hand or an extra finger, even it is not far from being permissible if it is certain that they are extra.

Problem #41: The expiation for clipping each nail of the hand or the foot is a *Mudd* of food unless it reaches ten from the hands and feet. If a person clips nine nails from the hands and the feet, he shall be bound to expiate one *Mudd* for each of them.

Problem #42: The expiation for clipping all the nails of the hand is sacrificing a sheep and for those of the feet sacrificing a sheep. Of course, if a person clips the nails of both the hands and the feet at a time, he shall be bound to expiate a sheep for all of them, except when there is an expiation intervening between the first and second, in which case he shall be bound to make the expiation of sacrificing two sheep. If he clips all the nails of one of them and some of the other, he shall be bound to sacrifice a sheep for all the nails of the one and a *Mudd* of food for each of the nails of the other. If a person clips all the nails of one of them at a time or at two separate times, and all the nails of the other at another time or at two other separate times, he shall be bound to sacrifice two sheep. If he clips all the nails of his hand at several times, he shall be bound to sacrifice a single sheep. The same rule shall apply in clipping the nails of the feet.

Problem #43: If the nails of a person's hands or feet are less than ten, and he clips all of them, he shall be bound to give a *Mudd* of food for each of them, though it is more cautious to sacrifice a sheep. If they are more than ten, and he clips all of them, he shall be bound to sacrifice a single sheep. According to the more cautious opinion, the same rule shall apply in case he clips all the genuine ones. If he clips some of the genuine ones and some of the extra ones, then he shall be

bound to give a *Mudd* of food for each of the genuine ones, and to be more cautious, it shall be better for him to give a *Mudd* of food for each of the extra ones (as well).

Problem #44: If a person is compelled to clip all or some of his nails, it shall be permissible for him, and it shall be more cautious for him to expiate in the manner mentioned before.

Twenty-Second: According to the more cautious opinion, (it is also forbidden) to extract one's tooth, even if it does not cause bleeding. Its expiation shall be sacrificing a sheep.

Twenty- Third: (It is also forbidden) to uproot or cut a tree or grass, grown in *Ihram*. The following, however, are exceptions.

1. As regards the trees or grass growing in his house or residence once it has become his house or residence, if he has planted or grown them himself, it shall be permissible for him to uproot them or cut them. If he has not planted the trees himself, it shall be more cautious for him to leave them, though, according to the stronger opinion, it is permissible for him (to uproot or cut them). He must not give up caution as regards the grass, if he has not grown it himself. If a person purchases a house where there are some trees and grass, it shall not be permissible to cut them.

2. Fruit trees and palm trees, regardless whether they are grown by nature (Allah, the Exalted) or human beings.

3. *Idhkhir*, which is a kind of (aromatic) grass.

Problem #45: If a person cuts a tree, not permissible to be cut or uprooted, then if it were a big one, according to the more cautious opinion, he shall be liable to sacrifice a cow, and if it were a small one, he shall be liable to sacrifice a sheep.

Problem #46: If a person cuts a part of a tree, then, according to the stronger opinion, it is necessary to expiate its price. In case of (cutting or moving) grass there is no expiation except asking divine forgiveness.

Problem #47: If a person acts according to the usual practice and mows grass, there shall be no objection in it, as it shall also be permissible for him to graze his camel on it, but he should not cut the grass for it.

Problem #48: It is not permissible even for a person who has not tied *Ihram* to cut a tree or grass within the area of *Ihram* where it is not permissible for a person who has tied *Ihram* to do so.

Twenty-Fourth: According to the more cautious opinion, (it is forbidden) to be armed with weapons like a sword, a dagger, a pistol or the like, that fall under the category of fighting arms, except when unavoidable. It is disapproved to carry weapons, when one is not armed with them, but they are displayed. It is more cautious to avoid it.

Chapter Thirteen - Rules Concerning Circumambulation

Circumambulation is one of the primary obligations for *'Umrah*. It consists of seven rounds of the holy *Ka'bah* according to the following details and conditions, it is a pillar that invalidates *'Umrah*, if given up deliberately until its proper time expires, regardless whether the person has knowledge of its rule or is ignorant of it. The time of its expiry is when the time for the performance of the *'Umrah*, and all its rites and reaching for staying at *'Arafat* becomes too short.

Problem #1: It is more cautious for a person who has invalidated his *'Umrah* deliberately to perform *Hajj-al Ifrad*, and then the *'Umrah*, and also perform *Hajj* next year.

Problem #2: If a person gives up performance of circumambulation inadvertently, he shall be bound to perform it some other time when possible. If he has returned to his place, and it is possible for him to go back without any distress, it shall be obligatory on him (to go back and perform it). Otherwise, he shall designate someone to do it on his behalf.

Problem #3: If a person is not able to perform circumambulation due to some ailment or the like, then if it is possible to let him perform it even by carrying him on a couch, it shall be obligatory. As far as possible, one must observe to fulfill its essentials. Otherwise, one shall be bound to designate someone else to perform it on his behalf.

Problem #4: If a person has performed *Sa'y* before circumambulation, it is more cautious to repeat it after circumambulation. So also if he has offered prayer before circumambulation, he is bound to repeat it after circumambulation.

Chapter Fourteen - Essentials of Circumambulation

There are two categories of the Essentials of Circumambulation.

First Category of Its Essentials

The First Category concerns its Conditions. They are as follows.

First: The Intention, with all the conditions already mentioned under *Ihram*

Second: Cleanliness from the major and minor uncleanness so it is not permissible for a person who is polluted or menstruating or has had some minor pollution, irrespective of his having knowledge, or being ignorant or forgetful.

Problem #1: If a person has had a minor pollution during the performance of the circumambulation, then if it occurs after the completion of the fourth round, he shall perform ablution, and perform the remaining round, and it shall be valid. If it were earlier, then it is more cautious for him to complete it by performing ablution, and also repeat it. If he has had the major pollution, he shall leave the mosque immediately, and repeat the circumambulation after having the ritual bath, if he has not already completed the fourth, round; otherwise, he shall complete the remaining rounds.

Problem #2: If he has some excuse for the use of water, he may perform *Tayammum* in place of the ablution or the ritual bath. In case there is a hope of the removal of the excuse, it is more cautious to wait until the time becomes short.

Problem #3: During the performance of the circumambulation, if a person doubts whether he had performed ablution or not, then if it occurs after the fourth round, he shall perform ablution, and complete (the remaining rounds of) the circumambulation, and it shall be valid. Otherwise, it is more cautious to complete it, and repeat it. If, during the performance of the circumambulation, he doubts whether he has had ritual bath after major pollution or not, he shall be bound to leave the mosque immediately, and if the doubt has occurred after the completion of the fourth round, he shall complete the circumambulation after having ritual bath, and it shall be valid, though it is more cautious to repeat the entire circumambulation. If the doubt has occurred before the completion of the fourth round, he shall complete circumambulation after having the ritual bath. If the doubt occurs after the completion of the circumambulation, he need not pay any heed to it, and cleanse himself for the rites that follow.

Third: Cleanness of the body and the garments. It is more cautious to avoid what is exempted in offering prayers, like blood in a quantity of less than a Dirham, or what does not let the prayer be complete, including a (forbidden) ring. It is, however, not necessary in case of blood of abscesses or wounds when there is some trouble for him in cleaning himself of them. It is more cautious to delay the circumambulation when there is a hope of their cleanness without causing any trouble to him,

provided that it would not lead to shortage of time, in the same way as it is more cautious to clean or change the (unclean) garments, if possible.

Problem #4: If, after completing circumambulation, a person comes to know of the uncleanness of his garments or body, then it is more proper to consider his circumambulation valid. If, before it, a person doubts about the cleanness of his body or garments, he may nevertheless perform it, and it shall be valid, except when he is certain about their uncleanness and he doubts whether he had cleaned them or not.

Problem #5: If the uncleanness occurs during the performance of circumambulation, he shall complete it after having attained cleanness, and the circumambulation shall be valid. The same rule shall apply if he finds the uncleanness, and considers it to have occurred presently. But if he is certain that it was there even from the beginning of the circumambulation, then it is more cautious to complete the circumambulation after having attained cleanness, and then repeat it, particularly if the cleanness has taken a long time. In such case, it is more cautious to offer the prayer for circumambulation after having completed it, and then repeat the circumambulation and prayer as well. There is no difference in this caution whether he has completed the fourth round or not.

Problem #6: If a person forgets cleaning, and recalls it after circumambulation or during its performance, it would be more cautious to repeat it.

Fourth: He must be duly circumcised. It is a condition for males, not for females. It is more cautious to observe it in case of children as well. If an uncircumcised child ties *Ihram* by the order of his guardian, or his guardian ties him *Ihram*, it shall be valid, but, according to the more cautious opinion, his circumambulation shall not be valid. If an uncircumcised person ties *Ihram* for Hajj, according to the more cautious opinion, his wives shall thereby be rendered unlawful to him. But if he performs the *Tawaf al-Nisa'* after having been circumcised or gets the circumambulation performed by another on his behalf, the wives shall be rendered lawful to him. If a child is born duly circumcised, his circumambulation shall be valid.

Fifth: Covering one's privy parts. If a person performs circumambulation without covering his privy parts, it shall be void. It is also a condition that the thing covering his privy parts must also be lawful, so that it shall not be valid in case of its being usurped. Rather, it shall also not be valid in case any of his other garments are usurped.

Sixth: According to the more cautious opinion, uninterrupted sequence between the rounds as per usual practice, in the sense that there must not be so much distance between the rounds as it may cease to be a single circumambulation.

Second Category of Essentials of Circumambulation & Its Conditions

The Second Category of its Essentials includes things that are considered part of the actual

Circumambulation, but some of them belong to the category of Conditions. It is quite easy. They are as follows.

First: To begin (the circumambulation) with *Hajar al-Aswad* (Black Stone). It is achieved by starting from the first, middle or last part of the Black Stone.

Second: To end (each round) at the Black Stone. It is obligatory to end each round at the point from where it was started, this will complete one round.

The above two conditions are achieved by starting the circumambulation from any point of the Black Stone, and completing the seventh round at that very point from where the person had started.

It is not obligatory, rather it is not permissible to perform it in the way some of the people following their temptations and the ignorant that leads to disgrace to the faith of truth, so that if one follows them, there shall be hesitation in the validity of his circumambulation.

Problem #7: One is not bound to stop after each round, nor is it obligatory to go forward and backward as done by the ignorant bringing disgrace to the faith.

Third: Perform circumambulation on the left side in a way that the holy *Ka'bah* be on the left side of the person performing it. It is not obligatory that the *Bait (Allah)*, in all circumstances, be virtually parallel to ones shoulders, and so if there is a little deviation on reaching the Isma'il Stone, it would be valid, even if the *Bait (Allah)* were inclined towards his back, but the round were according to the usual practice.

The same shall be the case even if this happened while crossing the corners of *Bait (Allah)*. So there shall be no objection if the round were performed in the usual manner as is done by other Muslims.

Problem #8: To be cautious that, in all circumstances, *Bait (Allah)* is, on the side of the left shoulder, even if he were very weak. It shall be obligatory if it would cause notoriety and disgrace to the faith.

There shall be no objection if a learned sane person does it in a way that it may not be contrary to *Taqiyyah* or cause notoriety.

Problem #9: If a person performs circumambulation contrary to the usual practice in some of the rounds, for instance, due to some hindrance his face becomes towards or behind the *Ka'bah*, or he performs it backwards contrary to the usual practice, he shall be bound to compensate it, and it shall not be permissible to consider it sufficient.

Problem #10: If, due to overcrowding a person loses control in his circumambulation, so that he performs it from his left side without control, he shall be bound to compensate it, and perform it with control, and not to suffice with what he has done.

Problem #11: Circumambulation shall be valid, irrespective of the manner in which it is performed, whether slowly or rapidly, riding or on foot, but it is better if it is performed on foot in a normal gait

Fourth: Inclusion of the Stone of Ismail, Peace be upon him, in circumambulation. So a person must perform circumambulation outside it around *Bait (Allah)*, so that if he performs it from inside or on its wall, it shall be void, and he shall be bound to repeat it. If he does it deliberately, he shall be governed by the rule for one who invalidates it deliberately, mentioned before. If he does it inadvertently, he shall be governed by the rule concerning one who does it inadvertently. If he contravenes the rule in any of the rounds, it shall be more cautious to repeat it. Apparently it is not necessary to repeat it, though it is more cautious to do it.

Fifth: The circumambulation must be performed between *Bait (Allah)* and *Maqam-i Ibrahim*, Peace be upon him, with due consideration of its distance between them from other sides as well, so that it may not exceed it.

It is said that the distance between them must be $26 \frac{1}{2}$ cubits, and it shall be indispensable for the distance in all the sides to be more than that.

Problem #12: It is not permissible to include *Maqam-i Ibrahim* in one's circumambulation. If he includes it, it shall be void.

If he includes it in some of the rounds, he shall be bound to repeat those rounds. It is more cautious to repeat the circumambulation after completing the rounds excluding *Maqam-i Ibrahim*.

Problem #13: The room for circumambulation becomes narrow behind the *Hajar-i-Isma'il* to its extent. They say there remains about $6 \frac{1}{2}$ cubits there, so it is obligatory not to exceed this limit. Anyone exceeding it shall be bound to compensate it.

Sixth: Being outside the wall of the *Bait (Allah)* and its foundation. If a person walks on them, it shall not be valid, and he shall be bound to compensate it, as a person walking on the wall of the *Hajar-i Ismail* has to compensate it by repeating that portion. There is no harm in putting one's hand on the wall beside the *Shadarvan* (a water-driven gadget), though it is better to avoid it.

Seventh: The circumambulation must consist of seven rounds.

Problem #14: If a person intends to perform more or less than seven rounds, his circumambulation shall be void, even if he has completed seven rounds. It is more cautious to treat a person ignorant of the rule, rather even if a person does it inadvertently or negligently as regards the obligation of repeating the (seven) rounds.

Problem #15: If a person considers a round after seven obligatory rounds to be approved one and so he intends to perform seven obligatory rounds and then performs another approved round, it shall be valid.

Problem #16: If a person reduces part of the circumambulation inadvertently, then if he has already completed more than half of it, he shall be bound to complete it, except that it is intervened by a lot of (irrelevant) work, in which case it is more cautious to complete the circumambulation, and repeat it. If he has not completed more than half of circumambulation, he must repeat it, though it is more cautious to complete and then repeat it.

Problem #17: If a person does not recall the deficiency except, suppose, after returning to his homeland, then, if possible, he shall be bound to return to Mecca to perform it anew. If it is not possible, or it may cause distress, he shall employ someone else to do it on his behalf. It is more cautious to complete it, and then repeat it.

Problem #18: If a person performs more than seven rounds inadvertently, then if the excess is confined to less than a single round, he shall discontinue it, and his circumambulation shall be valid. If it were a single or more rounds, then it is more cautious to complete seven rounds with the intention of seeking closeness (to Allah) without specifying it to be approved or obligatory, and offer two *Rak'ats* of prayer before *Sa'y*, and treat them as those offered for the obligatory one without specifying them for the first or second circumambulation, and also offer two *Rak'ats* after *Sa'y* for other than the obligatory one.

Problem #19: An approved circumambulation may be discontinued without any excuse. According to the stronger opinion, same is the case with an obligatory one, though it is more cautious not to discontinue it in a way not to return to it in a way that it may not be treated as uninterrupted one according to the usual practice.

Problem #20: If a person discontinues his circumambulation, (but does not do anything repugnant including even a long interval, he shall complete it, and it shall be valid. But if he does something repugnant, then if he had discontinued it after completing the fourth round, it shall be more cautious to complete it, and then repeat it

Problem #21: If some excuse occurs during circumambulation like an ailment or pollution without his control, then if it were after completing the fourth round, he shall complete it after the removal of the excuse, and it shall be valid. Otherwise, he shall repeat it

Problem #22: If, after the circumambulation and return, a person suspects that he has performed excessive rounds, he must not pay heed to it and deem it valid. If he suspects that he has performed lesser rounds, the same rule shall apply, though with hesitation, and so caution must not be given up. If he doubts about its validity as when suspecting having performed it without fulfilling a condition or the existence of a hindrance, he shall deem it valid, even if the doubt has occurred after return having already completed seven rounds without any excess or deficiency.

Problem #23. If a person suspects of excess in circumambulation after reaching the Black Stone, he shall deem it valid. But if, before reaching the Black Stone, he doubts, suppose, whether his present round was seventh or eighth, it shall be void. So also, if, in the end or middle of a round, he doubts

whether it is the seventh, sixth or any other lesser round, his circumambulation shall be rendered void.

Problem #24: A person in the habit of doubting about the number of rounds shall not pay heed to his doubt. It is more cautious for him to have some reliable person to count the number of rounds. A presumption about the number of rounds is deemed at par with doubt.

Problem #25: If, during the performance of *Sa'y*, a person realizes that he has not performed circumambulation, he shall discontinue it, perform circumambulation, and then repeat *Sa'y*. If he is certain about a deficiency in his circumambulation, he shall discontinue *Sa'y*, complete the deficiency, return and complete the remaining *Sa'y*, and it shall be valid, though it is more cautious to complete the circumambulation, and repeat it if it were less than four rounds. The same rule shall apply if he has completed less than four rounds, and he recalls (that his circumambulation was deficient, he shall complete the remaining rounds of *Sa'y* and repeat it).

Problem #26: Talking, laughing or reciting poetry does not harm one's circumambulation, but it is disapproved, and it is approved to recite Qur'anic verses, *Du'as* and remember Allah, the Exalted during circumambulation

Problem #27: It is not obligatory to keep one's face towards the front, rather one may turn it towards his left, right or back. One may even discontinue it, and go and kiss *Bait (Allah)* and return to complete it, as one may also sit or lie down during its performance to the extent that it may not harm its usual sequence. Otherwise, it is more cautious to complete it and repeat it

Chapter Fifteen - Prayers for Circumambulation

Problem #1: After the performance of circumambulation, it is obligatory to offer two *Rak'ats* of prayer for it. According to the more cautious opinion, one is bound to expedite it after circumambulation. Its procedure is similar to that of the Morning Prayer, and one may recite any Surah of the Qur'an in it except those entailing Sajdah. It is approved to recite *Sarah al- Towhid* (Chapter 112 of the Qur'an) in the first *Rak'at* and *Surah al-Jahd (Surah al-Kafirun*, Chapter 109 of the Qur'an) in the second *Rak'at* .One may recite the Surahs loudly or quietly.

Problem #2: A doubt about the number of *Rak'ats* shall entail invalidation of the prayer. In such case, it is not far from depending on presumption. This prayer is also governed by the rules applicable to other obligatory prayers.

Problem #3: It is obligatory to offer this prayer near *Maqam-i Ibrahim*, and it is more cautious to offer it on the backside of the *Maqam*. It is preferable to be as close to the *Maqam* as possible, but not in a way that may disturb others. If, due to overcrowding, it is not possible to offer the prayer on the back of the *Maqam*, one may offer it on the right or left of the *Maqam*.

If it is not possible to offer the prayer near the *Maqam*, one must choose a place nearest to it from both sides or the back of the *Maqam*. In case of all sides being equal, one must choose the place on the back of the *Maqam*. If both the sides are closer than the backside of the *Maqam*, but all of them are beyond the limit to be called near the *Maqam*, it is not far from sufficing with its backside, but it is more cautious to offer another prayer in any of the two sides observing the closeness to the *Maqam*.

It is more cautious to offer prayer on the back of the *Maqam* if it is possible up to the time when the time for *Sa'y* falls short.

Problem #4: If a person forgets offering the prayer, he must offer it near the *Maqam* whenever he recalls it. If he recalls it during *Sa'y*, he must return and offer the prayer and then complete the *Sa'y* from where he had left it, and it shall be valid. If he recalls them after the performance of the rites performed after it, he shall not be bound to repeat them after offering the prayer.

If he recalls it at a place where it is distressing for him to return to the *Masjid al- Haram* (to offer the prayer), he shall offer the prayer wherever he happens to be at that time, even if it were another town.

It is not obligatory to return to the *Haram* even if it were easy. A person, ignorant of the rules, shall be deemed at par with one who is negligent of the rules.

Problem #5: If a person dies, and he owes the prayer for circumambulation, his eldest son shall be bound to compensate it.

Problem #6: If a person is neither able to recite the prayer correctly, nor is able to learn it, he shall offer the prayer as he can, and it shall be valid. If it is possible to be prompted, it shall be more cautious to do so. It is more cautious to imitate a morally sound person, but he must not suffice with it, as one is not to suffice with an agent.

Chapter Sixteen - Performance of Sa'y

Problem #1: After offering two *Rak'ats* of prayer for circumambulation, it is obligatory to perform *Sa'y* between Safa and Marvah, and one is bound to perform seven rounds of it, one round being from Safa to Marvah and another being from Marvah to Safa. One is bound to start from Safa and end at Marvah, so that if one reverses it, it shall be void. (In case a person does otherwise,) he is bound to repeat it wherever he recalls it, even if it were during the performance of the *Sa'y*.

Problem #2: According to the more cautious opinion, it is obligatory to start the *Sa'y* from the first part of Safa. If a person climbs some of the stairs of the mountain and starts *Sa'y*, it shall suffice.

It is also obligatory to end it at the first part of Marvah, and it is sufficient to climb some of the stairs. One may perform *Sa'y* riding or on foot, though it is preferable to perform it on foot.

Problem #3: It is neither a condition in *Sa'y* to be clean of major or minor pollution nor to cover the privy parts, though it is more cautious to be clean of the major pollution.

Problem #4: It is obligatory to perform *Sa'y* after the circumambulation and offering its prayers. If a person performs it earlier, he shall repeat it, even if he has not done so deliberately and despite knowledge (about its rule).

Problem #5: It is obligatory to perform *Sa'y* in the usual way, so that a serious deviation from it is not permissible. Of course, it is permissible to perform it from the upper storey or the lower one, if it is supposed that both the storeys lie between the two mountains, neither above nor below the two mountains.

It is more cautious to adopt the way that was prevalent before the construction of the two storeys.

Problem #6: During the performance of the *Sa'y* up to Marvah or Safa, it is a condition to face them, so that it is not permissible to walk backwards or with one's right or left towards them. But it is permissible to turn one's face to one's right or left or backward, as also it is permissible to sit or sleep at Safa or Marvah or between them before the completion of the *Sa'y* even without any excuse.

Problem #7: It is permissible to delay the performance of *Sa'y* after circumambulation and its prayer for the sake of taking rest and easing heat (or) without any excuse until the nightfall, though it is more cautious not to delay it until the fall of night, and it is not permissible to delay it till the next day without any due excuse.

Problem #8: *Sa'y* is a (kind of) worship (*'Ibadah*), and so it is obligatory to observe all the conditions in worships like intention and sincerity (of purpose). It is a pillar (of *Hajj*) and the rule for abandoning it deliberately or inadvertently is similar to that applicable for abandoning circumambulation, mentioned before.

Problem #9: If a person performs one or more rounds extra inadvertently in *Sa'y*, his *Sa'y* shall be valid. It is better to discontinue it wherever he realizes it, though it is not far from being valid to complete it up to the seventh round. If it were deficient, he shall be bound to complete it wherever he realizes it. If he returns to his hometown, and it is possible for him to return without distress, he shall be bound to do so. If it was not possible or it was distressing for him, he shall designate another person to do so on his behalf. If he performs some of the first round and then forgets and fails to perform *Sa'y*, it shall be more cautious to start it anew.

Problem #10: If a person unties the *Ihram* in an '*Umrat al-Tamattu'* before completing *Sa'y* under the impression that he has completed it, and has sexual intercourse with his wife, according to the more cautious opinion, he shall be bound to complete *Sa'y* and expiate by slaughtering a cow. Rather, if before completing *Sa'y*, he trims the hair of his head, and performs such act (ie sexual intercourse with his wife), then it shall be more cautious for him to complete (*Sa'y*) and expiate. It is more cautious to apply this rule relating to *Sa'y* in both the events even in cases other than '*Umrat al-Tamattu'*.

Problem #11: If a person doubts about the number of rounds (in *Sa'y*) after trimming the hair of his head, he need not pay heed to it and deem it to be valid. The same rule shall apply if, after the performance of the rite, he suspects that he has performed extra rounds. But if, after the performance of the rite and return, he suspects of deficiency (in the performance of the rounds), then there shall be hesitation in deeming it valid, and it shall be more cautious to complete the deficiency. If the doubt about its validity occurs after the completion (of the rite) or any round, he shall deem it valid. The same rule shall apply if he doubts about the validity of part of around after its completion.

Problem #12: If, while in Marvah, a person doubts about the round being seventh or more, as, for example, the tenth one, he shall deem it valid. If, however, he doubts during the performance whether it is the seventh or, suppose, sixth round, his *Sa'y* shall be declared void. The same rule shall apply in similar cases of suspicion about some deficiency. The same rule shall apply if, before the completion of the round, he doubts whether his present round is the seventh or more.

Problem #13: If, after trimming the hair of the head, a person doubts about the performance of *Sa'y*, he shall deem it to have performed it. If, after the day of performing circumambulation, he doubts about the performance of *Sa'y*, it shall also not be far from deeming it to have performed it, but it shall be more cautious to perform it, if the doubt has occurred before trimming the hair of his head.

Chapter Seventeen - *Taqsir* (Trimming Hair of the Head)

Problem #1: After the performance of *Sa'y*, it is obligatory to perform *Taqsir*, i.e., trimming an amount of nails, or the hair of the head, moustaches or beard. It is better not to suffice with trimming the nails, and so also it is not sufficient to shave the hair of the head, not to speak of the beard.

Problem #2: *Taqsir* is (type of) worship. It is obligatory in it to have intention with all its conditions. If it is impaired, the person's *Ihram* is rendered invalid except when restored.

Problem #3: If a person abandons *Taqsir* deliberately, and ties *Ihram* for *Hajj*, his *'Umrah* shall be rendered invalid, and apparently his *Hajj* shall become *Hajj al-Ifrad*. It is more cautious for him to perform *'Umrat al-Mufradah* after completing his *Hajj* and also perform *Hajj* next year.

If he forgets performing *Taqsir* until tying *Ihram* for *Hajj*, his *'Umrah* shall be valid. It shall be approved for him to sacrifice a sheep; rather, it shall be more cautious (to do so).

Problem #4: After performing *Taqsir*, everything which had become unlawful to him shall be rendered lawful including (enjoying) women (sexually).

Problem #5: There is no *Tawaf al - Nisa* 'in an *'Umrat al- Tamattu'*. If a person performs with the hope (that it shall be desirable to Allah) or by way of caution, there shall be no objection.

Chapter Eighteen - Staying at 'Arafat

Problem #1: After 'Umrah, it is obligatory to tie *Ihram* for *Hajj* and staying in 'Arafat with the intention of seeking closeness (to Allah) like all other worships. It is more cautious to do it from noon on the 'Arafah Day to legal time of Maghrib. It is not far from being valid to delay it to the extent that the prayers for *Zuhr* and 'Asr may be offered when they are joined, though it is more cautious not to delay it. It is not permissible to delay it until 'Asr.

Problem #2: By staying here is meant to be present in that holy place, irrespective of riding or otherwise and walking on foot or otherwise. Of course, if a person has all the time been sleeping or swooned, his staying there shall be considered invalid.

Problem #3: The above-mentioned staying at 'Arafat is obligatory, but the pillar in it is nominal staying even if for a minute or two. If a person abandons it, even a nominal one, his *Hajj* shall be cancelled. But if he stays to the nominal extent and gives up the rest deliberately, his *Hajj* shall be valid, but he shall be considered to have sinned.

Problem #4: If a person leaves 'Arafat deliberately before the legal time of Maghrib, and goes beyond its limits and does not return, he shall be liable to slaughter a camel for Allah at any place he likes, though it is better to slaughter it at Mecca. If he is not able to slaughter a camel, he must fast for eighteen days. To be more cautious it is better that the fast must be without interruption. If he has left 'Arafat inadvertently and realizes it subsequently, he shall be bound to return. If he fails to return, he shall be considered to have sinned, but shall not be liable to expiate, though it would be more cautious to do so. A person ignorant of the rule is at par with a forgetful person. If he does not recall it until the expiry of the time, he shall be under no liability.

Problem #5: If a person leaves 'Arafat before sunset deliberately, and then repents and returns and stays until sunset, or returns for some business, but after return stays with the intention of seeking closeness (to Allah), he shall *not* be liable to expiate.

Problem #6: If a person gives up stay in 'Arafat from noon to sunset due to some excuse like forgetfulness or shortage of time, or the like, it shall be sufficient for him to pass some time from the night of *Eid (al-Adha)* there even if it were a little, and that is the emergency time for 'Arafat. If he gives up the emergency time deliberate and without any due excuse, then apparently his *Hajj* shall be cancelled, even if he arrives at *Mash'ar (al-Haram)*. If he gives up both the free and emergency times due to some excuse, it shall be sufficient for the validity of his *Hajj* to have as voluntary stay at *Mash'ar al-Haram*, the details of which shall follow.

Problem #7: If the appearance of the new moon for *Dhu'l Hijjah* is established for a *Qadi* (or judge) of the Sunnis, and he also proclaims it, but it is not established among us (Shi'ahs), then if it is possible to act according to the true religion (i.e. the Shi'ah faith) without *Taqiyyah* or fear, it shall be obligatory (to do so); otherwise., it shall be obligatory to follow them (i.e., the Sunnis). The

Hajj shall be valid if it does not appear to be contrary to the actual position. Rather, it shall not be far from being valid despite the knowledge of acting against the actual position. (In this case) it is not permissible to oppose (the Sunni opinion). Rather there is hesitation in the validity of the Hajj despite opposing *Taqiyyah*. As the horizon of Hijaz and Nejd is different from ours, particularly from the horizon of Iran, it is quite rare to get the knowledge of acting contrary to the actual position.

Chapter Nineteen - Staying in *Mash'ar al-Haram*

It is obligatory to stay in *Mash'ar al-Haram* from the dawn on the day of *Eid (al- Adha)* to sunrise. It is a worship in which intention with all its conditions is obligatory. To be more cautious it is obligatory to stay there with pure intention on the night of *Eid (al-Adha)* upto dawn after setting out from 'Arafat. Then intention should be made for staying between the two rises (i.e., the dawn and the sunrise). It is approved to set out from *Mash'ar (al-Haram)* before the sunrise in a way that one may not pass from the Valley of Muhassir. If he passes from there, he shall be considered to have committed insubordination, but he shall not be liable to expiate. It is more cautious to set out in a way not to reach the Valley of Muhassir before sunrise. The pillar is staying (in *Mash'ar al-Haram*) from dawn to sunrise upto the extent that it may be called a nominal stay even if for a minute or two. If a person gives up stay between the two rises (i.e, the dawn and the sunrise) absolutely, his *Hajj* shall be cancelled, according to the details that follow.

Problem #1: For weak persons like women, children and old men or those who have some excuse like fear or ailment, or those who accompany them to look after them and attend (during their illness), it is permissible to set out from *Mash'ar (al-Haram)* on the night of *Eid (al-Adha)* after staying for some of its time. The caution that is not to be given up is that they should not set out before mid-night. It is not obligatory on these groups of people to stay between the two rises (i.e., the dawn and the sunrise).

Problem #2: If a person sets out before morning without any excuse and deliberately, and does not return until sunrise, if his stay at 'Arafat has not been wasted and he has stayed at *Mash'ar (al-Haram)* at the night of *Eid (al-Adha)* until the morning, his *Hajj* shall be valid, according to the prevalent opinion, and he shall be liable to slaughter a sheep, but, according to the more cautious opinion its rule is otherwise, According to the more cautious opinion, he shall be bound to perform *Hajj* next year.

Problem #3: If a person fails to stay between the dawn and sunrise and stay at night due to some due excuse, though he has stayed at 'Arafat, then if he has passed some time from the morning to the day of *Eid (al-Adha)* upto the noon and has stayed at *Mash'ar (al-Haram)* even for a little time, his *Hajj* shall be valid.

Problem #4: It has become clear from what has been mentioned before that one is required to stay at *Mash'ar (al-Haram)* three periods once at free time that is between dawn and sun-rise, and twice at emergency time: once at the night of *Eid (al-Adha)* in case of one who has some due excuse, and another time from sunrise on the day of *Eid (al-Adha)* upto noon in a similar case. (It has also become clear) that for the stay at *Arafat* there is a free time that is from the noon of the day of 'Arafah upto the legal sun-set (or *Maghrib*), and an emergency time that is on the night of *Eid (al-Adha)* for those having some excuse. As there are several cases where one has reached either or both of the two staying places at the free time or at emergency time, alone or collectively, deliberately, inadvertently or forgetfully, we shall describe some of the cases of occurrence.

First: When a person has reached both the places at the free time, in which there is no hesitation in the validity of his Hajj from this point of view.

Second: When one has failed to reach whether freely or in emergency in either of the places, in which case there is no hesitation in declaring it invalid, irrespective of its occurring deliberately, inadvertently or forgetfully, so that the person shall be bound to perform *'Umrat al-Mufradah* with the *Ihram* he has tied for Hajj. It is better to revert his intention to *'Umrat al-Mufradah*. It is more cautious for a person having a sacrificial animal to slaughter it. If the failure has been without any fault, he shall be bound to perform Hajj except after having fulfilled the conditions for its capability next year. If it were due to his fault, obligation of Hajj shall be established on him, and he shall be bound to perform Hajj next year, even if he did not fulfill the conditions for its capability.

Third: When a person reaches *'Arafat* at the free time and in emergency on the day of *Mash'ar (al-Haram)*. Then if he abandoned deliberately the free time at *Mash'ar (al-Haram)*, his Hajj shall be rendered invalid; otherwise, it shall be valid.

Fourth: When he reached *Mash'ar (al-Haram)* at the free time and at *'Arafat* in emergency time, then if he has abandoned the free time at *'Arafat* deliberately, his Hajj shall be declared invalid; otherwise, it shall be valid.

Fifth: When he reached *'Arafat* at the free time and at *Mash'ar (al-Haram)* at the emergency night time. If he has abandoned the free time at *Mash'ar (al-Haram)* due to some excuse, his Hajj shall be valid; otherwise, according to the more cautious opinion, it shall be declared invalid.

Sixth: When he reached *'Arafat* in emergency and *Mash'ar (al-Haram)* in emergency night time. Then if he has done it with some due excuse, and has abandoned the free time of *'Arafat* inadvertently, according to the stronger opinion, his *Hajj* shall be valid. If it were without a due excuse and he has abandoned the free time of *'Arafat* deliberately, his *Hajj* shall be declared invalid; otherwise. If he has abandoned the free time of *Mash'ar (al-Haram)* deliberately, then, according to the more cautious opinion, the same rule shall apply, as, according to the more cautious opinion, the same rule shall apply even if it was done inadvertently.

Seventh: When he reached *'Arafat* in emergency time and *Mash'ar (al-Haram)* at the emergency day time. Then if he has abandoned any of the free times deliberately, his Hajj shall be declared invalid; otherwise, it shall not be far from being valid, though it shall be more cautious for him to perform Hajj next year, if he is capable.

Eighth: When he reached *'Arafat* only at the free time. Then if he has abandoned *Mash'ar (al-Haram)* deliberately, his *Hajj* shall be declared invalid; otherwise, according to the more cautious opinion, the same rule shall apply.

Ninth: When he reached *'Arafat* only in emergency time, then his Hajj shall be declared invalid.

Tenth: When he reached *Mash 'ar (al-Haram)* only at the free time. Then if he has not abandoned deliberately the free time of *'Arafat*, his Hajj shall be valid; otherwise, it shall be invalid.

Eleventh: When he reached *Mash'ar (al-Haram)* only in the emergency day time, his *Hajj* shall be declared invalid.

Twelfth: If he has utilized the emergency night time only. Then if he were one having some due excuse, and has not abandoned stay at *'Arafat* deliberately, according to the stronger opinion, his Hajj shall be valid; otherwise, it shall be invalid.

Chapter Twenty - Essential Rites at Mina

There are three Essential Rites of Mina. They are as follows:

First: Throwing pebbles at the *Jamrat al-'Aqabah* (the Bigger Satan). It is a condition that they should be such as may be called pebbles. So it is not permissible to throw sand, stones or porcelain, or the like. It is also a condition that they must belong to the *Haram*, so that they are not allowed to belong to outside *Haram*, and that they should be unused, so that they may not have been used before, even if several years back. They must be lawful, and not usurped, nor those gathered by someone else when used without his permission. It is approved that they must belong to *Mash'ar (al-Haram)*.

Problem #1: The time for throwing the pebbles is from sunrise of the day of *Eid (al- Adha)* to its sunset. If a person forgets it, it is allowed to be done up to the third day. If he fails to recall it until after the third day, then, according to the more cautious opinion, he may do it next year or appoint someone else to do it on his behalf.

Problem #2: One is bound to observe a few things in throwing the pebbles. Firstly, there must a pure intention for Allah, the Exalted as in other worships. Secondly, the pebbles must be thrown in a way that it may be called throwing. If a person places them with his hand on the object on which they are to be thrown, it would not suffice. Thirdly, the pebbles must be thrown with the hand, so that it is sufficient if they are thrown with the feet. It is also more cautious not to throw them with a device like catapult, though it is not far from being valid. Fourthly, the pebbles must reach the object on which they are thrown, so that if they do not reach it, they shall not be counted. Fifthly, the pebbles must reach the object by his throwing. So if a person throws them imperfectly, and the act is completed with the help of an animal or human being, it shall not suffice. Of course, if a person throws a pebble and it strikes against a stone, and from there it rises and reaches the object intended, it shall be valid Sixthly, and the pebbles must be seven in number. Seventhly, the pebbles must be thrown one after another. So if they are thrown all at once, they shall be counted as one, even if they reach the object one after another, in the same way as if he throws them one after another, it shall be valid, even if they reach all at once.

Problem #3: If a person doubts whether the pebbles have been used previously or not, he shall be allowed to throw them. Likewise, if he suspects that they belong to a place other than *Haram* and have been brought from outside, he must not pay heed to it. If he doubts whether the word pebbles are applicable to them, he shall not suffice with them. If he doubts about the number of the pebbles, he shall be bound to throw them until he is certain of their number being seven. Likewise, if he doubts whether the pebbles have reached the object intended, he shall throw them until he is sure of it. The presumption about what has been said is at par with doubt. If a person doubts about throwing the pebbles or their number after slaughtering the (sacrificial animal) and shaving the hair of the head etc., he shall not pay heed to it. But if the doubt about the number of the pebbles occurs before the two acts after being engaged in some other act, then if it relates to their deficiency, it shall be

more cautious to return and complete the number but no heed must be paid if it relates to excess. If a person doubts about the validity of throwing pebbles after its completion, he shall decide in favour of its validity provided that the doubt does not relate to the number (of the pebbles).

Problem #4: It is not a condition that the pebbles be clean, nor is it a condition that the person throwing them must be clean of the major or minor pollution.

Problem #5: If a person is unable to perform throwing pebbles, like a child, or a sick or fainted person, he may appoint another person to perform it on his behalf. It is approved, if possible, to carry the sick person to the object on which pebbles are thrown and to throw the pebbles in his presence, rather it is more cautious to do so. If the sick or fainted person recovers after the completion of throwing the pebbles, he shall not be bound to repeat it. But if it occurs during the act, it shall be started anew, and there is hesitation in accepting as sufficient the pebbles thrown by the agent.

Problem #6: If a person is unable to throw pebbles on the day' of *Eid (al-Adha)*, he may do it at night.

Problem #7: Throwing pebbles may be done on foot or while riding, though the former is more preferable.

Second: Sacrificing an animal that is bound to be from one of these three animals, namely, a camel, a cow or a sheep. A buffalo is treated like a cow. All other animals are not permissible. The more preferable is a camel, and then a cow. In case of capability, it is not sufficient for two or more persons to share a single animal for sacrifice. Even in case of necessity, there is hesitation in the sufficiency of sharing a single animal by several persons. It is, therefore, more cautious to share the sacrifice and at the same time keep fast.

Problem #8: A sacrificial animal must fulfill the following conditions.

First: Age. According to the more cautious opinion, it is a condition in a camel that it must have entered the sixth year, and in a cow that it must have entered the third year. A goat is treated at par with a cow, while a sheep, according to the more cautious opinion, must have entered the second year.

Second: Physical Health. So an ailing animal shall not suffice, including even a bald one, according to the more cautious opinion.

Third: It must not be too old.

Fourth: It must be physically perfect, so that a castrated animal shall not suffice, and that an animal whose testicles have been removed. Nor shall an animal whose testicles have been crushed shall suffice, according to the more cautious opinion. Nor one is having no testicles by birth, or one whose tail ears have been chopped off. Nor should the internal part of its horns be broken.

However, there is no objection if the outer part of its horn is broken. It is not far from being valid if an animal has had no ear or horn by birth, though, according to the more cautious opinion, it is otherwise. If an animal is obviously blind or lame, according to the stronger opinion, it shall not be acceptable. The same rule shall apply even if its blindness or lameness is not obvious. There is no objection in an animal whose ear is split or perforated, though, according to the more cautious opinion, it shall not suffice, as, according to the more cautious opinion, an animal whose eyes have turned white shall also not suffice.

Fifth: It must not be emaciated. It shall be sufficient if it has some fat on its back. According to the more cautious opinion, it should not be considered emaciated according to the common belief.

Problem #9: If no animal except a castrated one is available, then it shall not be far from being sufficient, though it would be more cautious to join it with a sound animal slaughtered in Dhu'l Hijjah (on *Eid al-Adha*) the same year, or if it were not possible, next year, or add a fast to sacrificing the defective animal. If a defective animal other than a castrated one is available, then it would be more cautious to join it with a sound one during the remaining days of Dhu'l Hijjah, and, if it is not possible, next year. It is more cautious to add a fast to either of the two types of animals (namely, a defective or castrated one).

Problem #10: If a person slaughters an animal, and then it transpires that it was defective or sick, he shall be bound to sacrifice another (sound one). If he considers an animal to be fat, but it turns out to be otherwise, it shall suffice. If a person considers an animal to be emaciated, but he slaughters with the hope that it shall turn out to be fat with the intention of seeking closeness (to Allah), and later it turns to be fat, it shall suffice. If it is not likely to be fat, or it is likely to be fat but he slaughters it without such consideration nor with the hope of obedience (to Allah's Command), it shall not suffice. If he believes it to be emaciated, and he slaughters it out of ignorance of the rule, then it turns out to be otherwise, then it shall be more cautious to repeat the slaughter. If he believes it to be defective and slaughters it out of ignorance of the rule, then it turns out to be otherwise, then apparently it shall suffice.

Problem #11: It is more cautious to slaughter the sacrificial animal after throwing pebbles on the Satan. It is also more cautious not to delay it further than the day of *Eid (al-Adha)*. If it is delayed due to some due excuse, etc., then it is more cautious to slaughter the animal during the days of *Tashriq*. Otherwise, he must slaughter it in the remaining days of Dhu'l Hijjah. It is one of the *'Ibadat* (Worships), and so there is the condition of Intention as required in *'Ibadat*.

An agent may be appointed to perform it, and he may have Intention on behalf of the principal. It is more cautious for the principal too to have Intention. According to the more cautious opinion, it is a condition that the agent must be a Shi'ah. Rather it is not free from force. The same rule applies even in case of slaughter for expiations.

Problem #12: If, after slaughtering the sacrificial animal, a person doubts whether it fulfilled all the required conditions or not, he shall not pay any heed to it. Likewise, if a person doubts about the

validity of the performance of his agent, he shall not pay any heed to it. If, however he doubts whether his agent has slaughtered the sacrificial animal or not, he shall be bound to obtain certainty about it, and presumption about it would not be sufficient. If the agent has acted contrary to what is required by *Shari'ah* regarding the characteristics of the sacrificial animal and - its slaughter, then if he has done it deliberately, he shall be held liable and shall be bound to repeat it. But if he has done it ignorantly or forgetfully and inadvertently, and if he has received some wages, he shall be held liable. But if he has done it voluntarily, then the liability is not known. In both the suppositions, it shall be obligatory to repeat the act.

Problem #13: It is approved to divide the sacrificial animal into three shares. He may eat one third, give in charity another one-third and gift the remaining one-third. It is more cautious for him to eat something out of its meat, though it is not obligatory.

Problem #14: If a person is not able to slaughter an animal, when he has neither a sacrificial animal nor the money to purchase it, he shall be bound to fast for three days during the Hajj days and seven days after his return (to his hometown).

Problem #15: If a person is capable to take a loan without any distress or trouble, and has something that he may pay at the time of its repayment, he shall be bound to take loan and slaughter a sacrificial animal. If a person has some baggage for journey in addition to his demand that he may dispose of without any distress and purchase a sacrificial animal with its sale-proceeds, he shall be bound to dispose it of (and purchase he sacrificial animal). He shall, however, not be bound to dispose of his garments in any circumstance. If he disposes of his extra garments, he shall be bound to purchase a sacrificial animal (with its sale-proceeds), and it is more cautious to fast along with it.

Problem #16: A person is not bound to do a job for earning money to purchase a sacrificial animal. If, however, he does a job and earns money sufficient to buy a sacrificial animal, he shall be bound to buy it.

Problem #17: It is obligatory to fast for three days during Dhu'l Hijjah, and, as a matter of obligatory caution, he must fast from the 7th to 9th Dhu'l Hijjah, and not earlier. It is also obligatory to keep the fast consecutively. It is also a condition that the fast must be kept after tying *Ihram* for *'Umrah* and it is not allowed to do it earlier. If he is not able to fast on 7th Dhu'l Hijjah, he may fast on 8th and 9th and delay the third for the day after returning from Mina. It is more cautious that it must be kept after the *Tashriq* days, i.e. after the 11th, 12th and 13th (of Dhu'l Hijjah).

Problem #18: It is not permissible to fast for three days during the *Tashriq* days in Mina. Rather it is not permissible to fast during the *Tashriq* days at all in Mina, regardless whether the person has come to perform Hajj or any other purpose.

Problem #19: To be more cautious it is better for a person who has kept fast for 8th and 9th Dhu'l Hijjah, that he must fast for three days consecutively after return from Mina, and that the first one

must be on the day of journey, i.e. on 13th, and he must have intention that three out of these five fasts are to be counted as obligatory.

Problem #20: If the person fails to fast on 8th too, he may delay the fast till after his return from Mina, and fast for three days consecutively. For a person who has failed to fast on 8th, it is permissible to fast in Dhu'l Hijjah and he shall have sufficient time till the end of the month, though it is more cautious to expedite to fast just after the *Tashriq* days.

Problem #21: It is permissible to fast during journey, and it is not obligatory to have intention of staying in Mecca for keeping fast. Rather if there is no sufficient time for staying in Mecca, it shall be permissible to fast on the way.

If, however, a person fails to fast for three days throughout Dhu'l Hijjah, he shall be bound to slaughter a sacrificial animal himself or through his agent in Mina, and fasting shall not be of use.

Problem #22: If a person fasts for three days and then becomes capable to sacrifice an animal, he shall not be bound to sacrifice an animal. If, however, he becomes capable to sacrifice an animal during fasting, he shall be bound to do it.

Problem #23: It is obligatory to fast for seven days after returning from *Hajj* journey, and it is recommended that they must be consecutive. It is neither permissible to keep these fasts in Mecca nor on the way. Of course, if a person intends to stay in Mecca, he may keep fast in Mecca after a month of his intention of stay. Rather he may keep fast when so much time has passed since his intention to stay that if he had returned from Mecca he would have reached his hometown. But if he stays in a place other than Mecca in any country or on his way, he shall not be allowed to keep these fasts, even if the said time has elapsed.

Of course, it is not obligatory for him to fast in his hometown, so that if he returns to his hometown, he may stay in any other town for keeping these fast.

Problem #25: If a person is not able to keep fast for three days in Mecca, and he returns to his hometown, then if the month of Dhu'l Hijjah still continues, he may keep fast for three days in the month of Dhu'l Hijjah in his own hometown, but there must be an intermission between the three fasts (that were originally required to be kept at Mecca) and the other seven fasts (that he was required to keep in his hometown after his return from *Hajj*).

If the month of Dhu'l Hijjah is over, he shall be bound to slaughter a sacrificial animal that must be slaughtered in Mina, even if it is done through his agent on his behalf.

Problem #26: If a person is capable of keeping the (three obligatory) fasts, but fails to do it until he dies, the three obligatory fasts shall have to be compensated by his *Wali* (or eldest son). It is more cautious to compensate the seven fasts as well (that the deceased was bound to keep after his return from Hajj, provided that he has failed to keep them till his death).

Problem #27: After slaughtering the sacrificial animal, it is obligatory to get the hair of the head shaved or perform *Taqsir*, and one may opt for either of them, except the (following) few individuals.

First: Women, so that they are bound to perform *Taqsir* and not shaving the hair of the head. If they shave the hair of their head, it shall not suffice.

Second: *Sarurah*, i.e. one who is performing Hajj for the first time, according to the more cautious opinion, he is bound to shave the hair of his head.

Third: *Mulabbad*, i.e., one who has stuck his hair with something sticking like honey or gum in order to remove lice or the like, according to the more cautious opinion, he shall be bound to shave the hair of his head.

Fourth: One who has braided his hair, i.e. set his hair, folded and knitted them, according to the more cautious opinion, he shall be bound to shave the hair of his head.

Fifth: a Hermaphrodite whom it is difficult to declare to be such, if he does not belong to any of the last three categories, he shall be bound to perform *Taqsir*; otherwise, according to the more cautious opinion, he shall add shave the hair of his head in addition to performing *Taqsir*.

Problem #28: In performing *Taqsir*, it is sufficient to trim some hair or cut some of the nails by means of any instrument one likes. It is however; better to trim some hair and some of the nails as well. For a person who is bound to shave the hair of his head, it is more cautious to shave the entire head. It is permissible in both *Taqsir* and shaving the head to perform it personally or assign it to someone else. In both of them, one is bound to have intention himself with all its conditions. It is better that if he assigns it to someone else, he must also have its intention.

Problem #29: If shaving the head is decided for a person, but there is no hair on his head, it shall suffice for him to roll the razor on his head, and it shall be sufficient for the rite of shaving the head. If a person having no hair on his head has the option either to shave the head or perform *Taqsir*, decision shall be made in favour of *Taqsir* for him. If he has neither hair even on his eyebrows nor any nails, it shall suffice for him to roll the razor on his head.

Problem #30: There is difficulty in declaring shaving the hair under the navel or underhand to be sufficient. Trimming the hair of the beard shall not be sufficient for *Taqsir* or shaving the head.

Problem #31: It is more cautious to perform shaving the head and *Taqsir* on *Eid (al-Adha)*, though it is not far from permissibility to delay it until the end of Tashriq days and their place must be Mina, and in case of his being free to opt, it is not permissible for him to opt for some other place. If he fails to perform it there and leaves that place, he shall be bound to return to Mina, irrespective of his having knowledge or being ignorant, forgetful, etc. If it is not possible for him to return (to Mina), he shall shave or perform *Taqsir* wherever he is, or perform *Taqsir* at his place and, if possible, send his hair to Mina. It is approved to bury the hair in one's tent.

Problem #32: It is more cautious to delay shaving the head and performing *Taqsir* till after slaughtering the sacrificial animal, and that is to be performed after throwing pebbles. But if he violates the sequence inadvertently, he shall not be bound to repeat it for its fulfillment. It is not far from treating the rule of an ignorant person at par with one having done it inadvertently. If, however, it has been done with knowledge and deliberately, then, if possible, it is more cautious to repeat it.

Problem #33: One is bound to perform circumambulation and *Sa'y* after *Taqsir* or shaving the head. If a person performs them before the two rites deliberately, he shall be bound to return and perform *Taqsir* or shaving the head and then go back and perform circumambulation, prayers and *Sa'y*, and he is liable to sacrifice a sheep. The same rule shall apply if he performs circumambulation earlier deliberately. A person shall not be liable to expiate if he performs *Sa'y* earlier, though he shall be bound to repeat it and observe the sequence. If he performs it earlier due to ignorance of the rule or forgetfully or inadvertently, the same rule shall apply except as regards expiation, as he shall not be liable to expiate in this case.

Problem #34: If a person performs *Taqsir* or shaves his head after circumambulation or *Sa'y*, it shall be more cautious for him to repeat it in order to observe the sequence. If he is bound to shave the head particularly, he may, by way of caution roll the razor on his head.

Problem #35: After the performance of *Ram'y*. (throwing pebbles), slaughtering the sacrificial animal and shaving the head or *Taqsir* by a person who has tied *Ihram*, everything that had been forbidden for him due to *Ihram* shall be rendered lawful except enjoyment of women and using perfumes. Hunting shall also not be far from being allowed. Of course, hunting within (the limits of) *Haram* shall be forbidden for a person who has tied *Ihram* as well as others as a token of respect of the *Haram*.

Chapter Twenty One - What is Obligatory after the Rites of Mina

There are five obligatory rites after those of Mina. They are Circumambulation of *Hajj* and its prayers of two *Rak'ats*, *Se'y* between Safa and Marvah, *Tawaf al-Nisa'* and its prayer of two *Rak'ats*.

Problem #1: The procedure for the Circumambulation, its prayers and *Sa'y* shall be similar to those of *'Umrah* and its prayer of two *Rak'ats* and *Sa'y* exactly as in *'Umrah* except Intention; here the person shall have the Intention of what he is performing.

Problem #2: It is permissible, rather approved, after having performed the rites of Mina to return to Mecca on the day of *Eid (al-Adha)* for the performance of the rites mentioned above. It is permissible to delay it until the 11th (of Dhu'l Hijjah). It is not far from being permissible to delay it until the end of the month, as it is permissible to perform those rites even until its last day (i.e., of Dhu'l Hijjah).

Problem #3: It is not permissible to perform the above five rites before staying in *'Arafat* and *Mash'ar (al-Haram)* and the rites of Mina in case of free time, though it is permissible for the following persons to perform them earlier:

First: Women who are afraid of getting menstruation or puerperal blood after returning to Mecca, and it is not possible for them to stay upto purification.

Second: Men or Women who are not able to perform circumambulation after their return to Mecca due to extreme crowd, or who are not able to return to Mecca.

Third: Patients who are unable to perform circumambulation after returning to Mecca due to the crowd or are afraid of it.

Fourth: Those who are certain that they shall not be able to perform the rites until the end of Dhu'l Hijjah,

Problem #4: In the above four category of people except the last one, if it transpires otherwise, so that no menstrual or puerperal blood is seen by the women, or the ailing person recovers, or the crowd was not to the extent they were afraid of, they shall not be bound to repeat their rites, though it would be more cautious. As far as the last category of people is concerned, if the basis for their belief were ailment, old age or indisposition, performance of the above rites shall suffice; otherwise, it shall not suffice, as is the case when a person believes that flood shall not let him perform Hajj or that he would be imprisoned (and so he shall be unable to perform Hajj), but subsequently it transpires to be otherwise.

Problem #5: There are the following three places of lawfulness (i.e., places where what had been prohibited due to *Ihram* becomes lawful). Firstly, after shaving the head or *Taqsir*, when everything becomes lawful except use of perfumes, enjoyment of women and, apparently, hunting, though the latter is forbidden as a token of respect for *Haram*, Secondly, after the circumambulation

of *Ziyarat* (or pilgrimage) and its prayer of two *Rak'ats* and *Sa'y*, so that use of perfumes becomes lawful for him. Thirdly, after *Tawaf al-Nisa'* and its prayer of two *Rak'ats*, when sexual enjoyment of women also becomes lawful.

Problem #6: If a person performs circumambulation for *Ziyarat* or *Tawaf al-Nisa'* due to some excuse as the above categories of people, for him use of perfumes and enjoyment of women shall become lawful, though all other forbidden things would become lawful for him after the performance of *Taqsir* and shaving the head.

Problem #7: *Tawaf al-Nisa'* is not obligatory exclusively on men. Rather, it is equally obligatory on women, a hermaphrodite, a eunuch and a discreet boy. If any of them fails to perform it, his wives shall no more be lawful to him, or a husband if it were a woman, (who has failed to perform it). Rather, if a discreet boy has been tied *Ihram* by his guardian, it shall be rendered obligatory on him to perform *Tawaf al-Nisa'* so that women (or wives) may be rendered lawful to him.

Problem #8: *Tawaf al-Nisa'* and its prayer of two *Rak'ats* are both obligatory, but they are not pillars (of *Hajj*), so that if a person has abandoned them deliberately, his *Hajj* shall not thereby be rendered invalid, though his wives shall not become lawful to him. Rather, it shall be forbidden for him to conclude a marriage, ask the hand of a woman in marriage or be a witness to a marriage.

Problem #9: It is neither allowed to perform *Sa'y* before the circumambulation for *Ziyarat*, nor before its prayer in case of having free will; nor to offer *Tawaf al-Nisa'* before them, nor before *Sa'y* in case of having free will. If a person violates the sequence, he shall be required to repeat it in the way it is obligatory, according to the more cautious opinion.

Problem #10: It is allowed to perform *Tawaf al-Nisa'* before *Sa'y* in case of necessity as fear of getting courses and inability to stay until purification, but it is more cautious to assign to someone else to perform it on her/his behalf. If a person performs it earlier inadvertently or out of ignorance of the rule, his/her *Sa'y* and circumambulation shall be valid, though it is more cautious to repeat circumambulation.

Problem #11: If a person fails to perform *Tawaf al-Nisa'* inadvertently, and returns to his hometown, then if he is able to return without any distress, he shall be bound to do so. Otherwise, he shall assign it to someone else to perform it on his behalf, so that his wives may be rendered lawful to him after its performance.

Problem #12: If a person forgets and fails to perform the obligatory circumambulation of *Hajj* or '*Umrah* or *Tawaf al-Nisa'*', and returns (to his hometown) and has sexual intercourse with his wives, he shall be bound to sacrifice an animal by slaughtering or piercing a spear into the neck (of a camel) in Mecca, though it is more cautious to sacrifice a camel by piercing a spear into its neck. He may return and perform circumambulation if he is capable to do so without any distress. It is more cautious to repeat *Sa'y* in case he has not forgotten *Tawaf al-Nisa'*. In case of his incapability, he shall assign it to someone else to do it on his behalf.

Problem #13: If a person has failed to perform the circumambulation of *'Umrah* or *Ziyarat* out of ignorance of the rule and has returned (to his hometown), he shall be bound to sacrifice a camel and repeat the Hajj.

Chapter Twenty Two - Passing the Night at Mina

Problem #1: After the performance of the rites at Mecca, it is obligatory on a person to return to Mina and pass the nights on 11th and 12th (of Dhu'l Hijjah) there, and for this purpose he is bound to stay there from sunset to midnight.

Problem #2: On some persons it is obligatory to pass the night of 13th (Dhu'l Hijjah) until the midnight at Mina. They include the following persons

1. Any person who has not avoided hunting after tying *Ihram* for Hajj or *'Umrah*. It is more cautious for a person who has caught a prey but has not killed it to pass the night at Mina. If, however, a person has done something other than either of the acts (namely, hunting and catching the prey), like eating the meat of the prey, guiding a hunter or pointing out the prey, etc, he shall not be bound (to pass the night at Mina).

2 Any person who has not avoided having intercourse with women after tying *Ihram* for Hajj or *'Umrah*, regardless whether it is done in the natural or unnatural way (i.e. from front or backside), and whether the woman is his wife or a stranger. But it is not obligatory in case of an act other than sexual intercourse, such as kissing, touching or the like.

3. Any person who does not leave Mina on the day of 12th (Dhu'l Hijjah) until the sunset of 13th.

Problem #3: The following persons are not bound to pass the above-mentioned nights at Mina.

1 Any ailing person or his attendant, rather any person for whom passing the night at Mina is troublesome

2. Any person who is afraid that a considerable amount of his property shall be wasted or stolen at Mecca

3. Any herdsman who is bound to graze his herd at night.

4. Those who supply water to the Hajj pilgrims in Mecca.

5 Any person who has been engaged in worship in Mecca until morning and has not been engaged in any pursuits except the necessary ones like eating or drinking according to his need, performing ablution anew, etc. According to the more cautious opinion, it is, however, not permissible to give up passing night at Mina for a person who has been engaged in worship at any place other than Mecca including even a place on the way between Mecca and Mina.

Problem #4: According to the more cautious opinion, a person who has not been in Mina early at night without any excuse is bound to return before midnight and pass the night until the morning

Problem #5: Passing the night at Mina is an obligatory worship with all its conditions.

Problem #6: A person who fails to pass the obligatory nights at Mina is bound to sacrifice a sheep for each night, regardless whether it has been done deliberately, ignorantly or forgetfully. Rather, persons mentioned under Problem #3, except the Fifth Category are bound to expiate, while the application of this rule to Third and Fourth Categories has been by way of caution.

Problem #7: It is neither a condition for the sheep to fulfil the conditions required in a sacrificial animal nor is a particular plate required for its slaughter. So it is permissible to slaughter it even after returning to one's hometown.

Problem #8: A person who has not passed all the night outside Mina shall not be bound to expiate if he has been Mina from the early part of night to midnight. If, however, he leaves Mina before midnight or had been outside Mina in a part of the early night, to be more cautious, he shall be bound to expiate.

Problem #9: A person who is allowed to leave Mina on the day of 12th (Dhu'l Hijjah) is bound to leave it after noon and not earlier, while a person who leaves on 13th is allowed to leave at any time he likes.

Chapter Twenty Three - Throwing Pebbles on Three Satans

Problem #1: It is obligatory to throw pebbles at the three Satans, namely, the First, the Middle and the Rear ones during the days of the nights that are obligatory to pass at Mina, even on the 13th for one who is bound to pass its night at Mine. If a person fails to do it, his Hajj shall be valid, even if it is done deliberately, though he shall be considered to have sinned.

Problem #2: It is, obligatory to throw seven pebbles on each Satan every day. It is a condition to observe all the conditions here as required in throwing pebbles on the '*Aqabah*' mentioned before without any difference.

Problem #3: The time for throwing the pebbles is from sunrise to sunset. So it is not permissible to do it at night for one who has free time. If a person has some excuse like fear, ailment, and weakness or were a herdsman, he may perform it at night of its day or on the following night.

Problem #4: It is obligatory to observe the sequence; so that one must begin with the First, then take up the Middle and lastly the Rear one. In case of violation of the sequence even if inadvertently; it is obligatory to repeat it in the required sequence.

Problem #5: If a person throws four pebbles on the First Satan, then four on the Middle one and then takes up the Rear one, it shall be valid. He is bound to complete it in any way he likes, though if a person does it deliberately, he shall be required to repeat it.

Likewise, it is permissible to throw four pebbles on the First one, and then on the Second (and so on), and it is not obligatory to throw all the pebbles on the First one before taking up the Second one.

Problem #6: If a person forgets to throw pebbles one day, he must compensate it the next day. If he forgets to do two days, he must compensate them on the third day. The same rule applies in case he fails to do it deliberately. It is obligatory first to perform what is compensatory, and then take up the one being performed at its proper time, and to give priority to the preceding one. If a person fails to perform the *Ram'y* of the *Eid (al-Adha)* and the day after, on the 12th (Dhu'l Hijjah), he must first perform the obligatory *Ram'y* of the *Eid (al-Adha)*, then obligatory one for the 12th and then for the 13th. It is a condition to observe sequence in all or some of the compensatory *Ram'y* like the one performed at its proper time. If a person forgets to perform any of the *Ram'y*, such as the First one, and recalls it the next day, he must perform the previous one according to the required sequence and then take up the one required to be performed that day. Rather, to be more cautious, in case a person throws four pebbles on the Satans or any of them, and recalls it the next day, he must give priority to the compensatory one over the one being performed on its proper time, preferring the more precedent to the subsequent one.

Problem #7: If a person performs *Ram'y* against the required sequence and recalls it some other day, he must repeat it in the required sequence, and then perform the one he is bound to perform that day.

Problem #8: If a person forgets all the three acts of *Ram'y* and enters Mecca, if he recalls it on the *Tashriq* days (i.e. 11th, 12th and 13th Dhu'l Hijjah), he must return if he is capable to do it, and in case otherwise, he must assign it to someone else to do it on his behalf. In case he recalls it later, or delays it deliberately, then it is more cautious for him to combine what has been mentioned here with compensating it next year during the days corresponding to the days forfeited personally or through an agent. If he forgets all the three acts of *Ram'y* till he leaves Mecca, then it is more cautious to compensate them next year even if through an agent. The rule for forgetting some of the acts of *Ram'y* is similar to that applicable to forgetting all of the acts. According to the more cautious opinion, the rule for one who forgets to throw less than seven pebbles on the three Satans or some of them is the same as for getting to throw all the pebbles.

Problem #9: A disabled person like a patient, weak person or one unable to throw pebbles is treated at par with a child who acts through an agent. If he is not able to do so as an unconscious person, his rites shall be performed by his *Wali* or someone else, It is more cautious to delay the performance by an agent until there is despair on the part of the principal. If possible, it is better to carry the disabled person and throw the pebbles in his presence, and, if possible, to put the pebbles in his hands and let him throw them with his own hands. If the agent has performed the obligatory rites and then the excuse is removed, it shall not be obligatory to repeat the performance of the rites if the agent has been appointed after despair on the part of the principal; otherwise, it shall be obligatory to repeat them,

Problem #10: If a person other than the disabled person ,such as his *Wali*, loses hope of removal of the excuse of the disabled person, it shall not be obligatory for him to obtain the latter's permission for the appointment of an agent, though it is more cautious to do so. If the disabled person is not even able to give permission, there shall be no condition for obtaining his permission at all.

Problem #11: If a person doubts about the performance of an obligatory rite after the lapse of the day, he shall not pay any heed to it. So also, after starting to throw pebbles on a subsequent Satan, if he doubts whether he had thrown pebbles on the previous one or not, or doubts about its validity, he shall not pay heed to it, in the same way as when he doubts about the validity of an act after having performed it or having passed its stage, in which case he shall consider it valid. If, however, before starting to throw pebbles on the subsequent Satan, he doubts about the number (of the pebbles thrown) on the previous one while there is likelihood of its deficiency, it shall be obligatory to throw the pebbles until their number reaches seven. According to the more cautious opinion, even if he has already finished it and has started another rite. If the doubt about the number (of pebbles) thrown in the previous act occurs after he has started the subsequent act (of throwing pebbles), if he is sure of having already thrown four pebbles and has doubt about the rest of them, according to the more cautious opinion, he shall complete their number. Rather, the same rule shall apply even if the

doubt occurs after having completed the subsequent obligatory act (of throwing pebbles), If he doubts whether he has thrown four pebbles or less than four, he shall consider the number to be four and throw the rest.

Problem #12: If, after the day has passed, he becomes sure of non-performance of throwing pebbles on one of the three Satans, it shall suffice to compensate it by throwing pebbles on the last Satan, though it is more cautious to throw pebbles on all the three. If, after having thrown the pebbles on all the three Satans, the person is sure of having thrown three pebbles and not less than that on each of them, it shall be obligatory to complete the number on each of the three Satans. If, however, he is sure of having thrown less than four pebbles on one of the three Satans, it shall not be far from being sufficient to throw pebbles on the last one and complete the deficiency, It is more cautious to throw the complete obligatory number of (seven) pebbles on the last one, though it is more cautious to throw the pebbles on all of them anew.

Problem #13: If, after passage of the three days, a person is sure of not having thrown pebbles on one of the days without knowing which one, he shall be bound to compensate *Ram'y* of all the three days with due observation of the sequence, though it is likely to consider sufficient to compensate the obligation of the last day alone.

Chapter Twenty Four - Rules Concerning a *Masdud* and *Mahsur* Person

Problem #1: A *Masdud* person is one who is prevented by an enemy or the like from performing *Hajj* or '*Umrah*', while a *Mahsur* is one who is prevented by ailment from performing *Hajj* or '*Umrah*'.

Problem #2: A person who has tied *Ihram* for *Hajj* or '*Umrah*' is bound to complete it. If he has not completed it, he shall continue to be in a state of tying *Ihram*. So if he ties *Ihram* for '*Umrah*', and then he is prevented by an enemy or the like such as the government officials etc. from proceeding to Mecca, while he has no route other than the one obstructed, or there is one but he has no pecuniary capability of adopting that route, it shall be permissible to legalise whatever had been rendered forbidden to him (due to tying *Ihram*) by slaughtering by slitting the throat of a cow or a sheep (*Dhabh*) or by slaughtering a camel by piercing a spear into its neck (*Nahr*) at his own place. It is more cautious to have an intention (*Niyyat*) while doing so. Likewise, it is also more cautious to perform *Taqsir* (i.e. shaving or trimming the hair of one's head), as a result of which everything (forbidden due to tying of *Ihram*) shall be rendered lawful for him including even having sexual intercourse with women.

Problem #3: If a person enters the Holy city of Mecca after having tied *Ihram* for '*Umrah*', and then he is prevented by an enemy etc. from performing '*Umrah*', he shall be governed by the rules mentioned before. So he shall untie the *Ihram* in the way already mentioned. Rather it is also not far from being likely even if he is prevented from performing the circumambulation or Sa'y. If a person is imprisoned by an oppressor, or due to non-repayment of a loan that he cannot repay, he shall also be governed by the afore-mentioned rules.

Problem #4: If a person ties *Ihram* for entering Mecca, or the performance of a rite, and an oppressor demands the payment of money he is unable to pay, he shall be bound to pay the money if it does not entail distress for him. If it is not possible for him to pay it or it may be distressful for him, then apparently his case shall be similar to a *Masdud* person.

Problem #5: If a person has a route to Mecca other than the one obstructed and he has the pecuniary capability to go by that route, he shall be considered to be continuing in a state of tying *Ihram*, and shall be bound to proceed for *Hajj*. If the time for *Hajj* elapses, he shall perform '*Umrat al-Mufradah*', and untie *Ihram*. In case he is afraid of not reaching on time to perform *Hajj*, he shall not untie *Ihram* by adopting the course of a *Masdud*, but shall have to continue in the state of tying *Ihram* and untie *Ihram* after the lapse of the time of *Hajj* by performing '*Umrat al-Mufradah*'..

Problem #6: Prevention from *Hajj* is considered to take place when as a result of it he is not able to reach the two places of staying (at '*Arafat*' and *Mash'ar al-Haram*) either on free or emergency time. Rather it takes place even by not performing an act that if not performed entails the non-performance of *Hajj*, regardless whether it takes place ignorantly or inadvertently. Rather it shall be deemed prevention from *Hajj* even if it takes place after staying in the two places (namely, '*Arafat*'

and *Mash'ar al-Haram*), if a person is prevented from performing the rites at Mina and Mecca or either of them, and he is not able to appoint an agent. Of course, if he has performed all the rites, and is prevented from returning to Mina for passing the night there and performing the rites of the *Tashriq* days (i.e, 11th, 12th and 13th Dhu'l Hijjah), prevention shall not be considered to have taken place thereby, his *Hajj* shall be deemed valid, and he shall be bound to appoint an agent to perform the (remaining) rites the same year, and if it is not possible for him, then next year.

Problem #7: If a person is prevented from performing *Hajj* or '*Umrah*', then if he is one on whom *Hajj* has become obligatory or one who shall attain capability next year, he shall be bound to perform *Hajj*, and the untying of *Ihram* as mentioned above is not sufficient for him for Hijjat al-Islam.

Problem #8: A person who has been prevented (as above) shall be allowed to untie *Ihram* in the above-mentioned way even if he expects removal of the excuse.

Problem #9: If a person who has tied *Ihram* for '*Umrah*', but has not been able to reach Mecca due to ailment, intends to untie *Ihram*, it shall be indispensable for him to sacrifice an animal. It is more cautious for him to send the sacrificial animal or its price to Mecca through a reliable person, and let him promise to slaughter it or perform its *Nahr*, (if it were a camel), at a prescribed day and hour. On the appointed time he shall cut or trim the hair of his head, after which everything shall be rendered lawful to him except enjoying women sexually. While slaughtering the animal, it is more cautious for the agent to have intention of the principal's untying of *Ihram*.

Problem #10: If a person who has tied *Ihram* for Hajj, but has not been able to arrive at 'Arafat or *Mash'ar (al-Haram)* due to ailment, intends to untie *Ihram*, he shall be bound to sacrifice an animal. It is more cautious for him to send the sacrificial animal or its price to Mina for slaughtering it, and let (his agent) promise to slaughter it, or perform its *Nahr* (if it were a camel), on the *Eid (al-Adha)* day at Mina. After slaughtering the animal, everything shall be rendered lawful to him except enjoying women sexually.

Problem #11: If a person owing an obligatory Hajj is prevented due to ailment, he shall be allowed to enjoy women sexually only after performing Hajj rites and *Tawaf al-Nisa'* next year, In case of inability, it shall not be far from being permissible to appoint an agent, after whose performance the said act shall be lawful. In case of an approved Hajj it is not far from being sufficient to perform *Tawaf al-Nisa'* through an agent for legalizing the said act, though it is more cautious to perform it personally.

Problem #12: If a person who has been prevented unties *Ihram* during '*Umrah*' and enjoys women sexually, and then it transpires that the animal has not been slaughtered at the appointed time, he shall have no liability for a sin or expiation. But he shall be bound to send a sacrificial animal or its price and let the agent promise for a second time. He shall also be bound to abstain from enjoying women sexually, to be more cautious necessarily as soon as he comes to know of the factual position and if possible from the time of sending (the animal or its price).

Problem #13: The matters in which *Hasr* takes place are similar to those of a *Sadd*.

Problem #14: If a patient recovers and becomes able to reach Mecca after having sent the sacrificial animal or its price, he shall be bound to perform *Hajj*. If he has tied the *Ihram* for *Hajj at- Tammatu'* and has sufficient time for performing its rites, well and good. If, however, the time for staying in 'Arafat after the '*Umrah* is short, he shall perform *Hajj at-Mufradah*. It is more cautious to have the intention of shifting to *Hajj at-Mufradah*. Then after the Hajj he shall perform the '*Umrat al-Mufradah*, and it shall be sufficient for him for *Hijjat al-Islam*, If he reaches Mecca at a time not sufficient for free time for staying at *Mash'ar (al-Haram)*, he shall change his '*Umrah* to *Mufradah*, It is more cautious to have the intention to shift (to '*Umrat at-Mufradah*) and untie *Ihram*, and after accomplishment of the conditions, perform obligatory Hajj next year. In this case, a *Masdud* is considered similar to a *Mahsur*.

Problem #15: It is not far from affiliating an unable person like a weak or old person with an ailing person in application of rules, but it is a difficult matter. To be more cautious the person must continue tying *Ihram* until his recovery. If the time for *Hajj* has elapsed, he shall perform '*Umrat at-Mufradah* and untie *Ihram*, and if conditions are accomplished, he shall offer Hajj next year.

Problem #16: It is more cautious to prescribe a date (with the agent) for *Ihram* for '*Umrat at-Tumattu'* to be before the departure of the Hajj pilgrims to 'Arafat and for *Ihram* for *Hajj* to be the *Eid (al - Adha)* day.

SECTION EIGHT - ENJOINING THE RIGHT AND FORBIDDING THE WRONG

Enjoining the Right and forbidding the Wrong are among the obligatory duties and the most preferred ones. It is they that sustain all the other obligatory duties and considering them among the obligatory duties is among the essentials of (Islamic) faith. A person denying them as obligatory and essential duties with full realization of its consequences is deemed a disbeliever (*Kafir*). There are exhortations in their favour in the Holy Book (i.e., the Holy Qur'an) and the Traditions (of the Holy Prophet) in different ways. So Allah, the Exalted says (in the Qur'an):

“And let there arise from among you a community inviting to what is good, enjoining the right and forbidding the wrong. They are the ones who shall be successful”. (111: 104)

Likewise, Allah, the Exalted says (in the Qur'an)

“You are the best Community raised up for (the benefit) of the Mankind, enjoining the right and forbidding the wrong, and believing in Allah”. (111: 110)

Similarly, there are other (verses in the Qur'an on the same subject).

So also, it has been reported from (Imam 'Ali) Rida, Peace be upon him:

“The Messenger of Allah, Allah's Blessings be on him and his Progeny, has said: “When my Community (of followers) abandons enjoining the right and forbidding the wrong, then let them declare war against Allah”.

It has also been reported from the Prophet, Allah's Blessings be on him and his Progeny, (that he has said): “Verily Allah loathes a weak believer who has no belief. He was asked: Who is a weak believer who has no belief? He said. One who does not forbid the wrong”.

So also, it has been reported from the Prophet, Allah's Blessings be on him and his Progeny that he has said: “My Community (of followers) shall continue to be on the right path as long as they enjoin the right and forbid the wrong, and cooperate with one another in righteousness (*Birr*). Whenever they cease to do so, (Allah's) Benedictions (*Barakat*) shall be cut off from them, and some of them shall overpower others, and they shall have no supporter on the Earth or the heaven”.

It has been reported from Amir al-Mu'minin ('Ali), Peace be upon him, that he delivered a public address, and praised Allah and eulogised Him, and then said: “Verily those (people) who were before you have been wiped out because they perpetrated sinful acts, and their rabbis and priests did not forbid them from such acts. When they reached the last limits of the sinful acts, even then the rabbis and the priests did not forbid them. (Consequently) severe punishment came down on them. So you should enjoin the right and forbid the wrong. You should know that enjoining the right and

forbidding the wrong neither brings death of any person closer nor does it cut off the sustenance of any person” (till the end of the Tradition).

Similarly, it has been reported from (Imam) Abu Ja'far (al-Baqir), Peace be upon him, that he has said: “In the last of the days (of the world) there shall arise a people who shall follow those who practice hypocrisy. They shall pretend to be reciting the Qur'an and performing other religious rites. They shall be parvenu and idiots, neither considering enjoining the right nor forbidding the wrong to be obligatory, except that when they are safe from any harm, they invent permissibility and find excuses for themselves”. Then he said. “If prayer is damaging for the deeds performed by them with (the help of) their property and body, they discard it in the same way as they discard the most superior and most preferable obligatory duty. Verily enjoining the right and forbidding the wrong is a supreme obligatory duty that sustains all other obligatory duties. Then the Wrath of Allah, the Glorified and Exalted is afflicted on them in its complete form and all of them share His severe punishment. So the pious shall be destroyed in the houses of the evil-doers and the smaller ones in the houses of the bigger ones”.

It has been reported by Muhammad b. Muslim, saying: (Imam) Abu 'Abdillah (Ja'far al-Sadiq), Peace be upon him, has written to the Shi'ahs, let the grown up and wise among you be sympathetic towards the foolish and leadership seekers, otherwise all of you shall be afflicted by my curse”.

There are also other similar Traditions on the subject.

Chapter One - Varieties of the Two (Duties) and the Nature of their Obligation

Problem #1: Each of the two duties of enjoining and forbidding are divided into obligatory and approved, so that it is obligatory to enjoin whatever is obligatory according to reason and *Shari'ah*, and it is obligatory to forbid whatever is bad according to reason and prohibited by *Shari'ah*. Similarly, whatever is approved and recommended must be enjoined accordingly, and whatever is disapproved must be forbidden accordingly.

Problem #2: According to the stronger opinion, action of these duties is *Kifa'i* so that if it is exercised by one having the capability, it shall exonerate others from the liability; otherwise, all those having the conditions of capability shall be considered to have failed to exercise what was obligatory.

Problem #3: If the exercise of an obligatory act or elimination of a wrong depends on the concerted action in enjoining or forbidding, the duty shall not drop by the action of a few of them, and it shall be obligatory for them to get together for it in sufficient number.

Problem #4: If some of them, short of the sufficient number, do get together while others fail to do so, and it is not possible for the former to collect others, the obligation shall drop from them, and the sin shall subsist on the recusant ones.

Problem #5: If one or several individuals do act according to the obligatory duty but of no avail, while it is likely to be effective if joined by one or more persons, it shall be obligatory on the others (to join) provided that they fulfill the required conditions.

Problem #6: If a person is sure or satisfied about the exercise of the duty by others, he shall not be bound to act. Of course, if it appears to be contrary to his surety, he shall also be bound to act. Similarly, if he is sure or satisfied of the sufficiency of those exercising the duty, he shall not be bound to act. But in case it appears otherwise, he shall also be bound to act.

Problem #7: Mere likelihood or presumption about the exercise of the duty by another or sufficiency of those exercising the duty shall not be sufficient. Rather it shall be obligatory that both likelihood and presumption must be there. Of course, if testified by two witnesses, it shall be sufficient.

Problem #8: If the subject of the obligatory duty or wrong disappears, obligation shall also drop, even if it was due to act of the *Mukallaf* as is the case when a person pours forth water is exclusively to be saved for purification or protection of a human soul.

Problem #9: If the exercise of the obligatory duty or elimination of a wrong depends on the commission of a prohibited act, then apparently the importance is to be taken into consideration.

Problem #10: If a person is capable to do either of the acts, namely, enjoining the right or forbidding the wrong, he shall take into consideration the more important of the two. In case they are equal, he shall have the option to choose either of them.

Problem #11: It is not sufficient at the time of dropping an obligatory act to explain the rule of the *Shari'ah* or the evils of abandoning the obligatory act and commission of a prohibited act, except that according to the prevalent practice it may be understood, even if by indications, to mean enjoining or forbidding or serving the purpose by both of them. Rather it is sufficient that the other party may take it to mean enjoining or forbidding through some particular indication, even if usually it may not carry that sense.

Problem #12: Here the act of enjoining or forbidding is an act of a *Mowlavi* on the part of the person enjoining or forbidding (who should order the exercise of an obligatory act or avoiding a prohibited one) even if of a lower standard. So it is not enough to say. Allah has ordered you to offer prayer or has forbidden you from taking wine, except when it serves the purpose. Rather, it is indispensable to say, for example: Offer prayer, or don't take wine, or the like, as may mean a command for doing or avoiding something on his part.

Problem #13: In both the acts, it is not a condition that there must be intention of seeking closeness (to Allah) or sincerity of purpose. Rather they are meant for elimination of corruption and exercise of obligatory duty. Of course, if he has such intention as well, he shall get reward (from Allah) for them.

Problem #14: There is no difference in the obligation of forbidding whether it is a mortal or venial sin.

Problem #15: If a person starts the preliminaries of a prohibited act for its commission, then if he knows that it shall lead to a prohibited act, it is obligatory to forbid the commission of the prohibited act. If he knows otherwise, he shall not be bound but to point out the prohibition of the preliminaries or of the intention. If he doubts its leading (to the commission of the prohibited act), then he shall not be bound except in case the said opinion is adopted.

Problem #16: If a person intends to commit a prohibited act, but doubts whether he is capable to do it, then apparently there is no obligation to forbid him. Of course, if we accept that even the intention of committing a sin is prohibited, then it is obligatory to forbid him from it.

Chapter Two - Conditions for Obligation of the Two (Duties)

There are several conditions for both the duties. (They are as follows)

First Condition: The person enjoining or forbidding must know whether what the *Mukallaf* is abandoning is right, or what he is perpetrating is wrong. So it is not obligatory on a person who is ignorant of the right and wrong (to exercise the duty). Its knowledge is a condition for the obligation (of the duty), as capability is a condition in the Hajj.

Problem #1: As regards knowledge, there is no difference between certainty and the recognized methods of Ijtihād and Taqlid. So if two persons follow a Mujtahid in whose opinion offering Jum'ah prayer itself is obligatory, and so one of them abandons offering it, the other shall be bound to enjoin him to offer it. Similarly, if, in the opinion of their Mujtahid, the juice of the raisins when boiled on the fire is prohibited, and one of them takes it, the other shall be bound to forbid him to do so.

Problem #2: If the case is different so that the opinion of the person doing or failing to do an act or according to his Taqlid is different from that of the other, and so his action according to himself is lawful, the other shall not be bound (to enjoin or forbid him).

Rather he is not allowed to (enjoin or) forbid the other, not to speak of the case when he has knowledge about it.

Problem #3: If there is no difference in the case, and there is likelihood of the person committing the wrong to be ignorant of the relevant rule, then apparently it shall be obligatory to enjoin or forbid him, particularly when he is incapable. At first it is more cautious to give him proper guidance of the rule, and then forbid him, in case he persists, particularly when he is a minor.

Problem #4: If the person acting is ignorant of the matter, it shall not be obligatory to forbid him or removing his ignorance, as is the case when a person abandons prayer ignorantly or forgetfully, or takes an intoxicant out of ignorance of the matter. Of course, if the act is of importance to the other, and he is not willing with its commission or omission in any circumstances, he shall be bound to act by enjoining him or forbidding him, as is the case of killing a human soul.

Problem #5: If whatever has been abandoned is obligatory in a person's opinion or in the opinion of the one who follows him, or likewise whatever has been done is prohibited, but the opinion of the other person is contrary to his, then apparently he shall not be bound to forbid the other, except when we accept that the very intention of a prohibited act or an act leading to it is prohibited.

Problem #6: If what is committed is contrary to the necessary caution in the view of both or in the view of the follower of both, then it is more cautious to forbid him. Rather it is not far from being obligatory.

Problem #7: If a person has a brief knowledge about a prohibited act and he commits both or either of its parts, it shall be obligatory to forbid him in the first case, while it is also not far from being so even in the latter case, except when there is likelihood of the brief knowledge not being consummate to him at all, in which case it shall not be obligatory (to forbid him) at all. Rather it shall not be permissible, or with regards to the definite agreement, it shall not be obligatory. Rather in the latter case, it shall not be permissible.

The same shall be the case in case a person has brief knowledge about the obligation of an act and he abandons all its parts.

Problem #8: It is obligatory to learn the conditions of enjoining the right and forbidding the wrong, and the cases of its obligation and otherwise as well as its permissibility and otherwise, so that one may not commit a wrong while enjoining or forbidding.

Problem #9: If a person enjoins the right or forbids the wrong where it is not permissible, it shall be obligatory on the other person to forbid him from doing both.

Problem #10: If enjoining or forbidding in a case be in relation to some persons may cause disgrace to holy *Shari'ah*, while it is not so in the eyes of others, it shall not be permissible, particularly when there is mere likelihood of its effectiveness, except when the case happens to be from among the important ones, though cases differ from the point of view of importance.

Second Condition: The enjoining or forbidding be permissible and there is likelihood of its effect. In case one knows or is certain about its being otherwise, it shall not be obligatory.

Problem #1: The obligation shall not drop by mere presumption about its being ineffective, even if it is strong. However, in case there is considerable likelihood among the wise, it shall be obligatory.

Problem #2: If two just witnesses testify to its ineffectiveness, even then apparently its obligation shall not drop provided that there is its likelihood.

Problem #3: If a person knows that forbidding shall not be effective except when accompanied by imploring and exhortation, then it shall be obligatory to do it accordingly. So also if it is known that imploring and exhortation shall alone be effective without enjoining or forbidding, both shall not be far from being obligatory.

Problem #4: If a person commits two forbidden acts or omits two obligatory acts, and it is known that enjoining in respect of both shall be effective if done together, while there is likelihood of effect in respect of one of the two itself, it shall be obligatory in respect of that one to the exclusion of the other. If there is likelihood of one of them being effective but not exclusively, it shall be obligatory to take into consideration the more important one. So if a person abandons prayer and fasting, and it is known that enjoining him to pray shall not be effective, while there is likelihood of its being effective in respect of fasting, it shall be obligatory (to enjoin him to pray). If there is likelihood of its effect in respect of one of them, it shall be obligatory to enjoin him to pray. If

neither of them is more important, he may opt either. Rather he may enjoin him to do either of the two briefly, provided that there is likelihood of its being effective in respect of that one.

Problem #5: If it is known or there is likelihood of enjoining or forbidding him being effective if done repeatedly, its repetition shall be obligatory.

Problem #6: If it is known or there is likelihood of forbidding him in the presence of others being effective and not otherwise, then if the person committing the act commits it in the presence of others, it shall be permissible and obligatory to do so; otherwise its obligation, rather its permissibility, shall be open to question.

Problem #7: If it is known that enjoining or forbidding a person shall be effective if he is allowed to abandon another obligatory act or commit another forbidden act considering the importance of the case of permission, there shall be no difficulty in its non-permissibility or dropping its obligation. Rather if both are equal in importance, apparently it shall not be permissible, and the obligation shall drop. If the act related to enjoining or forbidding is more important, then the nature of importance is such that the master is not willing to do contrary to it, like killing a respectable soul, permission shall be obligatory; otherwise, there is hesitation, though it is not devoid of significance.

Problem #8: If it is known that enjoining him is ineffective in a case for the present, but it is known or there is likelihood of the effectiveness of the present enjoining in future, it shall be obligatory to enjoin at present. Likewise, if it is known that forbidding him to drink wine in a definite cup shall not be effective, but it shall be effective in giving it up later absolutely or to some extent, it shall be obligatory.

Problem #9: If it is known that enjoining or forbidding shall not be effective in respect of the person committing or omitting an act, but it shall be effective in respect of another provided that no attention is paid to him in the address, it shall be obligatory to address the former with the intention of its effect on the other.

Problem #10: If it is known that if a person enjoins another, it shall not be effective while it shall be effective if enjoined by a particular person, it shall be obligatory to entrust the work of enjoining to that particular person provided that he fulfils its conditions.

Problem #11: If it is known that such a person is going to commit a prohibited act, and there is likelihood of effectiveness if he is forbidden, it shall be obligatory.

Problem #12: If the effectiveness of enjoining or forbidding depends on the commission of a forbidden act or omission of an obligatory act, it shall not be permissible, and the obligation shall drop, except when the case has such an important place that the master is not willing if done otherwise in whatever way like killing a respectable soul, while the act on which it depends does

not have such importance. So if warding it off depends on entering a usurped house or the like, it shall be obligatory (to do so).

Problem #13: If the doer of an act is such that if he is forbidden from doing a wrong, he shall insist on doing it, but if he is enjoined, he shall abandon it, then it shall be obligatory to enjoin him, provided that there is no other hindrance. The same rule applies in case of a right.

Problem #14: If it is known or there is likelihood of effectiveness of forbidding- or enjoining in reducing the severity of a sinful act, but not in its extirpation, it shall be obligatory to forbid the wrong or enjoin the right. Rather it shall not be far from being obligatory if it is effective in changing the more severe sinful act to a less severe act. Rather there is no objection (in its obligation), if the more severe act is such that the master is not willing to do it in any circumstance.

Problem #15: If there is likelihood that forbidding a person shall be effective in abandoning a definite opposition in respect of the parts of brief knowledge but not in the definite agreement, even then it shall be obligatory (to forbid him).

Problem #16: If it is known that forbidding a person shall be effective, for example, in abandoning a detailed known forbidden act and commission of some of the parts whose position is known briefly, then apparently it shall be obligatory (to forbid him), except when the one known briefly is of an importance equal to what has been mentioned before to the exclusion of the one known in detail, in which case it shall not be permissible to forbid him. There is difficulty in deciding whether absolute importance necessitates obligation.

Problem #17: If there is likelihood of effectiveness, and at the same time there is likelihood to the contrary, then apparently there shall be no obligation.

Problem #18: If the effectiveness (of forbidding) is likely in delay the commission of a wrong or its postponement, then if there is likelihood of his inability to commit it in future, it shall be obligatory (to forbid him). Otherwise, it shall be more cautious (to do so); rather it is not far from being obligatory.

Problem #19: If two persons know briefly that forbidding by one of them shall be effective but not by the other, forbidding by both of them shall be obligatory. So if one of them forbids and it proves effective, the obligation on the other shall drop; otherwise, it shall subsist.

Problem #20: If it is known that forbidding by one of the two persons shall be effective (in persuading the person to abandon a forbidden act), while forbidding by the other shall be effective in his persistence in the commission of the sinful act, it shall not be obligatory to forbid him.

Third Condition: The person committing the sinful act must be persistent in its commission. If it is known that he has abandoned it, the obligation shall drop.

Problem #1: If there appear indications of the person abandoning (the commission of the sinful act) and it is certain that he has abandoned it, then there shall be no difficulty in dropping the obligation. Similar, shall be the rule in case of satisfaction, and if two just witnesses testify to it, when its authority is perceptible or almost perceptible. The same rule shall apply in case of the appearance of penitence and repentance.

Problem #2: If presumptive signs of his abandonment appear, then whether it shall still be obligatory to enjoin or forbid him, it is not far from not being obligatory. The same rule shall apply if a person doubts about his persistence or abandonment. Of course, if it is known that the person was intending to persist or abandon, and there is doubt about the subsistence of the person's intention, its obligation is likely, though with some hesitation.

Problem #3: If there are reliable signs of the person's persistence, forbidding him shall be obligatory. If they are unreliable, there shall be hesitation in its obligation. The contrary shall be more in conformity with the traditional authority.

Problem #4: Persistence here means repetition (of the sinful act) even if once, and not consistency. If a person drinks an intoxicant, and intends to drink it again, forbidding him shall become obligatory.

Problem #5: Repentance from a sinful act is among obligations. So if a person commits a prohibited act or omits an obligatory one, he is bound to repent instantly. In case of its non-appearance, it becomes obligatory to enjoin him. The same rule applies if there is doubt about his penitence. This is something other than enjoining or forbidding in respect of other sinful acts. If a person doubts about the persistence (in committing a sinful act) by another, or knows about his non-persistence, he shall not be bound to forbid him from it, but if he abandons penitence, he shall be bound.

Problem #6: If it appears from the condition of a person through knowledge, satisfaction or any reliable way that he intends to commit a sinful act that he has not committed before, apparently it shall be obligatory to forbid him.

Problem #7: The other person's penitence or repentance is not a condition for the obligation of forbidding him. But in case of knowledge or the like about his non-repetition, it is not obligatory (to forbid him), even if his non-repentance on his act is known. It has already been explained that the obligation for enjoining repentance is different from the obligation for forbidding in respect of sinful acts committed.

Problem #8: If there is knowledge about a person's inability, or it is known through reliable source that he is actually unable to persist (to commit the sinful act), and it is known that he intends to persist due to his ignorance of about his inability, forbidding him shall not be obligatory in respect of an act that is beyond one's capacity, though it is obligatory in respect of abandoning repentance and intending to commit a sinful act, if we accept the opinion declaring it to be forbidden.

Problem #9: If a person is unable to commit a prohibited act, but was preparing to do it if he becomes able, then if it is known through a reliable source about his (regaining) ability to do it, apparently it shall be obligatory to forbid him; otherwise not, except in case of his intention to do it, provided that we accept it to be forbidden.

Problem #10: If a person believes he is unable to persist, but, in fact, he happens to be able, then if it is known that he shall commit it if he comes to know of his ability, in such case if the disappearance of his belief is known, apparently forbidding him shall be obligatory in a way that he may not realize his mistake; otherwise not.

Problem #11: If it is known that one of two or more persons is persistent in the commission of a prohibited act, apparently it shall be obligatory to address in a way that may apply to that person, so that he may say that whosoever drinks wine must give it up, but it is not obligatory to forbid all of them or some particular ones; rather, it is not permissible. If, however, addressing the forbidding in a way that is applicable to the person committing the act shall amount to be an affront to all of them, then apparently it shall not be obligatory, rather not even permissible (to forbid him).

Problem #12: If it is known that a prohibited act has been performed or an obligatory act has been omitted, but there is no definite knowledge about it, it shall be obligatory in a vague way. If it is known briefly that a person has either omitted an obligatory act or has committed a forbidden one, it shall be obligatory accordingly or in a vague way.

Fourth Condition: There should not be in the forbiddance any cause of evil.

Problem #1: If it is known or is presumed that forbidding a person shall cause a considerable damage to his life, honour or property or any of persons related to him like his close relatives, companions or servants, forbidding him shall not be obligatory and its obligation shall drop. Rather it shall be so even if its considerable likelihood is apprehended by the wise. Apparently other believers are also to be added (to the list of those feared to suffer).

Problem #2: There is no difference whether the damage or loss relates to the present or future time. If it is apprehended that the damage or loss shall be borne by him or someone else as a consequence, the obligation (of forbidding) shall drop.

Problem #3: If it is known, presumed or apprehended that there is considerable likelihood that forbidding him shall cause trouble or discomfort to the person or those related to him, it shall not be obligatory. It is not far from being likely to include other believers too (in the list of those feared to suffer).

Problem #4: If there is fear of damage to one's own life or honour, or the person or honour of believers, forbidding shall be forbidden. Similarly, if there is apprehension of considerable damage to the property of the believers, (the same rule shall apply). If, however, if he fears some damage or loss to his own property, or there is certain knowledge about it, then if it does not mean any trouble

or discomfort to him, then apparently the obligation shall not be forbidden. But in case otherwise, it shall not be far from forbidding the obligation.

Problem #5: If making another to exercise an obligatory act or elimination of a wrong depends on expending a considerable amount of money, it shall not be obligatory to expend it. It is, however, approved to expend it if it does not cause any trouble or discomfort. In case otherwise, it shall not be far from being non-permissible. Of course, if the case is such that the Legislator {i.e. Allah} has attached much importance to it and does not agree with its violation at all, it shall be obligatory (to expend the money).

Problem #6: If the right or wrong is one that is attached so much importance by the Holy Legislator (i.e., Allah, the Exalted), as the protection of the life or honour of a tribe from among the Muslims, or destruction of Islamic monuments or its records that may cause leading the Muslims astray, or destruction of some of the Islamic places of worship like the Holy House of Allah (i.e., the Holy Ka'bah in Mecca) by extirpating its monuments and situation, and the like, then it is indispensable to keep its importance in view. In such case, the mere damage or loss, whether to one's life or trouble shall not cause the exemption from the duty. If the safeguard of - the Islamic records that may remove the aberration depends on the sacrifice of one or more lives, apparently it shall be obligatory, not to speak of suffering the loss or trouble that is far less (than sacrificing life).

Problem #7: If some innovation has been made in Islam, and the silence on the part of the scholars of the faith and the religious leaders, May Allah elevates their authority. has led to disgrace Islam and weakening the beliefs of the Muslims, it shall be obligatory to forbid them (from keeping silence) in whatever way it is possible, regardless whether such action is effective in the elimination of the evil or not. The same shall be the case if their silence over failure to forbid the commission of wrongs leads to the same effect. In such case, consideration shall be made for the importance of the issue and not the damage and discomfort involved.

Problem #8: If, in the silence of the scholars of faith and religious leaders, May Allah elevate their authority, there is apprehension that the wrong may become right, or the right may become wrong, it shall be obligatory (on the people) to express their knowledge (about the apprehension), and it is not permissible to keep silence, even if they know ineffectiveness of their appeal in the abandonment (of the silence). In such case, consideration shall not be made for the damage and discomfort provided the Command is such that the Holy Legislator (i.e., Allah, the Exalted) has attached great importance to it.

Problem #9: If, in the silence of the scholars of faith and religious leaders, May Allah elevate their authority, lies encouragement and support for the oppressor, God Forbid, silence on their part is forbidden, and they are duty-bound to give vent to their displeasure even if it is not effective in elimination of the injustice.

Problem #10: If the silence of the scholars of faith and religious leaders, May Allah elevate their authority, is instrumental in emboldening the oppressors on the commission of other prohibited acts

and resorting to innovations, keeping silence shall be forbidden on their part, and they shall be duty-bound to forbid (the oppressors), even if it is not effective in the elimination of the prohibited practice being perpetrated (by the oppressors).

Problem #11: If the silence of the scholars of faith and religious leaders, May Allah elevate their authority, causes misconception about them, their disgrace and their attribution to what is not lawful, while it is not proper to attribute to them, suppose, God Forbid, to be supporters of the oppressors, they shall be duty-bound to forbid them in order to ward off the outrage against their position, even if it is not effective in the eradication of the injustice.

Problem #12: If the inclusion of some of the religious scholars, for example, in some of the government departments is instrumental in the establishment of one or more obligatory practices, or in extirpation of one or more wrong practices, and there is no more important impediment like dishonouring the position of religious scholarship and religious scholars and weakening the beliefs of the weak believers, it shall be obligatory as a collective duty, except when it is not possible but for some particular individuals from among them due to their special qualifications, then it shall be obligatory on them as an individual duty.

Problem #13: It is not permissible for the students of religious sciences to join the institutions established by the government as religious institutes as the old schools occupied by the government and being supported by the Trusts.

Nor is it permissible for them to get their allowance from them, irrespective of its being from the joint fund or the trust of the school itself, etc. due to the cause of tremendous evil apprehended from it against Islam.

Problem #14: It is not permissible for the religious scholars and the leaders of the religious groups to accept the charge of any of the religious schools offered by the government, regardless whether the money spent on them and the students belongs to the joint fund or the trusts of the schools themselves, etc., due to cause of tremendous evil against the religious and scholarly seminaries in the near future.

Problem #15: It is not permissible for the religious students to join the religious schools headed by some of the persons dressed in the attire of the religious scholars provided by the tyrant government or by the order of the government, whether their curricula have been designed by the government or the principals, despite their being of religious nature, due to cause of tremendous evil against Islam and the religious seminaries in future, May Allah keep them under His Protection.

Problem #16: If there are indications that a religious institution has been established or its expenditure is met by the tyrant government, even if through various sources, it shall neither be permissible for a religious scholar to accept its charge, nor for the religious students to join it or get their allowance from it.

Rather, if there is a considerable likelihood of it, it is necessary to keep away from it, as a matter that is attached a lot of importance by the canonical law of Islam. So it is obligatory to observe caution in such cases.

Problem #17: An in charge of such an institution or one joining it is condemned as devoid of moral soundness (*'Adalat*). It is not permissible for the Muslims to accept them as fulfilling the conditions of moral soundness in matters where moral soundness is a pre-requisite as leading the congregational prayer or testifying as a witness in a divorce, etc.

Problem #18: It is not permissible for them to receive the share of the Imam, Peace be upon him, or the share of the *Sadat*, nor is it permissible for the Muslims to give anything out of both the shares as long as they remain in the said institutions and do not refrain from it and repent.

Problem #19: The excuses forwarded by some of those pretending to be scholars and religious leaders for accepting the charge (of such institutions) shall not be accepted from them, even if it is acceptable in the eyes of those ignorant people having superficial religious knowledge.

Problem #20: Neither morally soundness is a condition for one enjoining or forbidding, nor is it a condition that he must himself act upon what he is enjoining or refraining from what he is forbidding when a person is bound to enjoin (or forbid) in case he fulfils all the requisite conditions, as one who acts on something is bound (to enjoin it) and if he were committing the wrong, he is bound to forbid committing it, in the same way as it is forbidden for him to commit it.

Problem #21: A minor is not bound to enjoin or forbid (anything), even if he is a discreet adolescent. Nor is it obligatory on a *non-Mukallaf* like a minor or insane person to enjoin or forbid (another). Of course, if the wrong is such that the person does not agree with its existence at all, a *Mukallaf* is bound to forbid a *non-Mukallaf* from its commission.

Problem #22: If a person committing a forbidden act or omitting an obligatory one is excused by the Islamic canonical law (*Shariat*) or human reason, it is not obligatory, rather permissible, to forbid him.

Problem #23: If there is likelihood of a person committing a forbidden act or omitting an obligatory one to be excused, it shall not be obligatory to forbid him, rather it shall be difficult (to decide). If a person breaking fast during the month of Ramadan is likely to be, for example, a traveller, it shall not be obligatory to forbid him, rather it shall be difficult (to decide). Of course, if it is done publicly causing an affront to the Islamic commands, or encouraging people to commit the forbidden acts, it shall be obligatory to forbid him to do it.

Problem #24: If a person committing a forbidden act or omitting an obligatory one believes it to be permissible, but was mistaken in it, if it were due to the confusion about the subject, as considering fasting to be harmful for him, or the forbidden object being the sole cure for him, it shall neither be obligatory to remove his ignorance nor to forbid him. If it were due to the ignorance about the

canonical command, then if he were a *Mujtahid* or a follower of one who has given a verdict in its favour, then it is not obligatory to remove his ignorance or iterating the canonical command to him. If, however, he was ignorant of a canonical command that he is bound to act upon, then it is obligatory to remove his ignorance and informing him about the actual canonical command and it shall also be obligatory to forbid him.

Chapter Three - Grades of Enjoining the Right and Forbidding the Wrong

The act of enjoining the right and forbidding the wrong has grades, and it is not permissible to overstep from one stage to another provided that the purpose is served by the lower stage, rather even if there is its likelihood.

First Stage: A person must act himself in a way that it may express his heart-felt abhorrence against the wrong, and his desire thereby for the performance of the right and omission of the wrong. It has also various steps, e.g., winking the eyes, frowning and contracting ones face, or turning one's face or body, deserting a person or abandoning contact with him, or the like.

Problem #1: It is obligatory to suffice with the above-mentioned step in case of the likelihood of its being effective and eliminating the wrong. Likewise, it is obligatory to content oneself with taking the lowest possible step and adopt the easiest possible course, particularly when the other person feels affronted by such act, and it is not permissible to cross the necessary limit. If there is likelihood of achieving the purpose by winking the eyes conveying what is meant by it, it shall not be permissible to cross over to a higher stage.

Problem #2: If turning the face or body and desertion, for example, lead to reducing the wrong but not to its eradication, and there is no likelihood of enjoining or forbidding verbally to be effective in its eradication, and it is not possible to forbid without it, it shall be obligatory to do so.

Problem #3: If there is likelihood of effectiveness in the avoidance of the unjust and tyrant rulers by the scholars of faith and religious leaders, even if in the reduction of the severity of their injustice, they shall be duty-bound to do it. If the contrary like their social contact and communication is supposed to lead to that effect, it shall be indispensable to take into consideration the various aspects and prefer the more important course. In case there is no other obstacle in their way, not even the likelihood of their social contact leading to their glorification, encouragement and emboldening them to disgrace the commands of prohibition or the likelihood of affront to the position of the religious scholars, spiritual leaders and misconception about the scholars of Islam, it shall be obligatory to achieve the said objective.

Problem #4: If the social communication of the scholars of Islamic faith and religious leaders is devoid of the observation of the necessary preferable consideration, it shall not be permissible for them, particularly when it would lead to their condemnation and attribution of their willingness for the practice of the tyrant.

Problem #5: If in the rejection of the gifts of the oppressors and tyrant rulers there is likelihood of effectiveness in reduction of their injustice or in their boldness in initiating innovations (in faith), their rejection shall be obligatory, and it shall not be permissible to accept them. If, however, it were otherwise, then it shall be indispensable to take into consideration the various aspects and prefer the more important course, as mentioned before.

Problem #6: If the acceptance of the oppressors' gifts would consolidate their glory and embolden them in their perpetration of injustice or initiation of innovations (in faith), their acceptance shall be forbidden. In case of its likelihood it shall be more cautious not to accept the gifts. If the case is otherwise, then it shall be obligatory to take into consideration its various aspects and adopt the more important course.

Problem #7: It is forbidden to acquiesce in the commission of a wrong or omission of a right act. Rather it is not far from abhorring both of them. That is besides enjoining the right and forbidding the wrong.

Problem #8: Prohibition of acquiescence (in the wrong) and obligation of abhorrence is not conditional as a condition, rather the former is forbidden and the latter is obligatory in all circumstances.

Second Stage: Enjoining and forbidding verbally.

Problem #1: If it is certain that the first stage shall not serve the purpose, it shall be obligatory to shift to the second stage provided that there is likelihood of its effectiveness.

Problem #2: If there is likelihood of achieving the end by admonition, guidance and soft words, it shall be obligatory to adopt them and not to overstep them.

Problem #3: If it is certain that the above-mentioned course shall not be effective, he shall have to shift to a sterner stage of enjoining and forbidding, and it shall be obligatory to start with softer words, provided that there is likelihood of their effectiveness, and it is allowed to overstep, particularly if it is a case when the person committing the wrong feels affronted by his words.

Problem #4: If the elimination of the wrong and maintenance of the right depend on the use of harsher words and adopting a more vigorous course in enjoining, forbidding and warning of opposition, it shall be permissible (to do so) Rather it shall be obligatory (to do so) at the same time refraining from lying.

Problem #5: It is not permissible to stretch forbidding to what is forbidden and abhorrent like using abusive language, lying or insulting words. Of course, if the wrong is such that is attached a great importance by the Legislator (i.e., Allah, the Exalted) who does not agree with its commission absolutely, like killing a human soul, and commission of heinous crimes and mortal sinful acts, it shall be permissible (to use such language). Rather it shall be obligatory first to forbid, prevent and if necessary to resort to what is mentioned before if it is indispensable for prevention.

Problem #6: If some of the verbal steps are milder in hurting and insulting than what have been mentioned under the First Stage, it shall be obligatory to confine oneself to them, and let them serve as introduction (to the later steps). If it is supposed that admonition and direction in soft words and cheerful face shall be effective and possibly effective and less hurting than desertion, turning the face or the like, it shall not be permissible to overstep them. There are very different persons among

those forbidding others and forbidden by others. For some turning the face or desertion hurts them severely and is a strong affront as compared to the use of words, enjoining or forbidding. So it is indispensable for a person enjoining or forbidding another to take into consideration the difference between the stages and persons, and start with adopting the softest possible course.

Problem #7: If suppose some of the measures belonging to the first stage are equal to those belonging to the second stage, one is not bound to observe any sequence in them, and he is free to opt whichever he likes.

If, suppose, turning the face is equal to forbidding in hurting the other person, and each of the two is certain or likely to be effective, the person forbidding may opt either, and it is not permissible to shift over to the harsher one.

Problem #8: If it is likely to be effective and achieve the end by adopting some of the steps of the First Stage together with some other steps of the Second Stage, or by adopting all the measures of the First or Second Stages together or those that can be put together, or putting together both the stages as far as possible, it shall be obligatory to put them together as far as possible.

If it is certain that some of the steps shall be ineffective, while there is likelihood of effectiveness if contracting face, frowning, desertion and verbal forbidding accompanied by harsh words, threatening loud voice and frightening or the like are put together, it shall be obligatory to use them together.

Problem #9: If the elimination of a wrong or maintenance of a right depends on asking the help of a tyrant for preventing the commission of a sinful act, it shall be permissible (to do so). Rather it shall be obligatory at the same time avoiding any transgression from what is advisable for the performance of the duty, and the tyrant is bound to acquiesce. Rather its elimination is obligatory on the tyrant as on any other, and he shall be-bound to follow what is followed by any other person in forbidding by starting with the softest possible steps.

Problem #10: If the purpose can be achieved by a lower stage in case of a person and a higher stage in case of another, then apparently it is obligatory to do what is necessary for each individually, and it is not obligatory to entrust to the person who can achieve the purpose by adopting the lower stage.

Problem #11: If forbidding a person is effective in reducing the wrong, while forbidding another is effective in its elimination, it shall be obligatory to act what is necessary for each of them individually. But if action is taken for what is necessary for one of them thereby eliminating the wrong, the obligation for acting for the other shall drop, contrary to the case when action is taken for the one causing there by reduction of the wrong in which case the duty towards the other shall not drop.

Problem #12: If it is known briefly that forbidding by either of the two stages is (equally) effective, it shall be obligatory to adopt the lower stage. If the purpose is not achieved thereby, resort shall be made to the higher stage.

Third Stage: Forbidding by use of hand

Problem #1: If one is certain and satisfied that the purpose shall not be achieved by both the stages mentioned before, it shall be obligatory to shift to the Third Stage, and that involves using force by first adopting the softest possible step.

Problem #2: If it is possible to prevent the person by intervening between him and the wrongful act, he shall be bound to confine himself to that, if it is less troublesome than other measures.

Problem #3: If the intervention depends on taking hold of the person or the implement of his act, as when it depends on holding his hand, or pushing him aside or occupying his cup in which there is wine, or getting hold of his knife, or the like, it is permissible, rather obligatory (to do so).

Problem #4: If the elimination of a wrong depends on entering the person's house or his property, and making any change in his property like his carpet or bedding, it shall be permissible (to do so), if the wrong belongs to such important acts that the Lord does not like its violation in whatever way, as killing a human soul, but in other cases, there is difficulty (in its permissibility), it is not far from being permissible to adopt some of the measure in case of preventing some of the wrongful acts.

Problem #5: If the prevention results in the occurrence of some damage to the person perpetrating the wrongful act, as breakage of his cup (of wine) or his knife, in a way that it was necessary in the act of prevention; then, it is not far from non-entailment of the liability (of the person preventing him). If, however, the damage is caused by the person to the one enjoining or forbidding him, he shall be held liable and considered an offender.

Problem #6: If a person (enjoining or forbidding another) breaks the bottle containing wine or the box containing the implements of gambling that may not be necessarily required for the prevention of the act, he shall be held liable and considered to have committed a forbidden act.

Problem #7: If a person transgresses from the necessary limit required in the prevention of the wrong that results in some damage to the person committing the wrong, he shall be held liable, and the transgression shall be considered forbidden.

Problem #8: If the intervention depends on confining the person in some place or preventing him from leaving his house, it shall be permissible. Rather it shall be obligatory with the observation of the condition of starting with the most lenient and the easiest possible measure. It is not permissible to inflict on him any pain or straitening his livelihood.

Problem #9: If the purpose is not achieved except by inflicting pain and straitening his livelihood, then apparently it shall be permissible. Rather it shall be obligatory, observing the obligation of starting with the most lenient possible measure.

Problem #10: If the purpose is not served except by hitting him and inflicting pain on him, then apparently it shall be permissible with the condition of starting with the most lenient and easiest measure. He should also obtain the permission of a jurist possessing all the necessary qualifications. Rather it is necessary in case of imprisoning or inflicting pain, etc.

Problem #11: If forbidding causes wounding or killing, according to the stronger opinion, it shall not be permissible except by the permission of the Imam, May peace be upon him. At the present time, a jurist possessing the necessary qualifications stands in place of the Imam provided that he fulfills all the conditions.

Problem #12: If the wrong be such with which the Lord does not agree at all like killing a human soul, it shall be permissible, rather obligatory to prevent it, even if it results in wounding the perpetrator or killing him. So it shall be obligatory to defend the human soul by wounding or even killing the perpetrator, if it is not possible without it, and there shall be no need of obtaining the permission of the Imam, May peace be upon him) or of the jurist fulfilling the necessary conditions. If a person attacks another to kill him, he shall be bound to prevent him, even if by killing him provided that it is safe from evil. In such case, the killer shall have no liability.

Problem #13: It is not permissible to transgress to killing if there is possibility of preventing it by wounding. In wounding too consideration shall have to be made for starting with possibility the least harmful, so that if a person transgresses, he shall be held liable for it, in the same way as if the perpetrator of the wrong wounds the person forbidding him, he shall be liable for it or if he kills him, he shall be liable for *Qisas*.

Problem #14: A person enjoining a right or forbidding a wrong while enjoining or forbidding and in the stages of forbidding must behave like a kind physician treating a patient or like a kind father keeping in consideration interests of the perpetrator of the wrong, and that his act of forbidding the perpetrator must be out of love and kindness, particularly towards him and the community in general. His intention must be to do all that for the sake of Allah, the Exalted and the attainment of His Pleasure, and his act must be free from all the blemishes of his personal desires and manifestation of his own exaltation. He must neither consider himself free from all blemishes, nor higher or more elevated than the perpetrator (of the wrong). Sometimes the perpetrator (of the wrong) or fatal sins possesses some personal qualities enjoying approval of Allah, the Exalted, for which He may love him, though He may be angry with him due to that particular act, while sometimes a person enjoining or forbidding another happens to be otherwise, though this fact may be hidden from himself.

Problem #15: The most significant, most preferable, the most pleasing quality having the most effective and impressive impact on the people possessed by the individuals enjoining a right or

forbidding a wrong, particularly when the person enjoining or forbidding happens to be from among the scholars of faith and religious leaders, May Allah elevate their authority, is that it should be performed by a person wearing the cloak of right, whether obligatory or approved, and abstaining from wrong, rather even anything disapproved, and that he must follow the moral habits of the prophets and the clerics and purifies himself from the habits of the idiots and lovers of the (material) world, so that he may prove to be an enjoining or forbidding person even by his acts, attire and character, and people may be willing to follow him. God Forbid, if he happens to be otherwise, and the people notice that the religious scholar who claims to be a successor of the prophets and a leader of the community does not act upon what he preaches, it shall cause weakness in their faith, and embolden them to commit sinful acts and shall have a wrong opinion about the pious persons of yore. It is, therefore, a duty particularly of the scholars (of faith) and religious leaders to keep away from places of accusation (i.e., places where they may be accused of sinful acts), most significant of them being closeness to tyrant rulers and oppressive chieftains. It is the duty of the Muslim Ummah (Community) that if they find such a religious scholar, they may construe it to be right provided that there is its likelihood; otherwise, they must keep themselves away from him and reject him, he must be a non-ecclesiast, clad in the attire of the ecclesiasts, and a devil wearing the cloak of the scholars, We ask Allah to keep Islam in His Shelter against such person and against his evil.

CONCLUSION

It has the following Problems.

Problem #1: No one except the Imam of the Muslims, May peace be upon him, or one designated by him is authorized to have the charge of the political affairs like executing the *Hudud*, or the judicial or financial matters like collecting the revenues and taxes in accordance with the *Shari'ah* (or Islamic canonical law).

Problem #2: In the period of the Occultation of the *Waliyyal-Amr* and the Monarch of the Epoch, (i.e., Imam Mahdi, the 12th Imam), May Allah hasten his Holy Appearance, stand his general successors in his place for wielding the political authority and all powers held by the Imam, May peace be upon him, except initiating *Jihad*, and they are the jurists possessing all the qualifications of issuing religious verdicts and judgments.

Problem #3: It is the collective duty of the general successors (of the Imam) to perform the above-mentioned functions to the extent it is easy and as far as it is possible in case they are free to do so and have no fear of the tyrant rulers.

Problem #4: It is the collective duty of the people to cooperate with the jurists in the implementation of the policies and other non-litigious matters that are exclusively reserved for them during the Period of Occultation (of the 12th Imam) if possible, and if not, to the extent it is easy and possible.

Problem #5: It is not permissible to hold the authority entrusted by a tyrant, of executing the *Hudud* and issuing judgments, etc., not to speak of implementing policies repugnant to *Shari'ah*.

If a person accepts such authority entrusted by the tyrant in spite of having the power to refuse it, and performs something entailing a liability, he shall be held liable for it, and it shall be a fatal sinful act.

Problem #6: If a tyrant (ruler) compels him by force to wield authority in any case, it shall be permissible (for him to accept it), except in the case of inflicting death, and the liability shall go to the tyrant. There is hesitation in treating the case of wounding as similar to the case of inflicting death.

Of course, some other important cases are treated at par with the case of inflicting death, which have been mentioned before.

Problem #7: If a jurist possessing the necessary qualifications accepts the authority for some political or judicial matter or the like entrusted to him by a tyrant ruler, due to some special consideration, it shall be permissible, but he shall be bound to execute the *Hudud* of *Shari'ah* and issue judgments according to the criteria of the *Shari'ah*, and perform the non-litigious matters, but he is not allowed to transgress the limits imposed by Allah, the Exalted.

Problem #8: If a jurist is of the opinion that acceptance of an authority entrusted by a tyrant ruler shall lead to the enforcement of the *Hudud* of *Shari'ah* and the implementation of the divine policies, he shall be bound to accept it, except when its acceptance would lead to tremendous evil.

Problem #9: A *Mutajazzi Muftahid* (A Muftahid who is allowed to exercise *Ijtihad* in some religious matter, but not in all of them) has no authority in the matters mentioned above. According to the more cautious opinion, his position is similar to that of a common man.

Of course, in the absence of a jurist and a *Mutlaq Muftahid* (A Muftahid who is allowed to exercise *Ijtihad* in all religious matters), it is not far from being permissible for him to accept the authority to issue judgments if he were allowed to exercise *Ijtihad* in this field.

Similarly, according to the more cautious opinion, he shall be preferable to all other morally sound persons to wield the authority in non-litigious issues.

Problem #10: It is not permissible to refer the disputes to the tyrant rulers and his judges. Rather the disputants are bound to refer their cases to a jurist possessing the necessary qualifications.

In case it is possible and the person refers the matter to a person other than the jurist, whatever he receives as a result of that judgment shall be forbidden, according to the details in this case.

Problem #11: If a complainant invites his opponent to refer the case to a jurist, he shall be bound to accept it, in the same way as when the defendant is willing to refer the case to a jurist, the complainant shall not be allowed to refer it to some other person. .

Problem #12: If a complainant files the case in a *Shari'ah* court, and the judge summons the defendant, he shall be bound to appear, and his non-appearance shall not be allowed.

Problem #13: It is the collective duty of the judges of the *Shari'ah* court to accept the cases referred to them. In case of being the sole judge, it shall be his individual duty (to accept the cases filed in the *Shari'ah* Court).

DISCOURSE ON DEFENCE

There are two Categories of Defense. The First Category concerns the Defense of the Islamic Territory and Its Boundaries, while the Second Category concerns the Defense of oneself, etc.

Chapter One - First Category

Problem #1: If an enemy, who is a danger to the, Islamic Territory and the Muslim society, invades Muslim countries and their frontiers, the Muslims shall be bound to put up defense against him by whatever means possible like aid in the form of money and men.

Problem #2: Presence or permission of the Imam, May peace be upon him, or that of his general or special representative is not a condition for it. So it is obligatory on every *Mukallaf* to put up defense by whatever means without any condition or limitation.

Problem #3: If there is a danger of extensive subjugation of the Muslim countries, their conquest and captivity, defense shall be obligatory by whatever means possible.

Problem #4: If there is a danger of political and economic subjugation to the Islamic pale leading to their political and economic captivity, enervation of Islam and Muslims and their weakness, it shall be obligatory to put up defense by similar means and measures of negative resistance like boycotting the purchase of the enemy's products and giving their use, and having total suspension of social contact and trade relations with him.

Problem #5: If there lies in the trade relations (with the enemy) a danger to the pale of Islam and the Muslim countries in the form of foreigners' domination on them politically, etc., leading to their exploitation or the exploitation of their countries, or even morally, it shall be obligatory on the entire Muslim community to refrain from them and prohibit such relations.

Problem #6: If the political relations between the Islamic states and the foreigners lead to the subjugation of the Muslim countries, people or their property, or their political domination, it shall be forbidden for the heads of the Muslim states to maintain such relations and ties, and all treaties with them shall be declared null and void, and it shall be obligatory on the Muslims to guide their heads of states and force them to renounce them even by means of civil disobedience.

Problem #7: If there is a danger of foreign aggression on any Islamic state, it shall be obligatory on all the Muslim states to defend her by whatever means possible in the same way as it is obligatory on the Muslims.

Problem #8: If any of the Muslim states concludes a treaty for relations against the interests of Islam and Muslims, all the Muslim states shall be bound to make efforts for its revocation by political or economic means, such as severing political and trade relations with that state, and it shall be obligatory on all the Muslims to make all possible arrangements for it as by negative resistance (or civil disobedience). Such treaties are forbidden in the Islamic *Shari'ah*.

Problem #9: If some of the heads of Islamic states or the members of their parliament are instrumental in bringing about foreign influence, politically or economically, on the Islamic state, in a way that there is danger to the Islamic pale or the independence of the state, even if in future, they

shall be deemed traitors and must be deprived of whatever position held by them, even if it is supposed that they had rightfully occupied it, and the Muslim community is bound to punish them even by means of negative resistance, such as their social and commercial boycott and severing relations with them in whatever way possible, and arrange their dismissal from all the political positions and depriving them of the social rights.

Problem #10: If in the trade relations of some Muslim states or merchants with some foreign states or merchants there lies a danger to the Muslim markets or their vital economic interests, it shall be obligatory to abandon them and declare such trade to be forbidden, and in view of the danger, the religious leaders shall be bound to prohibit their products and trade with them as required by the existing conditions, and the Muslim community shall be bound to follow them, as all its members shall also be bound to endeavor the secession of the said trade relations.

Chapter Two - Second Category

Problem #1: There is no objection if a person defends himself, his honour or his property as far as possible against enemies, aggressors, thieves and the like.

Problem #2: If a person is attacked by a thief, etc. in his house, etc. to kill him unjustly (or without any reason), he is bound to defend himself by whatever means possible, even if it results in killing the aggressor, and he is not allowed to surrender and bow before the injustice.

Problem #3: If a person attacks someone related to another like his son, daughter, father, brother or any other person related to him, including his male or female servant, to kill him or her unjustly (or without any reason), it is permissible, rather obligatory, to defend him or her even if it results in killing the aggressor.

Problem #4: If a person makes a trespass on the haram of another, regardless of her being his wife or any other person, he shall be bound to defend her in whatever way possible, even if it results in killing the trespasser. Rather, apparently the same rule shall apply if some one attacks his haram short of trespass.

Problem #5: If a person makes a trespass on his or his wife's property, it shall be permissible for him to defend it by whatever means possible, even if it results in killing the trespasser.

Problem #6: In all the cases mentioned above, a person is bound to initiate with the mildest steps possible. So if the defense is possible by admonition or warning in any way as, for example, by coughing, he shall do it.

Similarly, if the danger cannot be removed except by shouting or horrifying threats, he shall do so and confine himself to such acts.

So also if it cannot be removed except by the use of hand, he shall use it, or by the use of a rod, he shall confine himself to its use. If it cannot be removed except by the use of the sword, he shall confine himself to inflicting injury, if the danger can be removed by it. If it is not possible except by killing, he shall kill with any killing implement.

One is bound to observe the sequence if possible and if there is ample time and absence of any fear of thief over overpowering-him. Rather if there is fear of loss of time and his being overpowered by the thief by observing the sequence, he shall not be bound to observe the sequence, and he shall be allowed to resort to the sure means of defense.

Problem #7: If the person (defending himself) has not transgressed the limits, and some monetary or physical damage or death is incurred on the aggressor, it shall entail no liability, and the defender shall not be held liable for his act.

Problem #8: If the person (defending himself) transgressed the limit that in his own view and in fact would be sufficient for his defense, then, according to the more cautious opinion, he shall be held liable for it.

Problem #9: If some damage is caused to the person defending himself by the aggressor directly or indirectly, he shall be held liable for it, regardless whether it is an injury, loss of life or property, or the like.

Problem #10: If a person or his harem is subjected to aggression for killing him or her, he is bound to defend himself or her, even if he is sure of being killed, not to speak of anything less than that, and not to speak of the case he presumes so, or there is its likelihood. But in case of loss of property, one is not bound to defend it. Rather it is more cautious to surrender it in case there is likelihood of loss of life, not to speak of the case when there is certainty of being killed.

Problem #11: If it is possible to save oneself by escape or the like, then it is more cautious to save oneself by escape or the like. If one's harem is subjected to aggression, and it is possible to save oneself in any way other than fighting, then it is more cautious to resort to it.

Problem #12: If a person or his harem is subjected to aggression for killing him or her, he shall be bound to fight, even if he is certain that his fight shall not be effective for his defense, and it is not permissible for him to surrender, not to speak of the case when he presumes it or there is its likelihood. But in case of fear of loss of property, he is not bound to fight; rather, it is more cautious to refrain from it.

Problem #13: If the intention of an aggressor is proved, even if by reliable indications, it shall be permissible for him to defend himself without any hesitation. Whether it is permissible for him to do so in case of presumption or likelihood causing apprehension, apparently it shall not be permissible for him provided that he is sure of being safe from the harm if someone intends to incur it due to his power of defense or his strength or the possibility of defense in any way if someone intends to attack him. In case otherwise, there is hesitation in the absence of permissibility.

Problem #14: If a person gains knowledge that some one is intending to attack him, his honour or his property, and so he exerts in his defense, but in doing so he injures the other person or hurts him physically. Later, it transpires that he was mistaken. In such case, he shall be held liable, even if he shall not be considered to have committed any sinful act.

Problem #15: If some thief or aggressor intends to attack a person, while he thinks otherwise. Now if he attacks the thief or aggressor not for defending himself but due to some other reason, then apparently he shall not be held liable even if he kills the thief or aggressor, but he shall be considered foolhardy.

Problem #16: If two thieves or such individuals attack each other, then if one of them took the initiative while the other defended himself, the initiator shall be held liable but not the defender,

although had the initiator had not taken the initiative, the other one would have taken the lead. If both of them attack simultaneously, then apparently each of them shall be held liable if they have hurt each other physically. If one of them refrains, but the other attacks him and hurts him physically, the other person shall be held liable.

Problem #17: If a person is attacked by a thief or such other person, but he knows that he would not be able to execute his intention due to the hindrance of a river or a wall, he must save himself from the other, but he shall not be allowed to inflict any injury on him or his life, etc, so that if he inflicts some injury, he shall be held liable for it. The same rule shall apply if the improbability was due to other person's weakness.

Problem #18: If a person is going to attack another, but before reaching the other repents and repentance is visible from him, the other person shall not be allowed to harm him in any way. If he does, he shall be held liable for it. Of course, if he is afraid that it is a ruse on his part and that he shall thereby lose an opportunity if he lets him go, then it shall not be far from permissible. But he shall be held liable (for the injury) if the other party happens to be truthful.

Problem #19: It is permissible to defend oneself if a person faces an aggressor or such other person, at the same time observing the sequence mentioned, if possible.

Problem #20: If the enemy's falling back is meant for gathering force, the other person shall be allowed to defend himself, provided that he is certain or is satisfied about its being so. But if he turns out to be mistaken, he shall be held liable for any injury incurred by him.

Problem #21: If a person presumes or there is reasonable likelihood that the enemy's falling back is meant for arranging force, and so the other person is afraid of any harm to his life or honour, and at the same time he is afraid of losing an opportunity if he lets him go, and that he shall overpower him if he gathers the strength, then apparently he shall be allowed to put up defense at the same time observing the sequence, if possible. But if later it transpires that he was mistaken, he shall be held liable for what entails liability. It is more cautious to abandon defense, particularly if it would cause injury or death (to the other person).

Problem #22: If a person catches a thief or an aggressor, fastens him or beats him and then leaves him in a way that he is no more able to execute his intention, then he shall not be allowed to harm him by beating or killing or wounding him. If he does, he shall be held liable for it.

Problem #23: If it is not possible for a person to defend himself, then in case his life or honour is threatened, he shall be bound to ask the help of another, even if he were a tyrant oppressor, rather even if he were an infidel. It is also allowed in case of defending one's property.

Problem #24: If he is certain that the oppressor whose help he is beseeching for defending his life or honour would transgress the limits necessary for defense, even then he shall be allowed to ask for his help; rather, he shall be bound to do so. If all the conditions are there, he shall be bound to

forbid him from transgressing. If he transgresses, he shall be held liable for it. Of course, if defense is possible without asking for help, he shall not be allowed to ask for help.

Problem #25: If a person beats a thief, for example, when he is face to face with him, and cuts some of his limbs, provided that it was indispensable for his defense, he shall not be held liable for it. Nor shall he be held liable if later the wound is infected and results in the death (of the thief). But if after beating, the thief turns his back for safety and runs away, he must let him go. In the latter case, if the person beats the thief, injuring him or cutting any of his limbs, or killing him, he shall be liable.

Problem #26: If the (defending) person cuts the hand of the thief while defending himself in the combat and the other hand while the thief had turned his back and was running away, and then both the hands are healed, the *Qisas* for the second hand shall be established. But if the second hand is healed, but the first is infected, he shall be under no liability for it. If, however, the first hand is healed, and the second one is infected, resulting in the death (of the thief), *Qisas* shall be established for it.

Problem #27: If a person finds another committing an unlawful act short of fornication with his wife or any of his close relatives like his son, daughter, or any other of his kinsmen, he shall be entitled to drive him away at the same time starting with the mildest measures, if possible, even if it leads to killing the trespasser, and he shall not be held liable for it. Rather, even if he defends a stranger as if defending himself, then he shall not be held liable for whatever happens to the other party.

Problem #28: If a man finds another man indulging in fornication with his wife, and is certain of his wife's acquiescence with it, he shall be allowed to kill both of them, and he shall neither be considered to have committed a sin nor held liable to pay *Diyat*, regardless whether both of them are married or not, and whether the wife is permanent or temporary, and whether marriage has been consummated or not.

Problem #29: In cases where permission is given for beating, injuring or killing, this permission is between him and Allah, and, in fact, in such case he is under no liability. But apparently the judge shall give his judgment in such cases according to the judicial criteria. So if a person has killed a man, and claims that he had seen him (committing fornication) with his wife, and has no witnesses as required by the Legislator (i.e., Allah, the Exalted), the judge shall condemn him to pay *Qisas*. The same principle shall be observed in other cases of similar magnitude.

Problem #30: If a person casts an eye on the privy parts of others, an act that is forbidden for him, they shall be entitled to rebuke and forbid him. Rather they shall be bound to do so. In case he does not stop, they shall be allowed to drive him away by beating, etc. If he does not give up, then they may throw a pebble, etc. upon him including fatal implements. In this case, if any injury is inflicted on him, it shall cause no liability on the person inflicting it, even if it results in death (of the

perpetrator of the forbidden act). If they resort to throwing pebbles, before rebuking and warning him, according to the more cautious opinion, they shall be held liable.

Problem #31: If the people rebuke him, but he does not desist, they shall be entitled to throw pebbles on him with the intention of wounding him, if the solution lies solely with it, and also intending to kill him, if this is the sole measure for driving him away.

Problem #32: If the onlooker were a kinsman of the women of the master of the house (or head of the family), and he were looking at what was allowed to look at without any carnal desire or bad intention, they shall not be entitled to throw pebbles on him. If they do so, resulting in some injury to him, they shall be held liable for it.

Problem #33: If the kindred cast an eye on what is not permitted to look at, like a privy part, or his looks were lascivious, he shall be treated as a stranger, then they shall be entitled to throw pebbles on him after having rebuked and warned him. In such case if any injury is inflicted on him, it shall not entail any liability.

Problem #34: If the person standing close to the privy parts happens to be blind, it shall not be permissible to throw anything on him. If someone does it, resulting in an injury to him, he shall be held liable for it. The same rule shall apply in case of a person who cannot see distant things, and the distance between him is so much that he cannot see (the privy parts of) the women or cannot discern them.

Problem #35: If a person looks lasciviously at the landlord's son, he shall be entitled to drive him away and rebuke him, and in case he does not desist, to throw pebbles at him, and if some injury is inflicted, it shall go without any liability.

Problem #36: If a person peeps into a house where there is none prohibited to look at, it shall not be allowed to throw pebbles at him. If some one throws pebbles at him resulting in an injury to him, he shall be held liable for it.

Problem #37: If a person looks at the privy parts (of another), and he is rebuked, but he does not desist. So pebbles are thrown at him resulting in injury to him. Then he claims that he did not intend to look at, and that he did not even see any thing, his words shall not be entertained, and apparently the person throwing pebbles shall not be held liable.

Problem #38: If the onlooker were very far so that it was not possible for him to look at the privy parts, but he looked at them with the help of modern implements, he shall be treated as one looking from close. He shall be allowed to be driven away. In case of any injury inflicted on him, it shall go without any liability.

Problem #39: If a person places a mirror before him, and looks at the privy parts by means of the mirror, then he shall be governed by the rule applicable to one looking without any other means. It

is, however, more cautious not to throw pebbles at him and get rid of him in some other way
Rather, caution must not be given up (in his case).

Problem #40: Apparently it is permissible to drive such intruder in the way mentioned, even if it is possible for the women to conceal their privy parts or enter some place where an onlooker may not look at them.

Problem #41: A person is entitled to defend himself, or another, or his property against the attack of an animal (lit. a quadruped animal). If it causes some defect or loss (of the animal) provided that it was the sole measure for defense against it, there shall be no liability for it. If it is possible to make the animal run away, then apparently it is shall not be permissible to inflict any injury to it, so that if some one inflicts injury in such circumstances, he shall be held liable for it.

SECTION NINE - EARNING AND COMMERCIAL TRANSACTIONS

The Earning and commercial transactions have several categories. We shall discuss their outstanding categories and their relevant problems under the following Chapters.

Introduction

The Introduction consists of the following problems.

Problem #1: It is forbidden to make earning through all kinds of unclean objects, though there is hesitation in the generality of the rule. Nevertheless, caution must not be given up in this regard by buying or selling them or making them a price in a contract for sale, a rent in a contract for hire, a wage for labor in a *Ju'alah*, or a consideration generally in any transaction, even if it were a dower, compensation in *Khul'*, or the like. Rather, one is not allowed to make them a subject of free gift or a conveyance without consideration. It is also not allowed to make an earning through them, even if one may accrue a considerable profit out of the transaction, like making manure with urine.

The (grape) juice when boiled before two-third of it evaporates in which case it is declared to be unclean, an infidel of any type, according to the stronger opinion, including even a *Fitri* apostate (i.e. an apostate born of Muslim parent or parents) and a hunting dog, rather even a sheep dog, farms, orchards and houses are exceptions to this rule.

Problem #2: The unclean objects, with the exclusion of those exempted, though not made a subject of property transaction according to *Shari'ah*, may yet give a special right to the person in whose possession or occupation they happen to be, arising from their ownership or due to their being his property, or the like, as, for example, when an animal dies and becomes dead, or when one's grapes turn into wine.

This right is transferable to another person through inheritance, etc., and no one is allowed to make a disposal of it without the permission of the person having its title. So it is lawful to make it a subject of a conveyance without a consideration, but it is not free from objection to make it a consideration in a transaction. Rather, it is not far from being included in the category of prohibited earning deals.

Of course, if some one pays something material so that he may give up its possession and lets it be owned by the payer, it shall be safe from objection, like the payment of something to a person who has previously occupied some land from the public places, like a mosque or a school, so that he may give up their possession, and the payer's right may be established on it.

Problem #3: There is no objection in the permissibility of sale of some part of a dead body, the part considered to be lifeless, intended thereby to make a lawful earning, such as its hair or wool, rather even its milk, if it is declared to be clean. In case of permissibility of sale of a clean dead body like that of a fish, or the like, when a person accrues some profit out of it, even if from its mouth, there is hesitation, and so caution must not be given up.

Problem #4: There is no objection in the permissibility of sale of dung if it gives some profit.

As regards the sale of urines of clean animals, there is no objection in the sale of the urine of a camel, but there is objection in the sale of the urine of other (clean animals). It is not far from being permissible if one intends to make some lawful profit (out of the sale of their urine).

Problem #5: There is no objection in the sale of an object unclean by something else that is liable to be cleaned.

The same is the case with an object that is not liable to be cleaned, when it is lawful to make profit freely by its sale despite its uncleanness, as an unclean oil which may be used in lamps or in rubbing on the boats, or unclean colors (or paints), soaps, etc.

However, the things that are not liable to be cleaned, and their use depends on their cleanness like unclean syrup of honey and vinegar (*Sikanjbin*), etc., their sale or making them a subject of exchange is not allowed.

Problem #6: There is no objection in the sale of the antidote (*Turyaq*) containing the meat of the serpents when it is not proved that they are among the reptiles having spurting blood, and with the assimilation of the meat in the antidote, as is mostly or usually the case, its use and making profit out of it is permissible. But the sale of the antidote containing wine is not allowed, as it cannot be cleaned, and it is also not allowed to make profit (out of its sale) due to the uncleanness, despite having free will that is the criterion for its permissibility, and not its use in case of emergency.

Problem #7: The sale of cats is allowed, and its sale proceeds are also lawful, without any hesitation. As regards the sale of other beasts, apparently it is also allowed if by sale is intended some lawful profit among the reasonable persons. The same is the case with insects; rather also with deformed animals, if their sale is intended to make profit out of it. This is the criterion (for the permissibility of the sale) of all the types of animals. There is no objection in the sale of the leeches that suck the unwanted blood, as well as the silkworms and bees, although they are among the insects. The same is the case with the elephants whose back and bones are profitable, though they are among the deformed animals.

Problem #8: The sale of all the instruments meant for prohibited acts when the benefit intended to accrue from them depends solely on them, like the instruments for entertainment, such as lyre, flutes, harps, etc. and the gambling instruments, such as the backgammon, chess, etc. As the sale and purchase of these instruments are forbidden, in the same way their manufacture and hiring them are also forbidden. Rather, it is obligatory to break them and change their shapes. Of course, the sale of their material, for example, wood and copper (used in them) is allowed after they have been broken; rather, even before breaking them too, when a condition is made with their buyer to break them, or when their material is sold to a person who is believed to break them. In case, otherwise there is hesitation (in the permissibility of their sale). The sale of utensils made of gold and silver for the purpose of decoration or acquisition is allowed.

Problem #9: Dealing in counterfeit or debased Dirhams usually made to deceive people or use them as means of exchange in transactions, when the person to whom they are paid is ignorant (of their being counterfeit or debased), is forbidden. Rather, according to the more cautious, if not stronger opinion, it is forbidden even with the knowledge and information of the person to whom they are paid, except when the transaction relates to their material, and a condition is made with the person to whom they are paid to break them, and he is believed to break them, as it is not far from being obligatory to break the material of evil and corruption to destroy it even if by instantly breaking it.

Problem #10: The sale of grapes and dates for preparing wine is forbidden, as well as the sale of wood for any trade or manufacturing an instrument for entertainment or gambling, etc., either by clearly mentioning to use them for prohibited purpose or stipulation to that effect in the agreement or their mutual agreement on it, even if the buyer says to the seller, for example: “(Sell) to me one maund of grapes so that I may prepare wine with them”, and the man sells them to him.

Similarly, (it is forbidden) to rent out houses for selling and storing wine in them, or manufacturing any forbidden articles in them, or rent out boats or other means of conveyance for carrying wine or other forbidden articles in any of the ways mentioned before, as the sale proceeds or the money for renting out of both the things are also unlawful. Similarly, (it is forbidden) to sell timber to a person about whom it is certain that he would manufacture a cross or an idol with it. Likewise, the sale (proceeds of) grapes, dates or timber to a person about whom it is certain that he would make wine, or instruments for gambling or (entertainment like) harps, or renting out houses to a person about whom it is certain that he would make or sell such (forbidden) things mentioned, according to the principles of jurisprudence, though the problem is very difficult to decide according to the textual authorities, as apparently they are *Mu'allal*.

Problem #11: The sale of rams to the enemies of (Islamic) faith is forbidden when they are in engaged in war against Muslims; rather, even in case of cessation of relations with them while there is fear (of war) from them. But in case of a peace treaty with them or an internecine war among themselves, it is indispensable to sell arms to them keeping in view the interests of Islam, Muslims and the needs of the hour.

The decision in such case rests with the ruler of the Muslims; no one else has the authority to decide it arbitrarily. All the Muslim sects who bear animosity towards the right sect (i.e., the Shi'ahs) are also affiliated with the infidels. The rule is not far from being extended to comprehend the robbers and their likes.

Rather, it is not far from the rule forbidding sale of arms to be extended to the case of sale of other things to them as well that may be a source of strengthening them against the followers of the true faith, such as necessities of life, means of transport, beasts of burden, etc.

Problem #12: Drawing pictures of living beings from among human beings and animals is forbidden, when they are in concrete form as are usually made of stones, metals, wood or the like.

According to the stronger opinion, it is allowed if they are not in concrete form, though it is more cautious to avoid it. It is allowed to draw pictures of non-living objects such as trees, flowers, etc., even in concrete form. There is no difference in the various forms of pictures whether they are painted, drawn, or embroidered, etc. Taking pictures in modern times with the prevalent (photo-) cameras is allowed. Rather it does not fall under the category of ‘drawing pictures’.

As it is forbidden to make statues of living beings, similarly it is also forbidden to make them a source of earning and charging any fees for them. This rule relates entirely to drawing pictures, but as regards their sale, acquisition, use and looking at them, according to the stronger opinion, they are all allowed, even if they are statues. Of course, it is disapproved to acquire and keep them in the house.

Problem #13: The performance, listening to and earning through music is forbidden. It is not merely improving one’s voice, but its prolongation and chant in a special vibrant and quavering tone that may suit the entertainment and music gatherings and accord with the instruments of entertainment. It makes no difference in its performance in Allah’s words in recitation of the holy Quran, or a prayer, an elegy or any other piece of poetry or prose. Rather, the punishment shall be manifold by its use in what belongs to the obedience of Allah, the Exalted.

Of course, songs of the singing women at the matrimonial functions are an exception, and it is not far from being so. But caution must not be given up by confining to the matrimonial ceremonies and the functions organized before or after them and not every gathering; rather, it is more cautious to refrain from them absolutely.

Problem #14: Provision of help to the oppressors in their oppression, rather in all forbidden acts, is forbidden without any hesitation. Rather it has come down from the Prophet, May Allah’s Blessings be upon him and his Progeny, saying: “One who goes to help an oppressor, knowing him to be an oppressor, shall be turned outside the pale of Islam”. There is another Tradition from him, saying: “On the Day of Resurrection, there shall be a caller calling: Where are the Oppressors and the Helpers of the Oppressors, including even those who have prepared a pen or ink (-pot) for them.”

He adds: “Then they shall be put together in an iron bier and it shall be thrown into Hell along with them”

As regards helping the oppressors in acts other than the forbidden ones, apparently it is allowed as long as he is not considered among their helpers, followers and affiliated ones, and his name is not noted in their registers and official records, and it may not be instrumental in boosting up their glory and power.

Problem #15: Preservation of the misguiding books or their manuscripts, their recitation, teaching or learning are forbidden if there is no lawful purpose in them, as when one intends to repudiate, or reject them, and he happens to be one capable of doing so and himself safe from misguidance. However, merely attaining knowledge about them is not among the lawful purposes allowing their

preservation for the majority of the people from among the common folk who are afraid of going astray or slipping (from the right path).

It is necessary for such people to keep away from the books containing material repugnant to the beliefs of the Muslims, particularly those containing confusions and erroneous ideas that they are unable to solve or reject. It is not allowed to purchase or keep them, or preserve them. Rather, they are bound to destroy them

Problem #16: Performance of magic, its teaching and learning as well as earning through it are forbidden. It means an act in the form of writing, words, smoking, picturing, blowing (knots), or making knots, or the like, that may affect the body of the person subjected to magic, or his heart or intellect, so that it may be effective in calling him, making him asleep or unconscious, producing in him love or hatred, etc.

To this is affiliated employing the angels, calling the jinns and overpowering them, calling the souls (of the dead) and overpowering them, and the like. Affiliated to this or considered to be one of the same is legerdemain, which means showing something unreal occurring with the quick movement (of hands).

Similarly there is divination, and that means foretelling about things to happen in future with the impression that some Jinns are conveying him such news, or with the impression that he comes to know of things from their preliminaries or causes that lead to such occurrences.

Physiognomy (is also forbidden), that means dependence on some special indications for attributing some of the persons to others and depriving some from others, contrary to what has been assigned criterion by the Legislator (i.e. Allah, the Exalted) for attribution (of a child to its father), such as sleeping in the same bed or otherwise.

Astrology (is also forbidden), that means inform with certainty and full confidence about the happenings in the universe, such as cheapness and dearness, drought and fertility, abundance of rainfall and its shortage, and such other things, like good and evil, profit and loss depending on the movement of the heavenly objects and the appearance and the conjunction of the stars believing them to be effect in this world independently or accompanied by Allah, who is more Exalted, than what the oppressors say, without their absolute effect, even if bestowed by Allah, the Exalted, provided that it is based on some sure evidence. The information about the solar or lunar eclipses, appearance of the new moon, conjunction of the stars and their separation after they are based on strong principles and rules do not belong to astrology. The errors in information which take place sometimes is due to the miscalculation and erroneous application of the principles (and formulae) as is also the case with other sciences.

Problem #17: Adulteration with something concealed in the sale and purchase is forbidden, such as mixing water with milk, and mix up the low quality food with high quality food, or fat or vegetable oil with animal fat (or Ghee) without informing the other party. The transaction is not vitiated

thereby, though the act is forbidden, and the right of option to rescind the contract rests with the other party after he comes to know of it. If the deceit consisted in showing something contrary to its real substance, such as sale of gold-plated or silver-plated object as one made of gold or silver, or the like, then actual transaction shall be declared void.

Problem #18: It is forbidden for a man to charge a fee for what he is obliged to do as his individual duty, or, according to the more cautious opinion, even if as a collective duty, such as washing or shrouding the dead. If the act is obligatory for achieving an object, like burial, and the money has not been paid for actual job, or it has been paid for taking up a particular action, there shall be no objection in charging the fee. So what is forbidden is charging the fee for the actual burial. But if the Wali has selected a particular place or grave, and has paid money for digging grave in that particular place, then apparently there shall be no objection in charging fee for it, as a physician charges a fee for visiting a patient, even if there may be objection in charging the fee for the actual treatment, though, according to the stronger opinion, it would be allowed. If an act is Ta'abbudi obligation, then there is a condition of seeking Allah's closeness in it, as in washing the dead, and so charging any fee for it shall not be allowed in any case.

Of course, there shall be no objection in charging it for some of the non-obligatory acts, as mentioned under the Chapter on Washing the Dead. As regards the cases where one is bound to teach the problems relating to what is allowed and what is forbidden, one is not allowed to charge any fees for it. As regards teaching the Qur'an, not to speak of teaching other things like writing, or reading the script, etc., there is no objection in charging fee for it. By the obligations mentioned are meant what is obligatory on the person hired. But as regards what is obligatory on other than oneself where there is no condition of performance in person, there is no objection in charging a fee for the same, including the *ibadat* in which appointment of an agent is lawful. So there is no objection in hiring a person for performing '*Ibadāt*, such as Hajj, fasting and prayers.

Problem #19: It is disapproved to take up money changing, sale of coffins and foodstuff as a profession and the same rule relates to the sale of slaves, as the worst among the mankind are those who sell human beings. The same rule applies to the adoption of slaughtering animals by slitting the throat or by piercing a spear in the neck (of a camel) as a profession. The same is the case with the profession of weaver or a cupper. The same rule applies to earning through giving on hire a male animal to fecundate a female animal for a definite one or more times, for some time, or without charging any hire. Of course, it is allowed to accept some gift or present for it.

Problem #20: No doubt, earning and making one's livelihood by means of sheer labor and effort is approved by Allah, the Exalted. There are several traditions that have come down from the Prophet, May Allah's Blessing be upon him and his Progeny, and the Imams, May peace be upon them, containing persuasion and invitation to the same in general, and particularly for adopting trade, agriculture and rearing sheep and cows. Of course, excessive breeding of camels has been forbidden in the Traditions.

Problem #21: It is obligatory on every one who indulges in trade or other types of earnings to learn their relevant rules and problems in order to distinguish the valid ones from the invalid ones, and safe from Ribā'. The necessary extent of it is the knowledge even if through Taqlid regarding trade and other transactions at the time of conducting them; rather, even after having conducted them, when there is doubt merely about their validity or invalidity. If, however, there is doubt about their being forbidden or permissible and not merely about their validity or invalidity, one is bound to refrain from them, as in case of doubt about whether a transaction involves Ribā' or not due to the transaction itself being forbidden (case of involving Riba), as is the case according to the more cautious opinion.

Problem #22: There are approved and disapproved etiquettes for trade and earning. The approved ones are as follows:

1. The most important of them is moderation and economy in demand in a way that one may neither be a loser nor avaricious.
2. If some one repents in sale or purchase, and wants to rescind the transaction, he must accept it.
3. There must be equality of the prices for all customers. So there must be no difference between a haggler and others, so that one may charge less with the former and more with the latter. Apparently, there is no objection in case of difference due to moral excellence and faithfulness, or the like.
4. One must be ready to accept less for oneself, but must pay more to others.

The disapproved ones are as follows:

1. (Exaggeration) in praising one's commodity by the seller.
2. Unusually discrediting the commodity by the buyer.
3. Swearing truly about the sale or purchase.
4. Selling the commodity from where it contains a defect or blemish.
5. Charging profit from a believer except in case of necessity, or when he buys the commodity for trade, or when the amount of purchase of the commodity exceeds one hundred Dirhams. If he earns thereby profit equal to his expenses of the day, it shall not be disapproved.
6. Charging profit from a person whom one has promised beneficence except in case of necessity.
7. Offering a commodity for sale between the rise of morning and the sun.
8. Entering the market before all others and leaving it after all others.
9. Deal with lowly people, not caring for what they say and what is said to them

10. Measure, weigh, count or survey a land when not fully conversant with it.

12. Intervene in the believers dealing, according to the opinion conforming to the traditional authority. Some hold it to be forbidden. If a person makes a higher offer in an auction, it shall not be disapproved.

13. Meeting the people riding (on camels, etc) or coming in caravans and proceed to them for conducting sale or purchase with them before their arrival in the town. Some hold it to be forbidden, though the sale and purchase shall be valid. This opinion is more cautious, though more apparently it is disapproved. It is disapproved on the following two conditions. Firstly, going out of the town for that purpose. Secondly, it may be deemed to be going out of the town. Thirdly, (the meeting) must take place in less than four Farsakhs, so that if it takes place in four Farsakhs or more, it shall not fall under the rule; rather it shall be considered a journey for trade. According to the stronger opinion, ignorance of the caravan people about the prices (of the commodities) in the town is not a condition (for the disapprobation of the transaction. Whether the rule also applies to transactions, other than sale and purchase, like hire, etc., there are two opinions regarding it

Problem #23: Hoarding is forbidden. It means concealing the foodstuff and storing them and waiting for the rise in their prices, while they are necessary for the Muslims and they need them, and there is no one to supply them sufficiently. Mere concealment of foodstuff waiting for the rise in its price, while it is not necessary for the people, and there is some other supplier shall not be forbidden, though it shall be disapproved. If, however, a person conceals it during the period of its dearness for his consumption, and not for sale, it shall neither be forbidden nor disapproved. According to the stronger opinion the rule applies to four grains (namely wheat, barley, dates and raisins), animal fat (Roghan or Ghee) and edible oil. Of course, the application of the rule generally to whatever is needed by the people has been considered preferable, but the rule concerning hoarding is not proved except in cases mentioned. The hoarder shall be compelled to sell the goods hoarded, though, according to the more cautious opinion, he shall not be compelled to sell on a fixed price, but he shall be free to sell his good on whatever price he likes, except when he commits extortion, in which case he shall be compelled to reduce the price without fixing the price, If he fails to fix the price, the ruler (or the government) shall fix a price deemed proper.

Problem #24: In case of having a free will, it shall not be permissible to accept assignments, ranks or jobs from a tyrant ruler, though the job itself may be lawful without regard to its assignment by the tyrant, such as collection of taxes, or Zakât, or holding army and security charge, government of towns, or the like, not to speak of the job being itself unlawful, as charging ‘Ushr (A Tenth of the agricultural produce) or custom and other types of innovative, unjust taxes.

Of course, it shall be lawful to accept all of these assignments under duress and coercion with the sure apprehension of harm to one’s life, honour or considerable amount of property in case of non-acceptance, except when required to kill respectable persons, so that there is hesitation in its permission, rather it is forbidden in its general application with regard to the assignments in some

of the jobs of injustice as dishonor to a group of Muslims, destroying their property, taking their women captive, and subjecting them to distress when he is afraid to some extent of harm to his honour or property though not subjected to distress, rather when in general he has some of such fears.

Acceptance of the first category of assignment, namely acceptance of some job lawful in itself, is permissible when the person accepting it carries out the interests of the Muslims and his fellow brothers in faith. Rather it shall be preferable if he accepts the assignments with the intention of doing good to the believers and protecting them against harm.

Rather, the acceptance of some positions and jobs is sometimes declared to be obligatory when the person holding the position or job is capable, for example, of removing some religious evil or forbidding some religious wrongs. Nevertheless, there are many risks in accepting such jobs, except for those who are protected by Allah, the Exalted.

Problem #25: Whatever taxes are charged by a (tyrant) government on lands in consideration of its conditions, in cash or kind, as well as on the palm trees and other trees shall be treated in the same way as in case of a just ruler. So a person who pays the taxes on land shall be absolved of the liability, and it shall be lawful for every one to purchase it or receive it free of cost or against something in exchange and to make any changes in it. If it is not received by the government, and it authorizes some one who is liable to pay an amount of tax, and he pays it to the authorized person, it shall be lawful for him, and he shall be absolved of the liability owed by him.

In modern times, however, it is more cautious for a person who benefits from such lands and is entitled to make changes in it in case of its tax as well as the person who receives anything from such property, also to refer to the judge of the religious court. Apparently the rule applied to a Shi'ah ruler is the same as applied to a Sunni ruler, though the caution for referring to the former is stronger.

Problem #26: It is allowed for every one to accept the taxable lands, and he shall be responsible for them against some payment to the government, and shall be entitled to benefit himself from them by farming, planting trees, etc., or hand them over to some one else and make him responsible for them against an enhanced payment, though it is disapproved in such case, except when he brings some new changes in them, as digging some canal in them or performs something in them that is helpful for the other party.

Rather, it is more cautious to avoid handing it over to some one else against enhanced payment except in case of bringing new changes in them.

SECTION TEN - CONTRACT FOR SALE

Problem #1: A Contract for Sale requires Declaration and Acceptance. Sometimes in a Declaration there is no need of Acceptance, as when a buyer or seller appoints the person dealing with him to be his agent in the sale or purchase, or both of them appoint a third person as their agent, and the person so appointed says: “I sell such and such for such and such”, in which case there shall be no need of Acceptance. According to the stronger opinion, the use of Arabic is not a condition in it, and it may be concluded in any language, even if it is possible to use Arabic. In the same way it is not a condition to express it clearly, but it is concluded by the use of any words conveying the intended sense according to the people using the language, as in Declaration one may say: “I have sold”, “I have given the ownership to”, or the like, while in Acceptance one may say: “I have accepted”, “I have purchased”, or “I have bought”, or the like. It is also not a condition to use Past Tense, but the use of a Preterite Tense (Mudari in Arabic) will suffice, though it is more cautious to use Past Tense. It is not a condition that it should not have any mistake as regards the root, form and I when the words used convey the sense intended according to the people using the language, and it should be considered to be a mistake of the same language and not another mentioned here, as one says: “*Bi’tu*” with *Fath* on “*B*”, or *Kasr* on “*Ain*”, or *Sukun* on “*Ta*”. It is better to use the language that has been phonetically corrupted as is prevalent among the people of Iraq or others whose language is sim to theirs.

Problem #2: Apparently it is allowed to bring Acceptance before Declaration, as saying: “I have purchased” or “I have bought” when it is intended to convey the sense of initiating a purchase and not agreeing with it, so that it is not allowed (initially) to say: “I have accepted” or “I have agreed”. But if it were by way of a command or demand for something, as when a person intending to buy should say: “Sell such thing for so much” and the seller should say: “I have sold it to you for so much”, then apparently it would be valid, though it is more cautious for the buyer to repeat Acceptance.

Problem #3: An uninterrupted sequence is a condition between Declaration and Acceptance, in the sense that there must not be long interruption between them in a way that it may cease to be a contract for sale or mutual agreement. A minor interval shall not vitiate it when it may be said that this Acceptance is for that Offer.

Problem #4: Conformity between Declaration and Acceptance is a condition in the contract for sale. If they differ, as when the seller makes a Declaration in a particular way as regards the Buyer, object of sale, its price or other adjuncts of the contract relating to the conditions, while the buyer makes the Acceptance in some other way, the contract shall not thereby be concluded. If the seller should say: “I have sold this thing to your client for so much”, and the agent should say: “I have bought it for myself”, the contract would not thereby be concluded. Of course, if the seller says: “I have sold this article to your client”, and the client who is present, but is not addressed, says: “I

have accepted, it is not far from being valid. If the seller says: "I have sold this article for so much", and the agent says: "I have accepted it on behalf of my client", then if the seller has intended to contract the sale with the person addressed himself, the contract shall not be concluded. If, however, he intended to address him whether he were the principal or the agent, the contract shall be valid.

If the seller says: "I have sold this article for one thousand" and the other party says: "I have bought half of it for one thousand or five hundred", the bargain shall not be effective. If the other party says: "I have bought each half of it for five hundred", it shall not be free from objection. Of course, it shall not be far from being valid if he intended each of the halves jointly.

If the seller says to two persons: "I have sold this article to both of you for one thousand" and one of them says: "I have bought half of it for five hundred", the bargain shall not be effected. If each of them says the same thing, it shall not be far from being valid, though it shall not be free from objection. If the seller says: "I have sold this article for so much on the condition that I have the option of three days, for example, to recede", and the buyer says: "I have bought it without any condition", the bargain shall not be effected. If the case is reverse, so that the seller makes the declaration without a condition, and the buyer accepts it with a condition, it shall not be effective conditionally. Whether it shall be effective generally and unconditionally, there is hesitation in it.

Problem #5: If a person is unable to pronounce the words of the contract due to dumbness, or the like, it shall be replaced by gestures conveying the sense, even in case he is able to appoint an agent, according to the stronger opinion. In case of inability to make gestures too, it is more cautious to appoint an agent or resort to *Mu'atat* (or mutual surrender, where the seller gives the article sold to the purchaser and the purchaser in return gives the price to the seller, without the interposition of speech. In case of inability to do either, one may conduct the bargain by writing.

Problem #6: According to the stronger opinion, a sale takes place by *Mu'atat* (or mutual surrender) in relation to things of small or high values. It consists of surrendering the thing itself with the intention of its becoming the property of the other against payment of its price, and the receipt of its price by the seller as an exchange. Apparently the bargain becomes effective as soon as the article sold is surrendered with the intention of its becoming the property of another against payment of an exchange with the intention of the purchaser to get hold of its ownership against payment of an exchange. So payment of the price is a total liability of the purchaser. There is hesitation in the effectiveness of the bargain by the mere receipt of the exchange (price) from the purchaser intending it to be a bargain of exchange, though the effectiveness is not devoid of force.

Problem #7: In a *Mu'atat* (or mutual surrender) there are all the forthcoming conditions of *Sighah* (or prescribed words) found in a contract for sale excluding the words. It is not valid with the non-fulfillment of any of them as relate to the selling and purchasing parties or those relating to the price or the thing for which the price is paid, in the same way as, according to the stronger opinion, the forthcoming options are established in it.

Problem #8: It is necessary for both the parties to a contract to conclude it by the prescribed words or *Sighah* except when there is an option. Of course, *Iqalah* is allowed in it, which means revocation of the contract by either of the two parties. According to the stronger opinion, *Mu'atāt* is also necessary from both the parties except in case of option, and *Iqalah* is also applicable in it.

Problem #9: According to the more cautious opinion, in a *Muātāt* sale, there are no conditions. So if one intends to establish or drop an option by a condition, or makes any other condition including specifying some time or date for any of the two things involving exchange (namely, the price and thing sold), one shall have to resort to the prescribed words for executing a sale and insert the condition therein, even if the buyer has accepted the condition earlier by negotiation and the transaction has been dependent on it, the condition shall not be devoid of authority and force.

Problem #10: Is *Mu'atāt* practicable generally in all types of transactions or not, or is practicable in some but not in others? God willing, this will become clear in the next Chapters.

Problem #11: As the sale and purchase take place by the seller and purchaser personally, they also take place through an agent or *Wali* of one or both the parties. A single person is allowed to act as the *Wali* of both the parties personally for one and through an agent for another or through an agent for both, or by way of a *Wali* for both, or through an agent for one and by way a *Wali* for another.

Problem #12: According to the more cautious opinion, a contract for sale is neither allowed to be made contingent on something that cannot be achieved during the contract, even if it is sure to be achieved later or not, nor on something whose achievement is unknown during the contract. But as regards making it contingent on something whose achievement during the contract is certain, according to the stronger opinion, it is allowed, as when one says: "I have sold (this thing) to you, provided that it is Saturday today", with the knowledge that it was Saturday.

Problem #13: If a buyer takes possession of what he has purchased by an invalid contract, he shall not become its owner, and shall be responsible for it, in the sense that he shall be bound to return it to its owner. If it is destroyed even by an Act of God, he shall be bound to return its equivalent or its price, If, however, each of the seller and the buyer agree to the right of disposal by the other absolutely in what is in its possession even if it were invalid, it shall be lawful for each of them to dispose of and get benefit from what is in his possession, including its destruction, without any liability on him.

Chapter One - Conditions of Contract for Sale

These conditions concern either the two parties to the contract, (namely the seller and the buyer) or the two things to be exchanged (namely the thing sold and the price paid for it).

1 - Conditions for the Parties to a Contract

Following are the conditions for the parties to a contract, (namely the seller and the purchaser).

First: Maturity. So a contract concluded by a minor is not valid, even if he is discreet and he is acting with the permission of the guardian. According to the stronger opinion, this applies to the cases when he concludes the contract independently in relation to things of significant value, and, according to the more cautious opinion, even in relation to the other things as well, though the validity of the contract in relation to things of small value, in case he was discreet according to the practice of the sane persons is not devoid of significance and force, as when he was in the position of a means where the bargain is in fact made between two mature persons, in which case there is no objection at all. As a bargain entered into by a minor in relation to things of significant value for himself is not valid, in the same way it is not valid if entered into on behalf of another, when he acts as an agent, even if allowed by the guardian to act as an agent. If he is an agent merely for pronouncing the prescribed words (of the contract), while the actual transaction has been carried out by two mature persons, then its validity is not far from being close. It is not devoid of reliability, but caution must not be given up.

Second: Sanity. So a contract entered into by a lunatic is not valid.

Third: intention. So a contract entered into by a person having no intention is not valid, as a contract concluded by one joking, one committing a mistake or an error.

Fourth: Free Will. So a contract entered under coercion is not valid. That means a person is afraid of giving up the contract by reason of a threat by another for inflicting some harm or distress to him. But the validity of a contract is not affected if it is entered into an emergency that leads to his compulsion, even if it is brought to bear by another, as when some oppressor compels him to surrender his property to him and so he has to sell it in order to give it to him. There is no difference in the alleged harm if it relates to the life of the person compelled or his honour or property or it relates to one related to him like his wife or children in whose case the harm inflicted on him or her shall be tantamount to a harm to himself. If the person compelled endorses it after the removal of the coercion, the contract shall be valid and binding.

Problem #1: Apparently it is not a condition for the application of coercion that there should be no possibility of escape in disguise. So if a person is compelled to sell (something) or is threatened against giving it up, and he sells (that thing) in that sense while there was possibility of not intending so or intending something other than sale, he shall be treated as coerced, when escape

from it was difficult, and there was likelihood of his falling into some distress, as is the case in such kind of situations. But when he was inclined to dissemblance, and it was easy for him to do so without any obstacle, then there is difficulty (in non-conclusion of the contract for sale due to coercion). But the condition of non-existence of such facility is not free from force.

Problem #2: If a person is compelled to do either of the two alternatives, namely, either to sell his house, or do some thing else, and he opts to sell his house. If in the other alternative there was some religious or worldly obstacle, that he wanted to avoid, the contract for sale shall be treated as one concluded under duress; otherwise, it shall be as one concluded with free will.

Problem #3: If a person is compelled to sell one of the two things opted, whatever he does for preventing damage to himself shall be treated as one done under duress. If he performs both together, if they were performed gradually, the one performed first shall be treated as one performed under duress to the exclusion of the other, except when he intends to obey the compeller. In such case, the first one shall be treated as valid. Whether the second one shall also be treated as valid? There are two opinions, the one closer to the principles of jurisprudence being the former. If he performs both of them simultaneously, then with regard to the contract for sale of both to be treated as valid, or both to be treated as void, or one of them to be treated as valid, and the decision to be arrived at by Casting lots, there are several opinions, the first one not being devoid of preference. If a person is compelled to sell something definite, and he adds something else to it, and sells both simultaneously, then the one done under duress shall be declared invalid, while the other shall be treated as valid.

Fifth: Both (the seller and buyer) must have the right of disposal. So the bargain shall not take effect if it is conducted by one other than the owner, when he is not an authorized agent or his Wali (or guardian) like the father, or paternal grandfather, or their Wasi (or executor), or the judge, and not one interdicted due to idiocy or insolvency, or any other reason for interdiction.

Problem #4: The non-execution of the contract made by one other than the owner of right of disposal means non-enforceability and non-effectiveness, not voidance. So if the owner endorses the contract made by one other than him, or the guardian ratifies the contract concluded by an idiot or the creditors endorse the contract made by a bankrupt person, the contract shall be valid.

Problem #5: There is no difference in the validity of a contract for sale concluded by one other than the owner with his permission whether he intends to conclude it for the owner or for himself, as the contract made by a usurper or one who is under the impression that he is the owner, as also between the case when it is previously forbidden by the owner or not, though there is hesitation (in its validity when it was previously forbidden by the owner). For the effectiveness of the permission, it is a condition that the owner should not have rejected it previously after its conclusion. So if a stranger executes a bargain, and the owner rejects it, and then endorses it, according to the opinion closer to the traditional authority, the subsequent permission shall be void, though it is not free from objection. If the owner rejects it subsequent to his endorsement, his rejection shall be void.

Problem #6: As permission takes effect by any word signifying the consent with the contract for sale as understood by custom, although by mere hint, as by saying: “I have endorsed”, “I have permitted”. “I have enforced”, “I have consented”, or the like, or by the seller saying to the buyer: “May Allah grant Blessing to you in it”, or other such hints. Likewise, it takes effect by any deed alluding to it by custom, as, (in case of a sale contracted by an unauthorized person), the owner should make a free disposal of the price attentively. Similar is the case when the owner permits the sale (contracted by a stranger) as it requires the permission of the sale in relation to the thing valued, as when a wife surrenders herself to the embraces of the husband in token of permission when her marriage is contracted by a stranger (or an unauthorized person).

Problem #7: Does permission signify the validity of the contract made by a stranger from the time it had been concluded, so that it means that the object of sale came under the ownership of the buyer and its price under the ownership of the seller from the time of the conclusion of the contract, or it is effective from the time it is given. The consequence of it comes to light when some growth (or benefit) intervenes the time of the conclusion of the contract and that of tendering the permission. In the first alternative, any growth in the object of sale shall belong to the buyer, while any growth in the price shall belong to the seller, while in case of the second alternative it shall be otherwise. The problem is difficult, and, therefore, caution must not be given up by making a compromise in relation to the growths.

Problem #8: If the owner is willing with the sale at heart, but has not tendered permission nor has appointed any agent in the sale or purchase, it is not far from being beyond an unauthorized contract, particularly in case of his inclination towards the contract and consent. If, however, the case is such that had the owner been inclined, he would have consented, then the contract shall be deemed an unauthorized one, and beyond the subject of the present Problem. But if he was willing but not inclined in detail towards it, even then it is beyond the pale of an unauthorized contract due to one reason that is not devoid of force.

Problem #9: In an unauthorized contract it is not a condition that the intention must be for concluding an unauthorized contract. So if a person is under the impression that he is a guardian or an agent, but later it transpires to be otherwise, it shall be an unauthorized contract, and can be validated through subsequent sanction. On the contrary, if a person (concluding a contract) is under the impression that he has no authority of disposal, but he turns out to be an (authorized) agent or guardian, then apparently the contract shall be valid, without there being any necessity of subsequent permission, though with some hesitation in the latter case. Similar is the case when a person is under the impression that he is not the owner, but he turns out to be one. But the invalidity of the contract and the necessity of permission in it is not devoid of force.

Problem #10: If a person buys something without authority, then becomes its owner by having the authority through purchase or without it as through inheritance, then the voidance of the permission in not being of any use is not devoid of force.

Problem #11: It is not a condition for the person giving the permission to be an owner at the time of the conclusion of the contract. So it is allowed that the owner may be one at the time of the conclusion of the contract and another at the time of giving the permission, as the owner dies at the time of the conclusion of the contract before tendering permission, in which case it shall be lawful for his heir to tender sanction. A better case is when the owner had no authority for disposal at the time of the conclusion of contract (by a stranger) due to some impediment like being a minor or idiot or the like, and later the impediment is removed, then the contract shall be validated by his sanction.

Problem #12: If several bargains of sale take place (by strangers) in relation to the property of another, the contract may relate to the property itself or its price paid in exchange. In the first instance, it may take place by a single unauthorized person, as he sells Zayd's house repeatedly to several persons, or it takes place by several persons, as when a person sells it to another for a horse, and then the buyer sells it to another person for a donkey, and then the other buyer sells to another for a book, and so on. In case of the second supposition, it may take place by a single person for several prices one after another, as when he sells Zayd's house for some cloth, and then sells the cloth for a cow, then sells the cow for a bedstead, and so on. Or the sale may take place on the price with several persons repeatedly, as when he sells the cloth in the above example, repeatedly to several persons. Thus, it comes to four modes, and the owner may sanction any of them he likes, and that particular contract shall be validated by his sanction. But as regards the other modes, it requires a lot of detail that cannot be given in this brief Chapter.

Problem #13: The difficulty in the rejection that is an impediment in the effectiveness of the permission has already been mentioned. Sometimes it also proves to be an impediment in its affiliation absolutely, even if this rejection has been made by a person other than the owner at the time of the conclusion of the contract, as when he says: "I have cancelled", or "I have rejected", or other words that signify the same meanings, as a disposal in it in a way that leads to the loss of the object of permission, either according to the reason as destruction, or according to the Shariah as manumission. Sometimes, particularly in relation to the owner, rejection becomes an impediment in its affiliation with the permission at the time of the conclusion of the contract, and not in all circumstances, as the disposal causing the transfer of the capital asset like sale, gift or the like, in which case the object of permission is not lost, except in relation to the person from whom it is transferred. But the person to whom it is transferred is entitled to give permission in case when it may not be a condition for the person giving permission to be an owner at the time of the conclusion of the contract, as already mentioned. As regards a contract for ease, it is no impediment in permission at all, even in relation to the leasing owner, as there is no contradiction between them, in consequence his asset shall be transferred to the buyer without any benefit.

Problem #14: In all cases where permission has not been given by the owner, regardless whether rejection has been made by him or not, as a hesitant person, he shall be entitled to demand the return of his property from the person in whose possession he has found it, provided that it subsists. Rather, according to the stronger opinion, he shall be entitled to have recourse to him for the

benefits accruing, as well as those not accruing to the possessor during the period (it has been in his possession), and he, in turn, shall be entitled to demand the unauthorized seller to return the asset as well as its benefits accrued thereon while it was in his possession and he had given them to the buyer. Likewise, the owner is entitled to demand the buyer to return the asset itself as well as the benefits accrued thereon or lost during his possession. In case, the return requires some expenditure, the owner shall also be entitled to demand it from the possessor. This is in case of subsistence of the asset. But in case it is lost, he shall be entitled to have recourse to the (unauthorized) seller for its equivalent, if it was lost during his possession. If the asset has revolved in several hands, so that it was in the possession of the unauthorized seller, who delivered it to a buyer, and he to another, and so on, and then it was lost, the owner shall be entitled to have recourse to any of them for its equivalent, and that person shall be entitled to have recourse to all the buyers distributing the loss with equal or different shares. If the owner receives the equivalent and the damage from one of them, he shall not be entitled to have recourse to the rest of them. This is the rule in respect of the (unauthorized) seller and the buyer and all those in whose possession the asset had been.

As regards the rule relating to the buyer and the unauthorized seller with the latter's knowledge about the former being a usurper, he is not entitled to have a recourse to him for what the owner had recourse to him and for the damages sustained by him. Of course, if he had paid the price to the (unauthorized) seller, he shall be entitled to demand its return from him in case of its subsistence, and have recourse for its equivalent if it is lost or he has lost it. In case of his ignorance about the situation, he shall be entitled to have recourse to him for the whole loss sustained by him from the owner, and for all the damages incurred to him in his benefits, growths, cost of the beast of burden, whatever has been spent by him on the asset itself or whatever of it is lost by him and cost of the horse, agricultural farm, excavation (of wells), etc., and the (unauthorized) seller is liable to pay all these expenses, and the buyer who had been ignorant of the situation shall be entitled to have recourse to him.

Problem #15: If the buyer has constructed on another's land purchased by him any building, planted plants or has made some farming, the owner shall be entitled to urge him to remove whatever has been constructed by him, level the land and demand compensation for whatever damage has been done by him to the asset without the owner being responsible for whatever damage has been done to it, in the same way as the buyer shall be entitled to remove that with the responsibility to compensate whatever damage has been done to the land, while the owner shall not be entitled to urge upon the buyer to leave it as it is though free of charges, as also the buyer shall not be entitled to leave them as they are, even if he is required to pay some wages (for its labor). If he has excavated any well or a canal, he shall be bound to fill it and return it to the original condition, if demanded by the owner, and if possible. He shall also be responsible to make good the loss due to any defect, and he shall not be entitled to demand from the owner remuneration for his labor or what he has spent on it, even if it results in rise in its price, as he is not entitled to return to its previous condition by filling (the pits, etc.), even if the owner does not agree with it. Of course, he shall be entitled to have recourse against the seller who is the usurper, for the remuneration of

his labor and whatever money he has spent on it as well as all the damages sustained on it provided that he is ignorant of the situation. The same rule shall apply regarding whatever quality the buyer has added to what he has purchased without the quality being there in the asset purchased, as when he has turned the wheat into flour, or spun the cotton into thread or wove a fabric with it, or moulded the silver. Here there are several details that will be mentioned, God willing, under the Section on Usurpation.

Problem #16: If the seller combines his property with that of another, or sells what was a joint property of his and another, the bargain shall take effect in relation to his property for which he has been paid a price, while the validity of its effect in relation to the property of another shall rest with the latter's sanction, so that if he endorses it (well and good); otherwise, the buyer shall have the option to rescind the contract due to the division of shares in the property provided that he had been ignorant of the fact.

This is the case when there is no impediment regarding the division of the shares along with the absence of the other person's sanction such as Ribā and the like, otherwise, the bargain shall be void ab initio.

Problem #17: The method of finding out the share of each of them in the price is to assess it from the actual price, it shall be evaluated in proportion to the price of the other, and then the share of each of them shall be determined according to that ratio. So if it is sold combined for six, while the price of one of them is six and that of the other three, then the share of person whose price was three shall be half of that of the other, namely, six, so his share shall be two and that of the other four.

This method is applicable in case of prevalent bargains in which the two thin sold do not differ individually and when combined. But in case of their difference with regard to the prices being less or more or different, then it shall not be valid. Apparently the rule is to assess the price of each of them individually when combined, and then each of them shall get the price according to his ratio to the aggregate of both the prices.

Problem #18: A father and paternal grandfather, how high so ever, are allowed to dispose of the property of minor through sale, purchase or lease, etc., and each of them has an independent right of guardianship. According to stronger opinion, moral soundness (*Adalat*) is not a condition for them. (Observation of) the minor's interest is also not a condition in the effectiveness of their disposal, but mere absence of cause of corruption or evil is sufficient, but the caution of observing (the minor's interest) must not be given up.

As they have the right of guardianship for making any disposal in the minor's property, they have the same right in relation to his person with regard to giving him or hire, or in marriage, with the exception of (right of) divorce (on behalf of the minor), a right that is not enjoyed by them; rather, they have to wait until his attaining maturity. Whether the right to rescind the contract of marriage where there is a due cause or excusing the (remaining) term of a temporary marriage (*Utah*) is also

affiliated to the right of divorce, there are two alternatives, rather two opinions, the stronger being in favour of non affiliation.

The right of guardianship does not belong to any close relative other than two, (namely, the father and the paternal grandfather) including the mother, brother, and maternal grandfather, as they are treated as strangers.

Problem #19: As the father and paternal grandfather have the right of guardianship over a minor during their life, similarly they have the right of appointing an administrator on him for after their death. His acts have the same force as those of the father and paternal grandfather, though with hesitation in matter of marriage. Apparently there is the condition of (observing) the minor's interest in the disposal by the administrator, and the absence of cause of corruption or evil merely shall not suffice, as, in his case, the condition of his moral soundness (*Adalat*) is more cautious, though his honesty and reliability are not far from being sufficient.

Problem #20: In case of demise of the father, paternal grandfather or an administrator appointed by them, the religious authority, namely, a morally sound Mujtahid shall have the right of guardianship in disposal of the property of minors with the condition of (observation of the minors') happiness and interest; rather, it shall be confined to what if abandoned shall be harmful and vicious for the minors. In the event of the demise of the religious authority, the right shall go to the believers, to be more cautious on the condition of their moral soundness. They shall be entitled to dispose of the minor's property in matters fulfilling the condition of his happiness and interest; rather, according to the more cautious opinion, by giving up what is vicious for the minor.

Following are the conditions for the things to be exchanged, namely, the thing sold and the price paid for it.

First: In the thing sold, it is a condition that, according to the more cautious opinion, it should be an object capable of being owned, regardless whether it has an outward existence or entirely owed by the seller or any other person. According to the more cautious opinion, it is not allowed to be a usufruct, as the usufruct of a house, a quadruped animal, or deed, like stitching a garment, or a right, though its permissibility, particularly in case of rights is not devoid of force. As regards the price, it may be a usufruct, or a deed capable of being owned; rather, it may be a right that can be transferred from one person to another, like the right of interdiction (*Tahjir*) or monopolisation. As regards the permissibility of a right that is capable of being abolished without being transferable as the right of option and right of pre-emption, there is hesitation in it.

Second: It is a condition in the things exchanged, (namely the thing sold and the price paid) that it may be capable of being measured, weighed or counted in the same way as the other, and merely being capable of being observed is not sufficient. Nor is it sufficient to measure it with what it is not measured. So it is not sufficient to assess by measuring or counting something that is weighed, or assess without counting a thing that is counted. Of course, there is no objection in taking a part of the thing that is counted or weighed, and count it or weigh it with counting or weighing machine,

and then assess the rest accordingly if it is safe from difference and ignorance. This, however, is not applicable in assessing by measurement.

Problem #1: It is allowed to rely on the information of the seller about the amount of the thing sold. So a person may buy a thing according to the information given to him by the seller about it. If later it turns out to be defective or deficient, he shall have the option to cancel the bargain. If he rescinds the bargain, he shall be returned the entire price (paid by him). If the buyer agrees with it, the price shall be reduced accordingly.

Problem #2: The ocular demonstration of a thing that is generally sold by load is sufficient, as hay, dried or fresh grass, or some kinds of fuel wood. Of course, if in some places according to the prevalent custom they are sold by load, mere ocular demonstration is enough. Similar is the case with several liquids and medicines kept in vessels and bottles. That are also usually sold in the same way. There is no objection in their sale as long as they are contained in the vessels and bottles, and ocular demonstration is enough in their case. Rather, even in case of animals slaughtered, ocular demonstration is sufficient as long as they are not skinned, but once they are skinned, they have to be weighed. Generally speaking the condition of things changes with the change in circumstances and places. So in some places and circumstances they are weighed, while in others they are not. Similar is the case with the things that are sold by numbers.

Problem #3: Apparently ocular demonstration is not sufficient in case of the sale of land whose value is assessed according to meters and yards, and it is indispensable to have actual information about its area. Similar is the case with most of the cloth before it has been stitched or cut. Of course, if it is a custom for the rolls of cloth to be in a particular number of yards, it shall be allowed to sell and buy them by number relying on the prevalent custom and depending on it in the same way as one relies on the information provided by the seller of a thing.

Problem #4: If the system of sale of a thing differs in one place to another, as, for example, it is sold by weight in one place while by number in another, then the criterion for bargain shall be its local system.

Third: Knowledge about the kind and description of the objects exchanged that leads to difference in their price and appeal. This is achieved by ocular demonstration as well as description removing ignorance. It is allowed to suffice with the previous observation in, case of things that usually do not change in case any change in them has not come to the knowledge. In case otherwise, there is hesitation; rather, it is close to be non - permissible.

Fourth: The objects exchanged must be owned and free. It is, therefore, not allowed to sell water, green grass, pasture, before they are possessed, fish and wild animals before they are hunted, wastelands before they are developed. If a person digs a well in an ownerless land, or excavates a canal and runs open water in it like a river, or the like, he shall become their owner, and, in such case, shall be entitled to sell them.

Likewise, it is not allowed to sell a mortgaged object except with the consent or permission of the mortgagee. If the mortgagor sells and then the mortgaged object becomes free, then apparently its sale shall be valid without any need for the mortgagor's permission. Similarly, it is not allowed to sell an endowed property except in certain circumstances.

Problem #5: An endowed property may be sold in the following circumstances.

1. When the endowed property is ruined in a way that it cannot be utilized in its original form, such as the trunk of an old and rotten tree, a worn out mat, a ruined house that cannot be utilized, including even its courtyard. To this is added the asset that loses total utility due to some reason other than ruination.

Similarly, an object that has lost utility considerably due to ruination, etc. in a way that it may usually be called to be of no use, as when a house is razed to the ground, and becomes flat as a courtyard so that it may be leased on a nominal hire, and should become such that if it is sold or exchanged with some other property, its benefit shall be like before or almost like before.

This is all when it is not hoped to return to its previous condition; otherwise, according to the stronger opinion, it shall not be allowed. Similarly, if its utility has reduced but not to extent to be equivalent to non-existent, then apparently it shall not be allowed to be sold, even if it is possible to purchase with its price something which has plenty of profit. This is when the object has been ruined or has gone beyond use presently. If its existence would lead to its ruination, then there is hesitation in the permissibility of its sale, particularly if its future ruination is based on mere conjecture; rather, in such case, its non-permissibility is not devoid of force, in the same way as it would not be allowed, to be sold without hesitation if suppose there is possibility of its being utilized after ruination in the same way as it was utilized previously in another way.

2. If the endower has made it a condition to sell it in case of reduction of its utility, increase in its tax, or difference may crop up among the persons to whom it is endowed, or they happen to be in an exigency or extreme need, in such case there is no objection in its sale or exchange, though with hesitation.

Problem #6: It is not allowed to sell a forcibly conquered land. It is the land that is forcibly seized from the infidels.

As regards the land that was developed at the time of conquest, it is the property of the Muslims in general. So it remains in its original state in the possession of the person who develops it; tax shall be charged on it and spent on the welfare of the Muslims.

As regards the land that was undeveloped at the time of conquest, and it was developed later, it shall belong to the person who develops it. This will solve the problem of the houses, real estates and some pieces of the land with which some deal of property is made, as they are likely to be lawfully owned by the person who has made some changes in them. So as long as a property is in

the ownership of a person, it shall be considered to be his property, except when it transpires to be otherwise.

Fifth: Power to deliver (the object and its price). So it is not allowed to sell an owned bid when flying in the air, nor an owned fish thrown into water, nor a quadruped animal that has escaped. If the seller is not capable of delivering the object, but the seller is capable to take its delivery, then apparently the sale shall be valid.

Chapter Two - Options

There are several kinds of Options. They are as follows.

First: Option of the Meeting (Khiyar-i Majlis)

After the conclusion of a contract (for sale), both the parties to the contract shall have the option to retract as long as they do not separate. If they separate, even if a step, so that it is considered separation according to the prevalent custom, both the parties shall lose the right of option, and the contract (for sale) shall become binding.

If, however, both the parties leave the place of meeting in a way that they are together, the right of option shall remain intact.

Second: Option of the Animal

If a person buys an animal he shall have the right of option until three days after the conclusion of the contract (for sale). But if the price paid is in the form of an animal, there is hesitation in the establishment of the right of option for the seller; rather, its absence is not devoid of force.

Problem #1: If the buyer makes some change in the animal signifying a kind of consent and it is mostly construed as such, he shall forfeit the right of option, as when he shoes the animal, or trims its hooves or its hair, or dyes it, or dyes its hair, etc. But every action does not signify consent of the buyer, nor every new and unusual act considered to be a proof of the buyer's consent, as riding the animal in an unusual way, or feeding the animal with fodder and giving it water to drink.

Problem #2: If the animal is lost during the period of option, it shall be treated as the property of the seller, the sale shall be annulled and the buyer shall have the right to demand the return of the price if he has already paid it (to the seller).

Problem #3: If some defect arises in the animal within the three days without the fault of the buyer, it shall not obstruct the cancellation (of the contract) or return (of the animal by the buyer).

Third: Option of Condition

The Option of Condition is obtained by stipulation during the conclusion of a contract (for sale). This may be made for both or one of the parties (to the contract) or a third party. It does not admit of a special time; rather, it is according to the what has been stipulated by both the parties (to the contract), regardless of its being for a short or long time, but the time must be specified as regards its being connected or separate. Of course, if a specified time is mentioned (in the contract), such as, for example, a month, without specifying from which month, then apparently it shall be connected with (the date of conclusion of) the contract.

Problem #1: It is allowed to stipulate option for one or both of the parties (to rescind the contract) after obtaining an order or consulting with a third party relating to the contract, so that the latter's opinion is to be followed as he deems desirable with regard to the sustenance or cancellation of the contract. In case of such a stipulation, specification of the time is also a condition, and the person who has the stipulated option shall not be entitled to rescind the contract before obtaining the opinion of the said third party, but he is not obliged to do what the third party orders him to do; rather, it shall be permissible for him to do so. If the seller stipulates for the buyer that, for example, he has three days to consult his friend or agent, then if he deems desirable he shall abide by it, otherwise not. According to this stipulation, the buyer shall have the right of option with the supposition that his friend or agent may not consider the contract desirable, but not absolutely, so that the buyer shall not have the right of option except with the said supposition.

Problem #2: There is no objection in declaring that the option of condition is not exclusively applicable to (a contract for) sale. Rather it is applicable to a large number of binding contracts. So also there is no objection in declaring that it is not applicable to unilateral obligations, such as a divorce, emancipation, absolution, and the like.

Problem #3: It is permissible to stipulate option for the seller in case he returns the actual price (of his commodity) or what is generally considered similar to it until a specified period of time. So if the specified time lapses and he fails to bring the whole price, the (contract for) sale shall become binding. This is generally known as *Bay' al Khiyār* (sale with the right of option) Apparently it shall be valid to stipulate that the seller shall be entitled to rescind the whole contract by returning part of the price or part of the contract by returning part of the price. It is sufficient for the seller in returning the price to do what concerns on his part in receiving the price, even if the buyer refuses to get the delivery (of the subject). So if the seller offers the price and presents it to the buyer, and the buyer is able to receive it but refuses to do so, the seller shall be entitled to rescind the contract.

Problem #4: The growth in the subject (of sale) and its benefits during the said period shall belong to the buyer, as he shall have the recourse against the seller if the subject is (damaged or) lost. The right of option subsists in the event of the loss of the subject if it is stipulated that he shall have the right of option and the power to rescind the contract. Subsequent to the cancellation of the contract, the seller shall have the right to demand an equivalent or price of the subject. If it is stipulated that

in the event of cancellation of the contract the subject itself shall be returned, the right of option shall drop. If it is stipulated that the subject itself shall be returned (in case of cancellation of the contract), the buyer shall have no right to bring any transferring change or loss of the subject before the expiry of the stipulated time. It shall not be far from both, (i.e. bringing change or loss) being permissible if what is stipulated is the power to rescind the contract.

Problem #5: The price stipulated to be returned is entirely the liability of the seller, as when he owes one thousand Dirhams to Zayd, and sells his house for what he owes to him, and stipulates the option conditional to the return of the price, its return shall be by paying what is owed by him, although he is absolved of his liability by stipulating it to be the price (of the subject).

Problem #6: If the seller has not taken the possession of the price at all, irrespective of the whole owed by the buyer or the actual subject in his possession, whether he has the option and the right to rescind the contract before the expiry of the stipulated period or not? There are two alternatives, the former not being devoid of preference.

If he has taken its price, and the price is absolute, then apparently he shall not be required to return it in substance; rather it shall be sufficient to return it in some other kind that may be deemed equivalent to that entire price, except when it has been stipulated to return the price in its substance. If the price is personal in substance, the return shall not be deemed to have taken place, except by its return in substance. If it is not possible to return it in substance or its kind due to having perished, the option shall drop, except when it has been explicitly stipulated that what is deemed generally as its substitute may be returned, if it is not possible to return it in substance. If the price is of the category that is usually utilized by spending it, not by keeping it, as cash money, it may be said that what comes to the mind in general may be deemed usually to include its substitute, as long as it is not stipulated otherwise.

Problem #7: As the return of the price takes place by its reaching the buyer, so also it takes place by its reaching the buyer's general agent or his special agent for that purpose, or by its reaching his Wali, like the judge, if he becomes a lunatic or is away; rather, it would take place even it reaches the morally sound believers, in case they enjoy his Wilāyat. This rule applies in case the option related to the return of the price or its return to the buyer, and had been in general terms. If, however, there was the condition of its return to the buyer personally, it cannot be paid to anyone else.

Problem #8: If the guardian buys something through an optional sale, and the interdiction of the principal is removed before the expiry of the stipulated period of option, and the seller returns the price (to him), then apparently the return of the price shall be deemed to have taken place by its reaching the principal, and the seller thereby be entitled to exercise option. The return of the price shall not be sufficient if it is paid to the guardian after he is deprived of his right of guardianship. If one of the two guardians, like the father, buys something, then will the return of the price be valid if it is returned to the other guardian, like the paternal grandfather? It is not far from being valid in

case it was not possible to return the price to the father in the said example. If a judge buys something as a guardian, then, according to the stronger opinion, the return of the price to another shall not be sufficient if it was possible to return it to the former. In case, it was not possible to return it to the former, then it can be returned to the other judge. This rule is applicable to the case where it has not been specifically mentioned that the price is to be returned to the buyer personally, as mentioned in the previous Problem, otherwise, it cannot be paid to anyone else.

Problem #9: If the seller dies, like all similar cases, the right of option shall be transferred to his heirs, so that they shall be entitled to return the price or rescind the contract for sale. The object of sale shall be returned to them according to the Laws of Inheritance, as the price returned is also to be divided among them according to their respective shares. If the buyer dies, then apparently it shall be permissible to rescind the contract for sale by returning the price to his heirs. Of course, if it has been stipulated specifically that the price is to be returned to the buyer personally and directly to him, then apparently his heirs shall not be entitled to stand in his place, and so the right of option shall drop with the death of the buyer.

Problem #10: As it is permissible for the seller to stipulate the right of option for returning the price, similarly the buyer may also be entitled to stipulate similar option of returning the object for which price has been paid. In such case, apparently the general stipulation shall require the return of the object itself, and it shall not be deemed to take place by returning its substitute, even if the object has perished, except when the return has been specified in a way that it also includes a substitute. It is permissible for both the seller and buyer to stipulate the right of option by returning what has been transferred to them.

Fourth: Option of Deception (Khiyār-i Ghabn)

The Option of Deception takes place when a person sells a thing on a price lower than its proper price or the buyer buys it on a price higher than its proper price due to ignorance of its proper price. In such case, the party deceived shall have the right of option to rescind the contract. The excess or deficit shall be judged in consideration of the stipulation appended to the contract. If a person sells something worth one hundred Dinars for far less than that, but with the right of option for the seller, it shall not fall under Deception, because a thing that is sold with the right of option for the seller has a lesser value than a thing that is sold with a binding contract (without an option). Similar is the case with other stipulations. It is a condition in a Deception that the difference in the price should be so much that it is not dispensed with usually in such transactions. Its determination depends on the usual practice. The difference differs with different transactions. Sometimes the difference is half of one-tenth or one-tenth, which is generally dispensed with, and so it is not considered a Deception, while sometimes the difference of one-tenth of one-tenth is not dispensed with. There is no fixed criterion for it, and it depends on the usual practice.

Problem #1: A defrauded person is not entitled to demand the difference of price from the fraudulent person; rather, he shall have the option either to rescind the contract or agree with the specified price, in the same way that his option is not dropped by the payment of the difference by the defrauding party. Of course, there is no objection in case of their mutual agreement.

Problem #2: The option is established from the time of the conclusion of the contract (of sale) and not from the time it is discovered. If the defrauded party rescinds the contract, while the deception has already taken place, the contract shall automatically be cancelled.

Problem #3: If a person comes to know of a deception, but does not expedite cancellation of the contract, then if it was due to his ignorance about the option, there shall be no objection in the subsistence of the contract. If a person has knowledge about the option, and decides to cancel the contract due to being unwilling with the sale on that price, but delays the cancellation due to some special consideration, then apparently the contract shall subsist. Of course, .he is not allowed to delay in a way that it may lead to harm or suspension of some work by the defrauding person. Rather, if he decides not to cancel the contract, but later changes his intention (and decides to cancel it), the subsistence of the contract shall not be devoid of force.

Problem #4: The criterion in a deception is the price at the time of the conclusion of the contract. If there is some increase in it subsequently, the right of option shall not drop, even if it happens before the defrauded person comes to know of the deficit in the price at the time of the conclusion of the contract. If the price is decreased after the conclusion of the contract, the right of option shall not be established.

Problem #5: This option drops in the following cases.

First: If during the contract the cancellation of the contract is stipulated. In such case the deception shall be confined to the degree intended in the stipulation and that is implied by the wordings of the contract. So if it is stipulated that a degree may drop from the deception, like one-tenth, and later it transpires to be one-fifth, the right of option shall not drop. Rather if its cancellation is stipulated, even if the deception is immoderate or more, the right of option shall not drop, except when it is proportionate to what is likely in such transactions and not more. If suppose a person buys something for hundred, while it is not likely to be worth ten or twenty, while it is likely to be immoderate up to fifty or more immoderate up to thirty, the right of option shall not drop in case of the stipulation mentioned, while it is worth ten or twenty. All this will happen in case the cancellation of the option is stipulated when it comes from ten in a way of being confined. The other case shall be dealt with under the Second.

Second: When the option is cancelled after the contract, even if before the deception is discovered when it is cancelled with the supposition that it shall be established. This shall also be confined to the degree of the deception as contained in the wordings of the contract. If it is dropped to a special degree, like ten, and later it transpires that the deception was of a greater degree, it shall not drop, if the cancellation is by way of being confined, so that the option may drop if it comes, for example, from ten in a general way conforming to the external according to its suitable circumstances. If the option that has been materialized in the contract is dropped under the impression that it is a deception of ten degrees, then apparently it shall drop, regardless whether it is defined by the supposed definition or not. If it is said that the option materialized in the contract that comes from ten, and so it is repugnant to the definition, its option is dropped, according to the stronger opinion. It is better to have been dropped under the impression that it comes from that. The same is the case when it is stipulated to be dropped by a degree, or when it is immoderate or more. The same rule shall apply to the case where a person has entered into a compromise on his option that has been declared invalid if it was by way of being confined to a degree, and later it transpires to be of a greater degree, besides the other two cases. As it is permissible to drop the option after the contract gratuitously, it is also allowed to make a t on it against some payment. So if there is knowledge about the degree of deception, there shall be no objection. In case of ignorance a compromise shall be valid with the specification of the general degrees, so that it is compromised on the option for deception occurring in this transaction of whatever degree it might be.

Third: If, after the knowledge about the deception, the person brings some changes in the thing transferred to him in a way that is understood by sane persons to mean making the contract binding and dropping the option, such as the change effected by its destruction, or by what hampers its return, or giving it out of his ownership, as through a binding sale, or, rather, otherwise, or the type of changes already mentioned under the Option of Animals (or Beasts of Burden). But as regards the minor changes, such as inconsiderable riding, or feeding it with fodder, or the like, that does not signify willingness (to drop the option), the option shall not thereby be dropped, in the same way as the changes effected before the discovery of the deception do not lead to the suspension of the

option, in the same way as the changes made by the defrauding person in the thing transferred to him absolutely does not deprive him of the right of option.

Problem #6: If the defrauded seller rescinds the contract of sale, then if the object of sale exists with the buyer in its original condition, the latter shall return it to the former. If it has perished or has been destroyed, the seller shall have the recourse to the buyer for its substitute or its price. If some damage has been done to it, regardless whether it has been the result of his own act, or otherwise an Act of God, or the like, the seller shall receive it along with its indemnity. If it has gone out of his ownership through an endowment or some binding transaction, then apparently it shall be treated as one destroyed, and so the seller shall have the recourse to the buyer for its substitute or its price.

If it has been transferred through an unbinding transaction like a sale with the right of option or gift (Hibah), then there is hesitation in the permissibility of the compulsion to rescind the contract and return the object itself. If the object itself has been returned to the buyer through revocation of the contract by either of the two parties, or a fresh contractor through revocation before the recourse by the seller for its substitute, it is not far from his being under compulsion to return the object itself, even if the previous transfer had been binding.

If its usufruct has been transferred to another person through a binding contract as a contract of lease, it shall be an impediment in revocation of the contract, as, after the revocation, the contract of lease shall remain intact, and the object shall be returned to person revoking the contract stripped of the usufruct, and he shall be entitled to all benefits enjoyed by the lessee, if any. There is a strong justification for the permissibility of his recourse to the buyer for the proper rent proportionate to the remaining period of lease. As also it is likely for him to have recourse to him for the damage caused to the object due to his being deprived of the benefit during that period. The price of the object shall, therefore, be assessed in consideration of its being an object having benefit during that period once and after being deprived of the benefit another time, and the seller shall receive the object itself along with the difference between the two prices. Apparently there is no difference between both the cases.

Problem #7: After the revocation of the contract by the defrauded seller if the object of sale exists with the buyer, but he has effected some change in it thereby bringing some alteration in it, either in the form of a deficiency or an excess or a mixture. If it is the form of a deficiency, the seller shall receive it and have recourse to him for indemnity, as already mentioned. If it were by way of excess, then either it is a mere description, as grinding the wheat into flour, bleaching the cloth, molding the silver, or it is a description tarnishing the object itself, as dying when it is usually considered to be something separate, or a mere separate object like plantation, tilling or building. In the first case, if the excess has nothing to do with the increase in its price, the seller shall have recourse to have the object itself and he shall be under no other obligation, as the buyer shall also not be under any liability.

If it has something to do with the increase in the price, the seller shall have recourse to have the object itself. In this case there are different alternatives, as, due to the increase in the price belonging to the buyer, the seller may receive the object itself and pay the excess in its price, or may share with the buyer in the price, so that the object may be sold and both may share the sale proceeds in their due proportion, or may share the object itself in their due proportion to the excess, or the object may belong to the seller and the buyer may receive the remuneration for his labor, or nothing may go to him at all, the stronger alternative is the second. The seller shall not be compelled for sale; rather, he shall be entitled to receive the object and pay what belongs to the buyer proportionately. The same is the likelihood even in the second alternative. In the third alternative, the seller shall have recourse to receive the object, while the plants or the like shall belong to the buyer, and the seller shall not be entitled to compel the buyer to uproot the plants or raze the building to the ground, or to indemnify, or compel him to keep it intact even gratis, as also the buyer shall not be entitled to keep it intact gratis and without any remuneration.

The buyer shall have to keep it intact against payment of remuneration, or uproot the plants or trees and level the land and repair the damage caused to the land, and the seller shall be entitled to compel him to do either of the two. If it is possible to plant the uprooted tree in a way that nothing shall happen to it except the change of the place, then the seller shall be entitled to compel the buyer to do so. Apparently there is no difference in the application of the rule between farming or other things.

If, however, the alteration has taken place due to mixture, then if it has been mixed in a way that it is not distinguishable, then it shall be treated as something non-existing, and so the seller shall have recourse to get its substitute or its price without there being any difference between a thing which has amortized and is considered to have perished, as when the rose-water is mixed with oil, or, in the prevalent custom, both the things, (when mixed), turn into something else. Caution must not be given up by reaching a compromise or mutual agreement in cases other than these two cases, though in case of mixture when the things mixed are not distinguishable, the application of the rule relating to a perished object is not devoid of force.

If the thing mixed belongs to the same category, then the mixture shall be shared in proportion to the respective quantity (of both the things mixed).

If the alloy is of an inferior or superior quality, then in the former case, the seller shall receive the indemnity and in the latter he shall pay for the surplus in its price.

It is, however, more cautious to reach a compromise particularly in the second case.

Problem #8: If a person sells or buys two things in a single transaction, having been defrauded in one to the exclusion of the other, he shall not be entitled to separate them while revoking the contract; rather, he shall have either to revoke the entire contract of sale, or be willing to abide by it entirely.

Fifth: Option of Delay

The Option of Delay takes place when a person sells a thing but neither receives the whole price nor delivers the thing to the buyer, while no stipulation has been made regarding the delivery of either of the two, (namely, the price and the thing sold). In such case, the contract shall remain binding until three days.

If the buyer comes with the price, he shall be more entitled to take the delivery of the commodity. Otherwise, the seller shall be entitled to revoke the bargain.

If, in the meantime, the commodity perishes (or is destroyed), the loss shall be borne by the seller, while the receipt of part of the price by the seller is to be treated as if not receiving the price at all.

Problem #1: Apparently this option is not to be made immediately. So if it is delayed for three days, it shall not drop, except in case of any of the causes that lead to its suspension.

Problem #2: This option is dropped by stipulation made in the contract of sale, or by dropping it after three days. There is, however, hesitation in its suspension before three days. The stronger opinion in favour of its non-suspension is stronger, as also the opinion in favour of its non-suspension is stronger in case the buyer pays the price even after three days but before its revocation by the seller. The option also drops if the buyer takes the money by way of settlement, not in any other way. As regards the question whether the option shall drop on the demand of the price by the seller, there are two opinions, the one according to the traditional authority being in favour of its non-suspension.

Problem #3: By the three days is meant the light of the day, and it does not include the nights excluding the intervening two nights. So if the contract of sale is concluded in the first part of the day, the end of the three days shall be the sunset on the third day. Of course, if it is concluded at night, the first night or part thereof shall be included in the period. Apparently, piecing together is sufficient. If the contract of sale is concluded in the first part of after noon, the beginning of the option shall be counted from the after noon of the fourth day. And so on.

Problem #4: This option is not applicable to other forms of transactions except to a contract of sale.

Problem #5: If the object of sale perishes (or is destroyed), the loss shall be borne by the seller. According to the stronger opinion, the same rule shall also apply if the object of sale perishes (or is destroyed) after three days

Problem #6: If a person sells some thing that is prone to perish, so that it perishes or is spoiled if detained for a night, like vegetables and some varieties of fruits, and sometimes meat, and the like, and the thing remains with the seller, while the buyer delays (in taking its delivery). In such case the seller shall have the option to revoke the contract before the thing is subjected to spoilage. So the seller may revoke the contract and bring change in the thing as he likes.

Sixth: Option of Inspection

The Option of Inspection applies in case a person buys a thing by description without having inspected it, and subsequently he finds it contrary to its description given to him, as being defective. Similarly, the option shall apply if he finds the thing different from what he had inspected earlier. In such case, he shall have the option (to revoke the contract of sale). So also in case a person sells a thing with a different description, and he finds it more than described by him or finds it more than what he had inspected before, or finds the price different from what had been described, that is, deficient from what had been described, then the seller shall have the option to revoke the contract of sale in all such cases.

Problem #1: By option here is meant rejection or detention (of the object of sale) gratis. The person possessing the right of option shall not be entitled to detain the object of sale against receipt of indemnity, in the same way as his option is not dropped by payment (of the indemnity) or changing the commodity by another commodity. Of course, if the quality absent in the object is effective in its soundness, the receipt of indemnity shall be justified due to the defect and not due to the difference in the quality or description.

Problem #2: This option is applicable in case of the sale of a definite commodity that is not present at the time of the sale and purchase, and it is a condition for the validity of the bargain that either the commodity should have been inspected in a way that satisfaction should have reached as to the subsistence of its properties; otherwise, there shall be hesitation (in the validity of the bargain), or it should have been described in a manner that would remove ignorance according to the usual practice so as to obtain confidence about its description that may eliminate the risk by mentioning its category, kind and properties that differ with the difference of prices and attractions of the people.

Problem #3: This option is to be exercised immediately after the inspection, according to the prevalent opinion, but there is hesitation (in accepting this rule).

Problem #4: This option drops in case its suspension is stipulated in the contract of sale if the confidence removing ignorance is not thereby eliminated; otherwise, it is vitiated and the contract itself is vitiated. The option is also dropped by dropping it after inspection, and by making any change in the object of sale in a way indicating the buyer's willingness with the bargain, as well as by not expediting to revoke the contract of sale, (as according to the rule) it is to be exercised immediately (after the inspection).

Seventh: Option of Defect

An Option of Defect is applicable when the buyer comes to know of some blemish in the object of sale. So he shall have the option either to revoke the contract of sale or detain the object subject to receipt of indemnity, provided that he has not already dropped the rejection by word or deed signifying it, and has not made any change in the object bringing any alteration in the object, and no defect has taken place in the object after the expiry of the period of option during which the seller is bound to indemnify the buyer, like the Option of Animal (or beast of burden) or Options of Meeting and Condition, when the latter two are exclusively related to the buyer. Apparently the criterion for its suspension is that the object of sale ceases to be in its original condition due to its destruction or what is treated as such, or due to some defect or deficiency, even if it is not a defect. Of course, apparently the option is not dropped by any change through excess if it does not necessarily bring any defect in the object, even if it produces mixture. Anyhow, in case of existence of any of the conditions mentioned, the buyer shall not be entitled to return the object; rather, a special indemnity is established for him. As this option is established for the buyer when he finds any defect in the object of sale, in the same way it is established for the seller if he finds any defect in the specified price. By defect here is meant excess or deficiency whatever as to the natural way and original creation like blindness, lameness, etc.

Problem #1: This option is established if the defect actually existed at the time of the conclusion of the contract of sale, even if it is not apparent later. The appearance of the defect is a proof of its existence from before and not the existence of the defect being a cause of obtaining the option. So the option is dropped in case of its suspension before the appearance of the defect, in the same way as it is dropped after it. Similarly it is dropped if its suspension is stipulated in the contract, or by (seller's) exonerating himself from the liability for any defect by saying: 'I have sold this commodity along with all its defects'. As the option is dropped by (the seller's) exonerating himself from the liability of any defect, so the right to demand indemnity also drops, as its suspension at the time of the conclusion of the contract or after it depends on the contract of sale.

Problem #2: As the option is established by the existence of the defect at the time of conclusion of the contract, so also it is established by its taking place after the conclusion of the contract but before the delivery. A defect that takes place after the conclusion of the contract impedes the return of the object, provided that the defect has taken place in the object after its delivery and after the option of the buyer due to the seller's liability, as already mentioned. If it takes place before the delivery, it shall engender the option, and shall not impede the return (of the object of sale) or revocation of the contract of sale due to the existence of the defect previously in a preferential way.

Problem #3: If the object of sale was defective at the time of the conclusion of the contract of sale, but the defect is removed before it becomes apparent, then apparently the option shall also drop. Rather the suspension of the indemnity shall also not be devoid of closeness (to the rule), though it is more cautious to reach a compromise.

Problem #4: The procedure of receiving the indemnity is that first the price of the object is assessed in its sound condition, and then its price is assessed in its defective condition, then the ratio is found between both of them, and then the specified price is reduced in the same ratio. Thus, if its price in its sound condition is assessed as nine, and in its defective condition as seven, then if, suppose, the specified price is six, then two shall be deducted from six; and so on. For its determination, reference must be made to the experts. It is stronger to rely on the opinion of a single trustworthy person from among the experts, though it is more cautious to rely on several and morally sound witnesses as is required in the case of evidence.

Problem #5: If the assessors differ in the assessment of the sound and defective object, or both, then it shall be more cautious to resolve it through compromise. In some cases it is not far from resorting to casting lots.

Problem #6: If a person sells two things by a single transaction, and then one of them turns out to be defective. The buyer shall be entitled either to accept them along with an indemnity, or reject them altogether. He is not entitled to separate them by rejecting the defective one only. Similarly, if two persons share in the purchase of a commodity, and that turns out to be defective, then one of them shall not be entitled to reject his share of the commodity even if his partner does not agree. There is hesitation in accepting the rule, particularly in the latter case. Of course, if the seller agrees, it shall be permissible, and it shall be valid to separate the shares in both the cases, without any hesitation.

Chapter Three - Rules Concerning Option

There are some rules of options that are common to all types of options, while there are some rules that relate to specific options. The present brief description does not admit of their details.

From among the common rules is that when a person having option dies, his right of option shifts to his heirs, without any difference in the types of option. Whatever is considered an impediment in the inheritance of property is also an impediment in the inheritance of options. So also whatever deprives an heir of his share in the inheritance, like the existence of a relative more closely related to the deceased, also deprives such heir in case of options too. If the option concerns some special property that is forbidden to some of the heirs, as land in relation to a wife or a Hubwah (a ring, garments, a sword and Mushaf (the Quran) that is forbidden to any of the sons except the eldest one, such heir (is deprived of a share in such property) shall not be absolutely forbidden to enjoy the right of option relating to it.

Problem #1: There is no problem when there is a single heir. If there are several heirs, then it is a stronger opinion that the option shall belong to them collectively in a way that some of them shall not be entitled to revoke the bargain without including the rest, neither in relation to the entire object of sale nor in relation to their shares.

Problem #2: If all the heirs agree to revoke the contract of sale of the object sold by their testator (*Murith*) then if the price in its original subsists, it shall be returned to the buyer. If it does not exist, it shall be deducted from the property of the deceased. If there is no property left by the deceased, then whether it shall be a debt against the deceased and remain a liability against him, to be set off by the object of sale returned, so that if there is a residue it shall belong to the heirs, and if it does not suffice for setting off what is due from him, the residue shall be liability of the deceased or of the heirs commensurate with their respective shares, there are two opinions, the more in keeping with the guiding principles is the former.

Chapter Four - What is Included in the Object of Sale Sold in General Terms

Problem #1: If a person buys a garden, it shall include its land, trees and palm-trees, as well as its buildings, its surrounding walls and other things that are considered to be attached to it, as the well and the Persian wheel, if it is usually included in it, and animal pens, and the like. On the contrary if a person buys a land, then its palm-trees and other trees in it shall not be included in it, except when so stipulated. Likewise, the foetus shall not be included in the sale of its mother, unless there is a stipulation to that effect, except when it is usually tied with the mother, as it is so typically. The same rule shall apply to the fruits of a tree. So if a person sells a palm tree, then if it is grafted, its fruits shall belong to the seller, and the buyer shall be bound to leave so much of the dates on the tree as are usually left on it. If it is not grafted, the fruits shall belong to the buyer, and apparently it is included in the sale. In cases other than sale and purchase, the fruits belong to the transferor without there being any condition or prevalent practice to the contrary, irrespective of the tree being grafted or not, as the rule relate to palm-trees and are not applicable to other cases. Rather, the fruits belong to the seller except in case of a condition or prevalent practice tying the fruits to the trees.

Problem #2: If a person sells trees and leaves the fruits to belong to the seller, and they may need watering, then their master shall be entitled to water them, and the owner of the trees shall not be entitled to forbid him from doing so. Similar shall be the rule in case otherwise. If watering damages one of them and its absence damages the other, then whether the right of seller who is the owner of the fruits shall be preferred or that of the buyer who is the master of the trees, there are two opinions, the latter is not devoid of- preference, while it is more cautious to reach a compromise and mutual agreement instead of preferring either of them, even if it is damaging to the other.

Problem #3: If a person sells a garden, and e a palm-tree, he shall be entitled to an entrance to and exit from it as well as drawing its branches and roots from the ground, and the buyer shall not be entitled to forbid him from doing so. If a person sells a house, it shall include the land and its lower and higher buildings, except when the higher buildings are independent as regards their entrance and exit and appurtenances, etc., that allude to its being excluded and independent according to the prevalent practice.

Similarly, it also includes the basements, wells, doors, woods found in the building as well as the pegs fixed in it, and also the passage attached to the staircase, but the grinding mill fixed in it is not included in it except by a stipulation in its favour.

Likewise, if there is some palm-tree or some other tree, (it shall also not be included in it), except by a stipulation to that effect, even if the buyer says; (it includes) whatever is around within its enclosure or there is prevalent practice leading to its confinement to it, as is generally the case. It is not far from including the keys in the building.

Problem #4: The stones produced in the land, as well as the natural mines in it are included in the sale of the land, contrary to the stones lying buried in it, or treasures kept as a trust in it, and the like.

Chapter Five - Taking Possession and Delivery

Problem #1: The parties to the sale and purchase are bound to deliver the object of sale and its price after the conclusion of the contract of sale in case there is no stipulation for delay. So neither of them is allowed to delay, if possible, without the consent of the other party. If both of them abstain, they shall be compelled. If one of them abstains, he shall be compelled. If the seller and buyer stipulate delay in the delivery to a specified time, it shall be permissible. Neither of the parties is allowed to delay the delivery within the time stipulated with the other party. Of course, if any of the parties delays the delivery until the maturity of the time, then the other party shall also be entitled to delay the delivery of the thing stipulated.

Similarly a seller is allowed to stipulate for himself the right of residence in the house, or riding the animal (or beast of burden) or till the land, or the like until a specified period. Taking possession and delivery, in case of a house or a farm is its evacuation by taking his hand off from it and removing hindrances to evacuation as well as giving permission to the other party to make any change in a way that it goes under the domination of the other. However, in case of movable objects like food and clothing, or the like, as regards their evacuation or taking possession absolutely or the details of their categories, there are several opinions, It is not far from sufficiency in evacuation in cases where the seller and buyer are bound to deliver the commodity sold and its price to the other party, even if does not lead to cessation of his liability on the supposition of absence of his liability for its loss or destruction in a likelihood that is not far, even if it is not sufficient in other cases where delivery of the object is a condition, the details of which cannot be given here.

Problem #2: If the object of sale is destroyed before its delivery to the buyer, it shall be treated as a property of the seller, and so the sale shall be cancelled and the price shall be returned to the buyer. If some growth has taken place in the object of sale before the buyer takes its possession, such as the offspring (of animals) or fruits, they shall belong to the buyer. If they become blemished before the buyer takes their possession, the buyer shall have the option either to rescind the contract of sale or endorse it against the entire price. As regards his right to have indemnity, there is hesitation in it, and the stronger opinion is in favour of its absence.

Problem #3: If a person sells several things at a time, and some of them are destroyed the buyer takes their possession, then the contract of sale shall be revocable in relation to what has been destroyed, and its specific price shall be returned to the buyer. The buyer shall be entitled either to revoke the contract of sale or consent with his share in the price of what has been remained intact.

Problem #4: Besides delivering the object of sale, a seller is bound to vacate the goods etc. lying in it, even if he is busy in the farm the harvest time of which has reached, he shall have to remove it. If it has roots transferring which may be harmful for it like cotton or maize, or there are some stones in the field lying buried in it, he shall be bound to remove them too and level the ground. If there is something in that cannot be removed except by bringing some change in the building, he shall be bound to remove it and repair what has been demolished. If there is some farm in it the harvest time

of which has not reached, there is hesitation in its retention until the harvest time without any payment. Anyhow, caution must not be given up by reaching some compromise.

Problem #5: If a person buys something, but does not take its delivery, then, if it is something that is neither measured nor weighed, it shall be permissible to sell it before taking its delivery. Similar is the case when the thing may be measured or weighed, but he sells it for what he had bought. If, however, he sells it with some profit, then there is hesitation (in declaring its sale valid). According to the stronger opinion, its sale is valid, but with an amount of disapproval. Anyhow, caution must not be given up. This is when he sells it to someone other than its seller. In case otherwise, there is no hesitation in its validity absolutely, as also there is no hesitation when he comes to own a thing without buying it, as through inheritance, dower, or Khul', etc. Apparently its prohibition or disapproval relates particularly to its sale, so that there is no restriction on its giving it as a dower, or wages etc.

Chapter Six - (Sale on) Cash and Credit

Problem #1: If person sells something but does not determine the time for payment of its price, its payment shall be treated to be in cash and immediately. The seller may demand the price at any time after its delivery. The seller is not entitled to refuse to receive it whenever the buyer intends to pay it.

If the time of payment of the price is already determined, it shall be treated as credit, and the buyer shall not be bound to deliver it before its appointed time, even if it is demanded (by the seller), in the same way as the seller is also not bound to receive it if it is paid by the buyer before its appointed time. It is indispensable to fix the time exactly so that it may not admit of any likelihood of excess or decrease.

If there is a stipulation for payment to be made later, but no time has been fixed, or it is fixed indistinctly, the sale shall be declared void. According to the stronger opinion, it is not sufficient for the time to be fixed by itself without the knowledge of both the parties to the contract of sale.

Problem #2: If a person sells something for a price payable immediately and a higher price payable later, so that he may say: "I shall pay it to you for ten in cash and for fifteen on credit for one year", and the buyer also agrees to it, then there is hesitation in declaring it void. If it is said that this bargain shall be valid and the seller shall be entitled to receive the lowest price even if paid at the appointed time, it shall not be far (from being valid). Of course, there shall be no hesitation in declaring it void if the person sells the thing for a price payable after some time and for a higher price payable after some other time.

Problem #3: It is not permissible to change a price payable immediately to one payable later, rather any debt, to a higher one so that the price to which the seller is entitled may be raised in quantity so that it becomes payable at a later time. Similarly, it is not permissible to increase the time of payment of a price payable at a later date, regardless whether it is done by way of sale, conveyance or Ju'alah, etc., but it is valid otherwise, and that is fixing the time by decreasing the price by way of conveyance or Ibrā' (release, or remission of the debt).

Problem #4: If a person sells something, it shall be permissible for him to buy it before the maturity of its appointed time or after it for the commodity of the price or something else, regardless whether it is equivalent to the former price or not, and whether the latter sale is in cash or on credit, and this is permissible when no such stipulation is made in the former transaction. If the seller stipulates in his contract of sale that the buyer shall sell it after buying it, or the buyer stipulates for the seller that he shall buy it from him, the transaction shall not be valid, according to the more cautious opinion, in the same way as it is not permissible absolutely if he does so in order to save himself from Ribā'.

Chapter Seven - Ribā' or Usury

The prohibition of Ribā' or usury is established by the Book (i.e. the Quran). Tradition (the Holy Prophet and the Imams) and consensus of the Muslims, rather it is not far from being one of the necessary injunctions of the Islamic faith. It is one of the great, atrocious sins. Its severity has come down in the Holy Book (i.e. the Holy Quran) and several Traditions (of the Holy Prophet and the Imams). It has come down about it in an authentic Tradition from Imam (Jafat) al Sadiq, Peace be upon him, that he has said:

“(Obtaining) a Dirham of Riba or usury is a more atrocious sin than committing incest seventy times.” It has also been related that the holy Prophet, Allah’s Blessing be on him and his Progeny, said in his Last Will to Ali, Peace be upon him, “O Ali, there are seventy parts of Riba’, the easiest (the lowest) is treated as heinous an offence as one’s marrying his own mother in the Holy House of Allah”. So also it has been reported from the Holy Prophet, Allah’s Blessing be on him and his Progeny that he has said: “Whoever eats Riba’, Allah shall fill his stomach with the Fire of Hell as much as he eats Riba’. If he makes any property with it, Allah shall not accept any of his (virtuous) acts. Allah and the Angels shall continue sending curse on him as long as even a Qirāt (the minimum quantity) of it is lying with him.” So also it has been related from the Holy Prophet, Allah’s Blessing be on him and his Progeny, (that he has said): “Allah has cursed the person who eats Ribā’, his agent, his scribe and both his witnesses.” Etc.

There are two kinds of Riba’: One relating to a Bargain, and the other relating to a Debt. The former is a sale of one of the identical commodities with another with something in excess, as the sale of one Maund of wheat with two Maunds of it or one Maund and a Dirham, or with different order such as one Maund in cash with one Maund on credit. According to the stronger opinion Ribā’ is not confined to sale only, but it is exercised in other transactions as well, as a conveyance or the like. There are following two conditions for it:

(Two Conditions for It)

First Condition: Both the things must be usually of the same kind. So everything that is treated as wheat, rice, dates or grapes in usual practice and is considered to be of the same kind cannot be sold with another of the same kind with something in excess, even if they differ in quality and properties. So the excess is not allowed in an exchange of red wheat of an inferior quality with white wheat of a superior quality, nor Ambar rice of superior quality with a Shambah rice of inferior quality, or Zāhidi dates of inferior quality with Khastah dates of superior quality, etc., that are usually considered to be of the same kind, contrary to what is not considered to be of the same kind, as wheat exchanged with lentil, in whose case there is no objection in addition in either of them.

Second Condition: The things exchanged must belong to the category of things that are measured or weighed, so that there shall be no Ribā’ in the exchange of things that are sold by number or sight.

Problem #1: As for Ribā', barley and wheat are considered to be of identical kind, and so their exchange with some addition is not permissible, even if they are not usually considered to be of the same kind. As for Zakāt, the Nisāb of one of them cannot be completed with another. Does 'Alas (a wheat-like grain of inferior quality used as food by the people of San'a, capital of Yemen) belong to the category of wheat or *Sult* (a grain soft as wheat and having the property of barley) to the category of barley? There is hesitation (in accepting them as wheat and barley respectively). It is more cautious that one of them must neither be sold in exchange for the other, nor either of them in exchange for wheat or barley, except that each of them must be exchanged with its own category.

Problem #2: Everything with its original is treated as one category even if they differ in names, as sesame and its oil, milk and yoghurt, churned sour milk, beestings, etc., dates and grapes mixed with their vinegar and juice.

Similar is the case with the products with their original as yoghurt and cheese and dried yoghurt, etc.

Problem #3: The meat, milk and animal fat differ with the different animals. An addition may be made with the meat of sheep and cow, as well as their milk and fat.

Problem #4: In case of things that are measured or weighed, a product does not follow its original.

In case of things that are not measured or weighed, if something is produced from them that cannot be measured or weighed something can be added with it and its original.

Similar is the case with something that is produced out of something else. So there is no objection in adding something either to cotton and what is woven with it, or to two things woven with it, so that two cloths can be sold for one cloth.

Sometimes some things can be measured and weighed at one time while they cannot be measured or weighed at another time, as fruits on the trees and after plucking, or an animal before it is slaughtered and skinned, and after it. So it is allowed to sell two sheep for one sheep without any objection.

Of course, it is not allowed to sell the meat of an animal with a living animal of the same category, as the meat of goat for a sheep.

Its prohibition is not due to Riba'; rather it is not far from generalising the rule of prohibition to the sale of meat of animal with the animal of even another category, as meat of a goat for a cow.

Problem #5: If something has the condition of being dry as well as moist, as fresh and dried dates and fresh grapes and raisins, and so also bread, as well as uncooked meat that becomes dry, so there is no objection in selling them in dry condition for another in dry condition, or moist for moist, anything for another of similar condition, as it is not permissible to add anything to them.

As regards the sale of a dry one for a moist one, there is hesitation in its permissibility; the more cautious being non-permissibility, regardless whether they are with an addition or something for a similar one.

Problem #6: Superiority or inferiority in quality does not necessitate addition. So it is not allowed to sell one Mithqal of gold of superior quality for two Mithqals of gold of inferior quality, even if they are equal in price.

Problem #7: Several ways for escape from Riba have been mentioned in books, and I have revised the issue, and have reached the conclusion that escape from Riba in one way or the other is not permissible, and what is permissible is the escape from similar things with an addition, as the sale of one Maund of wheat of equal price for two Maunds of barley or wheat of inferior quality. If one intends to get rid of sale of two similar things with something added to the defective one in order to escape from the prohibited one to the lawful one, in fact, this is not escaping from Ribā'. As regards escape from Riba it is not allowed by employing one device or the other.

Problem #8: If something is sold and purchased without weight in one place and in another through weight, then each place shall be governed by its own rule.

Problem #9: There is no Riba between a father and his son, nor between a husband and his wife, nor between a Muslim and a Harbi (a subject of a non-Muslim enemy country), in the sense that it is permissible for a Muslim to charge an excess (from a Harbi). It is also allowed between a Muslim and a Dhimmi (a non-Muslim subject of a Muslim state). This is the discussion regarding Riba in bargains. But as regards Ribā in debts, God willing, it shall follow.

Chapter Eight - Sale of Surf (Bay' al-Surf)

The sale of Surf means the sale of gold for gold or silver, or the sale of silver for silver or gold. There is no difference whether the gold or silver is bullion or otherwise. If the thread made of silk and gold or silver is sold for another such thread, when the gold or silver used in it is placed against each other, it shall be called a sale of Surf. If it is placed against each other in two cloths (in which the gold or silver thread is used), then apparently it shall not be called a sale of Surf.

The same rule shall apply if one of them is sold. It is a condition that the possession of the object of sale and its price should take place at the spot, so that if it takes place on different occasions or the possession does not take place, the contract of sale shall be declared void. If the possession takes place partially, the part of which possession does not take place at the spot shall be declared void.

Similarly, if gold or silver is sold in a single transaction with something other than gold or silver, and total possession does not take place until the two parties to the contract separate from each other, the contract relating to gold or silver shall be declared void, while that relating to the other object shall remain valid.

Problem #1: If both the parties leave together, the contract of sale shall not be void. So if both of them take possession of the object of sale and its price respectively, and then separate, the contract of sale shall be valid.

Problem #2: The condition of mutual possession in case of gold or silver relates to the transaction of its sale, and not in other transactions, such as conveyance or gift with an exchange, etc.

Problem #3: If the transaction takes place on promissory notes or the paper notes as usual in our times from one party or both parties, then apparently the rules of sale of Surf shall not apply to it, but at the same time excess shall not be permissible even if it is done to escape from Riba. If a person intends to give loan, and, in order to escape from Ribā, he sells the paper money with an excess, he shall be deemed to have committed a forbidden act, and the contract of sale shall also be declared void. If it is supposed that the transaction of gold or silver is valid and the money be in the form of commercial cheques, the sale of Surf shall take place and Ribā' shall be established in such transaction. But such supposition may take place in such transactions in these days.

Nevertheless, the exchange of cheques shall not be sufficient in the mutual possession required in a sale of Surf

Problem #4: Apparently for possession it is sufficient that the thing must be a liability of the party (required to give possession), and actual possession is not necessary. So if Zayd is liable to pay to 'Amr Dirhams and he sells it in Dinars, and he takes their possession before they depart, it shall be a valid transaction. Rather, even if he authorizes Zayd to take possession from him, it shall be a valid bargain.

Problem #5: If a person buys some Dirhams through sale of Surf, and then purchases with them some Dinars before taking possession of the Dirhams, the second transaction shall not be valid. If the mutual possession takes place before the parties depart, the first transactions shall be valid. If, however, they depart before the mutual possession take place, the first transaction shall also be declared void.

Problem #6: If a person has to pay Dirhams to another person. Then if the latter says to the former: “Change the Dirhams into Dinars”, and the other party also agrees, and accepts the liability of changing the Dirhams into Dinars. If it was to authorize him as an agent in the sale of what he owed for something else, it shall be valid; otherwise, by his mere consent with the change and his acceptance, there shall be hesitation in the validity of the transaction, and it is far from being likely to be called a transaction other than sale.

Problem #7: If counterfeit Dirhams and Dinars are current among the people, then if they have knowledge about it, it shall be permissible to spend and pay them and use them in a transaction; otherwise, it shall not be permissible except after declaring them to be counterfeit. It is more cautious to break them, even if they are not meant to be counterfeit.

Problem #8: As gold and silver are things that admit of Ribā’, whenever any of them is sold for something of its own category, both the parties to the transaction, in order not to fall in Ribā’, must see that there is no excess. This is a matter which must be attached due importance by both the parties to a transaction particularly the exchange agents. This is why exchange agency is forbidden, as an exchange agent cannot be safe from Riba

Problem #9: In an addition, the existence of some alloy in gold or silver is sufficient if it is of value when separated. So if silver containing some alloy is sold for something identical, it shall be permissible, even if sold with an addition, when the purpose is not to escape from Ribā’. If it is sold for pure silver, it is indispensable that there must be some excess so that the excess may be equal to the alloy. If the amount of alloy is not known, then it shall be sold for something belonging to another category, or for a quantity that is briefly known to be more than the amount of the alloy. The same is the case of the things ornamented with gold or silver or the like.

Problem #10: If a person buys a definite amount of silver for identical silver or gold, but finds it to be of some other category, as copper or lead, the sale shall be declared void, and he shall not be entitled to demand a substitute, in the same way as the seller shall not be entitled to compel him to accept a substitute. If he finds part of it to be so, that much shall be invalid and the rest shall be valid. The buyer shall be entitled to revoke the contract of sale due to the defective one being part of it. The seller shall also be entitled to revoke it, provided that he was ignorant of the actual condition.

If a person buys silver owed entirely by another for gold or silver, and after its possession finds what is delivered to be totally or partially of some other category, then if he finds it before both the parties depart, then the seller shall have to replace it with the actual category, and the buyer shall be

entitled to demand its substitute. If he finds it after the departure of both the parties, the sale shall be declared totally or partially void in the way explained before.

This is the case when the thing happens to be of a different category. But if it were of the same category, but some defect has come to light in it as the hardness of the substance or the alloy being more than usual, or the coin being counterfeit, or the like, then in the first case, when the object of sale is outwardly a definite amount of silver, the buyer shall be entitled either to return it entirely or retain it, but he shall not be entitled to return only the defective one if it is partially defective. But there is hesitation in accepting this rule, as mentioned under the Chapter on the Option of Defect. The buyer shall not be entitled to demand the indemnity if both the commodities were of the same category as silver for silver, in case of the substance being hard or the coin being counterfeit, according to the more cautious, if not stronger opinion, due to the application of Ribā'. If the commodities exchanged were of different categories, as silver for gold, the buyer shall be entitled to demand the indemnity before the departure (of both the parties). But after the departure, there is hesitation (in the application of the rule), particularly when the indemnity is to be paid in gold or silver. However, according to the stronger opinion, he shall be entitled to demand it, particularly when the object of sale was other than silver or gold.

In the second case, when the object of sale were entirely owed by some one else, and some defect comes to light in the thing delivered, it is not far from being likely for him to be entitled either to retain the defective object for that price or demand its substitute before the departure (of both the parties). But after the departure, there is hesitation (in the application of the rule). Is he entitled to indemnity? According to the opinion close to the traditional authority, it is not established, even in case of the commodities being different, as silver for gold, and even before departure (of both the parties).

Problem #11: It is not permissible to buy a ring or ear-ring from a gold-smith, suppose, made of silver or gold for something of the same category along with some excess in view of his remuneration; rather even if he buys it for something of another category, or buys it for partly of the same category, and prescribes some remuneration for the gold smith. Of course, if the bezel of the ring, suppose, belongs to the gold-smith, and is of a different category than the ring, it shall be allowed to purchase it for its category with excess in case it is not an escape from Ribā'.

Problem #12: If Zayd owes some Dinars to some person, and the latter takes Dirhams from him bits by bits. If it were in repayment of the debt, the amount of Dinars owed by him shall be reduced in proportion to the amount of the Dirhams received by him according to the rates current at that time. If, however, it was as a loan, he shall be liable to repay it in Dinars, and Zayd shall be liable to pay those Dinars (owed by him). Each of them shall be entitled to demand (the repayment of his debt. There is objection if each of them accounts for what is owed by the other to set off his respective debt, even if by mutual consent, in the same way as there is objection in the sale of the liability of another for his own liability. There is no alternative for them except to release the liability of one from another or compromising the Dinars by Dirhams. Of course, if the Dirhams

taken gradually were received by way of a deposit until they have reached the amount of the Dinars (owed by Zayd), they may be accounted for. There is no objection in the justification for treating the Dirhams in repayment of the debt at the time of calculation, in the same way as it is permissible for him to sell the Dinars owed for the present Dirhams. In any case, the current rates of Dinars and Dirhams shall be taken into consideration at the time of calculation, but the difference between the current and previous rates of exchange shall not be taken into account.

Problem #13: If a person gives Zayd a prescribed number of coins on credit or sells something for a prescribed number of coins, as *Lirah* (or Pounds) for a prescribed period of time, and the rate of the currency has gone up or has come down until the arrival of the prescribed time since the time of lending or selling, he shall not be entitled to anything other than the coins alone, and the rise or fall in the currency rates shall not be taken into account.

Problem #14: It is allowed to sell a Mithqal of pure silver to a gold-smith for a Mithqal of silver containing some alloy having value, on the condition that the gold-smith shall make, for example, a ring.

Similarly, it is permissible for a person to say to a gold-smith: Make a ring for me, and I shall sell to you twenty Mithqal of pure silver for twenty Mithqals of impure silver". In both the cases, it shall not necessarily incur Riba', provided that the purpose is not to escape from Riba'.

Problem #15: If a person sells ten Rupees, for example, for one Lirah (or Pound) minus one Rupee, it shall be valid, provided that both the parties have knowledge about the current rate of Rupee vis-a-vis Lirah, and also know what amount has been exempted, and on the condition that the purpose is not to escape Riba'.

Chapter Nine - Sale of Salaf (Bay' al-Salaf)

It is also called (Bay') al-Salam. Contrary to purchasing on credit, it is purchasing in cash something entirely to be delivered later on a prescribed date. (in such contract), the buyer is called *Muslim*, the price *Muslim*, the seller *Muslim ilayh*, the object of sale *Muslim fih*. It requires Declaration and Acceptance, and each of the sellers and buyer must have the authority to exercise Declaration and Acceptance.

The Declaration is made by the seller using the word of 'Bay' (Sale) or something like it, so that he says: I have sold to you an amount of wheat of such quality to be delivered until such time against such price, and the buyer says: "I have accepted (it) or "I have bought (it)."

As regards the Declaration by the buyer, it may be in either of the two expressions, namely, "I have purchased by way of Salam or "I have purchased by way of Salaf", so that he may say: "I have paid you by way of Salam or I have paid (you) by way of Salaf a sum of, for example, hundred Dirhams for an amount of wheat of such quality to be delivered until such time", and the *Muslim ilayh*, i.e., the seller may say: "I have accepted (it). It is permissible to pay by way of Salaf something other than gold or silver in any other case, so that the price and the object for which price is paid may be other than gold and silver having different categories or otherwise, or one or both being of the category of goods that can be measured or weighed. Similar is the case with the sale and purchase of either gold or silver by way of Salaf in case the price or the object of sale are other than those that can be measured or weighed, and vice versa. It is not permissible to contract by way of Salaf either gold or silver in either of them. It is not valid to sell or purchase by way of Salaf anything the properties of which cannot be determined as their price and demand differ with their difference, as the gems, pearls, real estates and lands and the like in whose case ignorance and risk are not avoided except by inspection, contrary to what can be determined in a way that it may not lead to scarcity of availability, as vegetables, fruits, cereals like wheat, barley, rice and the like, rather eggs, pomegranates, almonds, and the like, as well as animals, garments, drinks, spices, in pure or mixed forms.

There are the following conditions for *Salaf*.

First: Description of the kind and features of the object of sale in a way that may remove lack of information about it

Second: Taking possession of the price before departure from the place of conclusion of the contract. If part of the price is taken into possession, the transaction shall be valid in respect of that, and invalid in respect of the rest. If the price were a debt due from the seller, then if it were deferred, it shall not be allowed to make it the price for *Muslim fih*. If, however, it were prompt, then apparently it shall be allowed to make it the price, though it would not be free from objection, and so it would be more cautious to avoid it. If a person makes the entire price a liability of the

buyer, and then accounts it for in the debt payable by the seller, the *Muslim ilayh*, there shall be hesitation in treating it as Salam.

Third: Determination of the amount of the object that can be measured weighed or counted according to its respective measure.

Fourth: Prescription of the exact time for delivery of the *Muslim fi* in days, months and years, or the like. If, however, it is prescribed as the time of harvest, threshing or the like, it shall be declared void. There is no difference in the prescribed time if it is prescribed exactly as being one day, half a day, or a long one as twenty years.

Fifth: The presence of the person at the time of the maturity of the prescribed time in the place where the *Muslim fi* is stipulated to be delivered so that, if stipulated, its presence may not be discontinued in order to make its delivery possible.

Problem #1: It is more cautious to specify the place of delivery, except when it reverts to the place where the contract has been concluded or any other place.

Problem #2: If the time of the delivery has been specified as one or two months, then if the contract has been concluded on the first of the month, it shall be counted as a lunar month or two, and the deficiency in the month or its completion shall not be taken into account. If the contract was concluded in between the month, then, according to the stronger opinion, the days shall be pieced together, so that the days of the next month shall be accounted for and added to the previous month. If the contract was signed on tenth of the month, and the maturity period has been fixed as one month, then it shall mature on the tenth of the next month, and so on. Sometimes the month has not thirty days, and this is when the preceding month has less than thirty days. Anyhow, it is more cautious to reach a compromise, as it has been said in the case supposed that the month must be counted as having thirty days.

Problem #3: If the time of delivery has been prescribed as the month of Jamadi or Rabi the nearer shall be construed. Similarly if Thursday or Friday has been specified, then in the first case (of Jamadi or Rabi) the first of the lunar month and in the second (i.e. Thursday or Friday), the first part of the day shall be construed.

Problem #4: If a person has bought something by way of Salam, he shall not be allowed to sell it before the maturity of the period, neither to the seller nor to any one else, regardless whether he sells it for the earlier price or different from it, and whether the commodity is equal, less or more than the earlier one. He is allowed to sell the thing after the maturity of the prescribed time, no matter whether he has taken its possession or not, to the seller or some one else, and for the earlier price or other than that, whether it is equal or more than that, as long as it does not necessarily fall under *Riba*.

Problem #5: If the *Muslim ilayh* delivers to the buyer the thing sold by way of Salam after the maturity of the prescribed period, but it lacks as regards the quality or amount, the buyer shall not be bound to accept it. If it is identical, he shall be bound to accept it, as is the case with debts. Similar shall be the case if it was superior as regards quality so that it may be like the described object with an additional quality. In case otherwise, the buyer shall not be bound to accept it, as when the person had sold a restive horse, while he intends to return a trained one. Similarly, if it were bigger in amount, the buyer shall not be bound to accept it.

Problem #6: If the maturity period has arrived, but the seller is not able to deliver the thing sold by way of Salam due to the infliction of a calamity, his inability to procure it, its scarcity in the town and impossibility of procuring it from any other place, or any other excuse till the maturity of the prescribed period, then the buyer shall have the option either to revoke the contract or resort to the seller for the return of the price and his capital, or wait until the seller is able to perform his duty. According to the stronger opinion, he cannot compel the seller to repay the price at the maturity of the prescribed time (of delivery of the object of sale).

Chapter Ten - Murābahah, Muwāda'ah & Towliyah

What takes place between two parties to a transaction, takes place in two ways.

First that nothing takes place between them except a mutual conversation and fixation of the price and the thing for which price is paid without any consideration of the capital or whether there is profit or loss for the seller in the transaction. So both of them execute the sale on a prescribed thing for a specified price. This type of sale is called *Musawāmah*, and it is best of all its types.

Second that there is consideration of profit, loss or no profit no loss, and from this point of view, sale is divided into *Murābahah*, *Muwāda'ah* and *Towliyah*. The first (*Murabahah*) is a sale of the capital with an addition (or profit). The second (i.e. *Muwāda'ah*) is a sale with a loss. The third (i.e., *Towliyah*) is a sale without profit or loss.

It is indispensable for the application of any of these titles that the contract must be concluded in a way that may allude to any of them.

So in the first type, it is a condition to specify the amount of profit and in the second amount of loss. So in the first type, one says: "I have sold to you for what I had purchased with so much profit", and the buyer agrees with it. In the second, one says: "I have sold to you for what I had purchased with so much loss." In the third, one says. "I have sold to you for what I had purchased."

Problem #1: If in a *Murābahah* a seller says: "I have sold this to you for one hundred and a profit of one Dirham on each ten", and in a *Muwāda'ah* a reduction (or loss) of one Dirham on each ten", then if he knows the price and its amount, the contract of sale shall be valid, according to the stronger opinion, with some disapproval.

Rather, the validity shall not be devoid of force if he does not know the amount of price after adding the profit and reducing the loss.

Problem #2: If there are several currencies, and their exchange rates also differ, it is indispensable to mention the currency and its exchange rate, and that which currency he had purchased and at what exchange rate.

So, also it is indispensable to mention the conditions and the time allowed for delivery, and such other things due to which the price changes.

Problem #3: If a person buys a commodity for a fixed price, and does not do any act that may lead to increase in its price, then his capital shall be that price. So he is not allowed to give information about anything other than the price. If, however, he has done some labor in it, if it was his own act, it shall not be permissible for him to merge the remuneration for his own labor in its original price, and inform the buyer that his capital is so much, or that he had purchased it for so much. Rather his true words must be to say: "I have purchased it for so much" and here he must mention its original price, and add: "I have done so much labor in it." If the labor was done through employing some

one else, it shall be lawful for him to merge the wages in its price, and say: “It has cost me so much”, though it shall not be permissible for him to say: “I have purchased it for so much,” or “My capital was so much”. If he has purchased in a defective condition, and had had recourse against the seller for compensation, he shall be bound to inform the buyer about the actual incident. He is entitled to deduct the amount of the compensation from the original price and call the balance his capital and inform the buyer about it. However, he cannot inform the buyer about the original price without dropping the amount of compensation. If the seller reduces the price out of kindness after the sale, it shall be permissible for him to inform the buyer about the original price without deducting the discount.

Problem #4: A person is allowed to sell a commodity and then buy it with something extra or less, if he has not stipulated its sale with the buyer, even if it was the intention of both of them. Sometimes a person employs a trick while intending to raise his principal from what he had purchased by selling the commodity to, for example, his son for a higher price, and then purchasing it for that price in order to mention it in a *Murabahah*. In this case the man has not lied with regard to his principal provided that the sale and purchase with his son had been serious. Anyhow his sale was valid, but it has been treachery and deceit, and so it is not lawful to do it. Of course, if it were not by way of *Muwatāt* and with the intention of playing a trick, it shall be lawful and there shall be nothing forbidden in it.

Problem #5: If the untruthfulness of the seller in his information about his principal comes to light, the sale shall, nevertheless, be valid, and the buyer shall have the option either to revoke it or endorse it with the entire price. In such case there is no difference whether the lie was deliberate or inadvertent or by mistake. Does this option lapse in the event of loss of the commodity? There is hesitation in it, and it is not far from not to drop.

Problem #6: If a businessman gives over a commodity to an agent for selling it on his behalf, and specifies its prices and leaves the rest for him, by saying: “Sell it for ten as the principal, and whatever is extra shall be yours.” It shall not be lawful for the agent to sell it by way of *Murābahah*, make the price fixed price against its principal and add something to it as profit. Rather it is necessary that either he should sell it by way of *Musāwamah*, or mention the truth about it by saying that the businessman has fixed its price at so much, and I intend to make so much profit. Thus, if a person buys it with the extra, the extra amount shall belong to him. If the agent sells it for what had been prescribed by the businessman, the sale shall be valid, and the price shall belong to the businessman, and he shall not be entitled to anything, though it is more cautious for the businessman to satisfy the agent. If the agent sells it for less, he shall be considered to have done it without authority and the transaction shall be suspended unless assented to by the businessman.

Problem #7: If a person buys a commodity or a house, etc., he shall be allowed to have another as a partner for what he has purchased, so that the latter may share with him in its price on the basis of half and half or one-third after dividing the price in three shares, and so on. It is allowed to execute the contract by using the word of partnership, by saying: “I have joined you as a partner in this

commodity on the basis of half and half of the price”, or, for example, “for a one-third share”, and the other person says: “I agree with it.” If he expresses it in general terms (without specification), it shall revert to the basis of half and half. Is this transaction a sale or an independent one? There are both probabilities, and if the former is the case, it shall fall under the category of a *Towliyah* sale.

Chapter Eleven - Sale of Fruits

It concerns the sale of palm-trees and the trees that are today usually called Damän. To them are affiliated the farms and the vegetations.

Problem #1: The fruits of palm-trees and other trees are not sold before their appearance and manifestation for one year without annexing any thing else with them. Their sale for two years or more and annexing something else is permissible. However after their appearance when their capacity to bear the fruits is manifested, or the sale is for two years or with the annexation of something else, their sale is permissible without any hesitation. In the absence of all the three, there are two opinions, the stronger being in favour of the permissibility with some reluctance. It is not far from the reluctance having degrees, up to the time of their ripening, when the reluctance is eliminated.

Problem #2: The beginning of ripening of dates is when its turns red or yellow, while in other fruits it is when its grain becomes hard after the falling of its flowers and its becoming safe from calamities.

Problem #3: It is a condition in the things annexed when necessary that they must be such as can be sold separately and they must belong to the owner. If the trees are sold with their fruits, they shall also be treated as annexure. Whether fruits are to be treated as subsidiary (to their trees) or not; according to the stronger opinion, the answer is in the negative.

Problem #4: If some of the fruits of a garden have appeared, it shall be permissible to sell all its fruits, including those existing as well as those yet to appear in that year, regardless whether there is a single tree or more, and whether they are of different categories or of the same category. Likewise, it is allowed to sell the fruits of a garden that have appeared with the fruits of another garden that have not yet appeared.

Problem #5: If some trees bear fruits twice a year, then their period is apparently to be treated as two years, and so they can be sold twice before the appearance of fruits.

Problem #6: If a person sells the fruits of a year or more, and then sells the trees to another person, the contract of sale of the fruits shall not be declared void. The trees shall be transferred to the buyer but without the profit (the fruits). In case of his ignorance (the earlier sale of the fruits), he shall have the option to revoke the contract. Similarly the sale of the fruits shall not be invalidated by the death of their seller or the death of their buyer. In the first case, the trees shall be transferred to the heirs of the seller without the profit (the fruits), and in the second, the fruits to the heirs of the buyer.

Problem #7: If a person sells fruits after their appearance or the beginning of their capacity to bear fruits, then they are struck by an Act of God or some earthly calamity before the buyer takes their possession, and that means the release explained under the Chapter on Possession, they are to be

treated as the property of their seller. Apparently looting, theft and the like are to be treated as calamity. Of course, if a particular person is responsible for the loss, the buyer shall have the option either to revoke the contract or endorse it and have recourse against the person responsible for the loss for compensation. If the loss has taken place after possession by the buyer, it shall be borne by the buyer, and shall not be borne by the seller.

Problem #8: The seller is allowed to keep aside one-third or one-fourth of the fruits or a definite amount as one Maund or two for himself as his separate share, as he is entitled to keep aside the fruit of palm-trees or other specific trees. If the fruits fall short, the deficiency shall be deducted from his separated share in the first case, and in the second case, it is more cautious to reach a compromise.

Problem #9: It is allowed to sell the fruits on palm-trees or other trees for anything that can lawfully be made a price from different types of cash money, commodities, etc., rather even benefits, acts and the like. Of course, it is not allowed to sell dates on the palm-trees for dates, regardless whether they are of the same palm-tree or another, or placed on earth. This transaction is called Muzayánah. It is more cautious to affiliate the fruits with their trees except those of palm-trees, as they are not considered subsidiary to their category, though, according to the stronger opinion, they are not to be affiliated. Of course, according to the stronger opinion, it is not allowed to sell the fruits for a similar amount of them.

Problem #10: It is allowed to sell fruits purchased before or after their possession along with more or less than purchased.

Problem #11: It is not allowed to sell a crop before its appearance while it is still in the form of grain. The permissibility of reaching a compromise in it is reasonable. There is objection if its sale is affiliated with the sale of the land when a person sells it and stipulates its incorporation in the object sold. However, after its appearance and manifestation of its vegetation, it may be sold as fodder, if it is sold as fodder, and the buyer harvests it before it forms into spikes of grain, regardless whether the time of harvesting the fodder has reached or not, if the seller has specified the time for its retention.

If, however, if it has been left unspecified, he shall be entitled to retain it until the time of its harvest as fodder, and the buyer shall be bound to harvest it when its time has reached, except when the seller has agreed. If the seller has not consented, and the buyer also fails to harvest it, the seller shall harvest it. It is more cautious that it should be done after permission from the judge, if possible. The seller may leave it and demand the compensation for the period of retaining it on his land, and indemnity in case of damage.

If he leaves it until the spikes of grain appear, whether the grain shall belong to the buyer or the seller, or both shall share it, is a question that has several alternatives. It is more cautious to reach a compromise. As it is allowed to sell the crop as fodder, it is also allowed to sell it with its roots and

not as fodder on the condition that it is harvested. It is the property of the buyer, he may harvest it if he likes or if he likes he may retain it until it forms into spikes of grain.

Problem #12: It is not allowed to sell the spikes before their appearance and the formation of their grains. However, it is allowed to sell them after the formation of grains, regardless whether their grain is apparent like that of barley or hidden like that of wheat, separately or along with their plant, standing on the ground or after having been harvested. According to the more cautious opinion, it is not allowed to sell the spikes for the grains of its category, as selling spikes of wheat for wheat or the spikes of barley with barley. This is called *Muhaqalah*. Whether it includes the sale of the spikes of wheat for barley or the spikes of barley for wheat, there is hesitation in its answer. However, caution must not be given up, particularly in selling the spikes of barley for wheat.

According to the stronger opinion, this rule does not apply to cases other than these two grains (namely wheat and barley), like rice, maize, etc., though it is more cautious to apply it to them as well. Of course, according to the stronger opinion, it is not allowed to sell them entirely for the amount produced.

Problem #13: It is not allowed to sell the vegetables like cucumber, brinjal, melon, etc. before their manifestation. It is, however, allowed after their formation and manifestation for a single pick or a number of specified picks. The criterion for deciding the picks depends on the prevalent custom and usage of the farmers. Apparently once picking the ripe ones shall be reckoned a single pick.

Problem #14: It is allowed to sell the vegetables like cucumber and melons by inspection where it is possible to inspect them from inside the leaves. It makes no difference if some of the hidden ones cannot be inspected, as also it makes no difference if all or some of them are not ripe. Similarly it makes no difference if there are no picks except the first one, although they had been included in the first one.

Problem #15: If some vegetables are hidden in the earth, like carrots and turnip, there is hesitation in the permissibility of their sale until they are taken out from under the earth. Of course, in case of vegetables like onions whose apparent part is also intended for use, they can be sold separately or along with their plants.

Problem #16: It is allowed to sell fresh vegetables, leek and mint after appearance according to a single pick or specified number of picks. Similar is the case with the leaves of mulberry tree and henna that can be sold according to a single pull or several pulls. The criterion in the picks and pulls is the prevalent custom. The absence of some leaves makes no difference when there are enough leaves for a pull even if the time for their pull has not reached, so that the existing ones shall be added to the non-existent.

Problem #17: If a palm-tree or some other tree or a farm belongs to two persons by half and half, it is allowed for one of the partners to accept the share of his partner according to the prescribed estimate, so that the whole lot is estimated according to an amount, and he shall accept the whole

lot for himself and shall deliver half of the whole lot according to the estimate, whether it is big or small, and his partner shall consent with it.

Apparently this transaction is a particular one itself, as also apparently it has no special formula, and it is sufficient to express it in whatever words that apparently carry the intended purpose as it is understood according to the prevalent custom.

Problem #18: If a person passes by a palm-tree or some other (fruit-) tree just as a passer-by and not with the intention of eating its fruits, he may eat the fruit up to his fill as much as he wants without taking any amount of the fruits along with himself, and without damaging its branches or destroying the fruits.

Apparently there is no difference between the fruits on the trees or those lying on the ground. It is more cautious to confine oneself to the extent one knows it would not displease the owner.

Chapter Twelve - Sale of Animals

Problem #1: As it is allowed to sell the whole of an owned animal, so also it is allowed to sell it in parts by way of a joint share, as a half or a quarter.

As regards the sale of a specific part, like its head, skin, hands or legs, or half of it including, for example, its head, if it were from among the animals whose meat is not eaten, or when the intention is not to eat it, but to ride, or load or drawing a hand-mill, or the like, it shall not be allowed.

Of course, if it were an animal whose meat is not eaten, but can be cleaned, it shall be allowed to sell its skin.

The same rule shall apply where the meat of the animal is not intended, as in case of a horse or donkey, it shall be allowed to sell it if by slaughtering it what is intended is its skin. If, however, the intention is to slaughter the animal and eat its meat, as the butchers buy them and sell them, then apparently it shall be valid to sell it.

If a butcher slaughters an animal and it is purchased by a person, it shall belong to the person who has purchased it. If the person sells it, he shall have a share in its price in proportion to the money he has paid, so that supposing that the animal has been slaughtered, the price of its head and skin shall be evaluated from the rest, and he shall have in that proportion from the price.

The same rule shall apply to the case when a person sells an animal intended for eating its meat, and he excludes its head and skin. Or when two persons or a group of people share, and one of them stipulates, suppose, that its head and skin or head and leg shall belong to him, or a person purchases an animal and then another shares with him, for example, for its head and skin, in all such case, the sale shall be valid when the person intends to slaughter the animal. So when he slaughters it, he shall be entitled to the animal itself, or shall be a partner in the way already explained.

Problem #2: If a person says to another, "Purchase an animal in partnership with me." These words shall mean his intention of employing him as his agent in purchase. If the latter purchases the animal as ordered by him, the animal shall belong to both of them by half and half, except if he has specified differently, the partnership shall be on that basis. If the person ordered pays to the ordering person the price owed by him, he shall have no right of recourse against him as long as the situation does not demand that his intention was to purchase and he had paid what he owed from him, as purchasing from a distant place, where the object purchased is not delivered unless its price is paid. In such case he shall have recourse against the ordering person (for the payment of the price).

Chapter Thirteen - Iqalah (Revocation of the Contract by Both Parties)

Iqalah, in fact, is revocation of a contract by both the parties. It is exercised in all types of contracts, except Marriage. According to the opinion closer to the traditional authority, the heirs do not succeed the principals in such contracts. It takes place by any words that carry the sense intended among those using that language in which it is expressed. Both the parties may say: “Both of us have exercised *Iqalah* with you Or “Both of us have revoked (the contract). Or one of them should say: “I have exercised *Iqalah* with you’, and the other party should accept it.

Apparently it is sufficient if one of the parties should ask the other to pronounce *Iqalah*, and the other party does pronounce *Iqalah*. It is a not a condition to express it in Arabic language.

Apparently it is executed by way of *Mu’atat* in the sense that each of the parties should return to the other what had been transferred to him as a mark of revocation.

Problem #1: *Iqalah* is not executed by increase or decrease in the specified price (on which the transaction had taken place).

So if the buyer exercises *Iqalah* on something higher than the prescribed price, or the seller on something lesser than that, it shall be declared void, and the things exchanged between them shall continue to be the respective property of the parties.

Problem #2: In *Iqalah* revocation and *Iqalah* are not executed.

Problem #3: *Iqalah* is valid in everything on which a contract takes place, as well as on some of them, and in that case price is divided proportionately.

Rather when there are several sellers or buyers, the *Iqalah* of one of the parties is valid in proportion to his own share in spite of the existence of the other party even if his partner does not agree.

Problem #4: The destruction (of the object of sale) is not an impediment in the validity of *Iqalah*. So if both the parties pronounce *Iqalah* the consideration shall revert to its respective owner.

If it exists, he shall take hold of it, and if it is destroyed, he shall have recourse for its substitute in case it admits of substitute, and its price in case it admits of price.

SECTION ELEVEN - PRE-EMPTION

Problem #1: If one of the two partners sells his share to a stranger, the other partner shall, in case of fulfillment of all the following conditions, have a right of its ownership take it away from the buyer for the price he has paid. This right is called the Right of Shuf'ah (Pre-Emption) and its holder Shafi.

Problem #2: There is no objection in the establishment of the right of pre-emption everything that is immovable, if it were divisible, as lands, gardens, houses, and the like.

As regards its establishment in movable things like garments, commodities, and animals and immovable thing that are not divisible, like rivulets, roads, wells most of the hand-mills, public baths, as well as trees, palm-trees, fruits on the palm and other trees there is objection. It is more cautious for the partner not to enjoy the right of pre-emption except with the consent of the buyer, for the buyer to agree with the partner if he wants to assert his right of pre-emption.

Problem #3: Pre-emption is established in a joint share in a joint property, but there is no such right due to neighbourhood. So if a person sells his house or real estate, his neighbour shall not be entitled to assert the right of pre-emption.

So also it is not established in a divided property when one of the partner sells his separated share, except when it is a house that was divided after having been jointly or was initially separated but has a common passage, and one of the two partners has sold his separated share in the house, then the right of pre-emption shall be established for the other partner, if it has been sold by the former along with the passage; contrary to the case when the passage continues to be held jointly by both of them, in that case, there shall be no pre-emption in the sale of the share.

Whether sharing in drinking water of a well, river or a water pipe is affiliated with the rule of sharing the passage; there is hesitation (in giving its answer in the affirmative), and so caution must not be given up here too as in case of the preceding Problem

Similar is the case of affiliating the case of a garden and lands with that of sharing the passage in a house. So in these cases too caution must not be given up.

Problem #4: If a person sells something and a portion of the house, or sells his separated portion of the house with a joint share in another house by a single contract of sale, his partner shall have the right of pre-emption in the joint portion in relation to its share in the price, though it is more cautious to obtain mutual consent, as already mentioned.

Problem #5: It is a condition for the establishment of the right of pre-emption that the portion should have been transferred by sale. If it has been transferred by way of a dower, a ransom for Khul', or a conveyance or a free gift (Hibah), it shall not be subject to the claim of pre-emption.

Problem #6: Pre-emption is established when a property is held jointly by two persons, but there is no pre-emption if it is held by three persons or more. It makes apparently no difference if the sellers are two from among three partners while the Shafi' (or the person asserting pre-emption) is a single person, or vice versa. Of course, if one of the two partners should sell his share to two persons at a time, or gradually, the property now belonging to three people after the sale, there shall, nevertheless, be no objection in the assertion of pre-emption by the other partner. Has such a partner (claiming pre-emption) the right of discrimination so that he may assert his right of pre-emption in relation to one of the buyers leaving the other or not? There are two alternatives rather two opinions, the first not being devoid of force.

Problem #7: If a house is a joint property, one portion being independent and the other a charitable endowment. If the independent portion is sold, neither the person in whose favour the charitable endowment has been made, even if it were a single person, nor the Wall or agent of the charitable endowment shall be entitled to claim the right of pre-emption. Rather, even if the portion of the charitable endowment is sold by a valid sale, there is hesitation in the establishment of the right of pre-emption for the holder of the independent portion. The stronger opinion is in favour of absence of such right if the endowment be specific and its holders be several.

Problem #8: It is a condition in the establishment of pre-emption that the Shafi' (i.e. the person asserting the right of pre-emption) must be capable of paying the price. So there is no pre-emption for an incapable person, even if he brings a guarantor or mortgage, except when the buyer agrees to wait. Rather it is a condition in a pre-emption that the person asserting the pre-emption must show up the price.

If he brings the excuse that it is lying in some place, and goes to fetch it, then if it were in the same town, he shall be waited for three days, but if it were in some town, he shall be waited until usually money may be brought from that place even for more than three days, provided that the place is not too far, so that if the buyer should grant him time, the delay may be harmful for his interest, If the Shafi' fails to show up the price within the appointed period, he shall not be entitled to enjoy the right of pre-emption.

Problem #9: It is a condition that the Shafi' must be a Muslim, if the buyer happens to be a Muslim. So an infidel has no right of pre-emption against a Muslim, even if the latter has purchased the property from an infidel. The right of pre-emption is established for an infidel against an infidel, and for a Muslim against an infidel.

Problem #10: Pre-emption is established for an absent person. He shall be entitled to assert the right after he is informed about the sale, even if after a long a time. If he has a general agent for claiming the pre-emption, and he obtains the information about the sale to the exclusion of his client, then he shall be entitled to assert pre-emption on behalf of his client.

Problem #11: Pre-emption is established for an idiot, though he is not entitled to assert it except with the consent of his guardian, or his permission in case of his interdiction. Similarly, it is

established for a minor, lunatic, though their guardian is entitled to assert pre-emption on their behalf. Of course, if the guardian be the executor, he shall not be entitled to assert pre-emption on behalf of his ward, except when it is in the interest of the ward, contrary to the father or the paternal grand-father, in whose case the absence of corruption is sufficient, but they should not give up caution for observing the interest of their ward. If the guardian of such persons fails to claim pre-emption until they come of age, then they shall be entitled to assert pre-emption.

Problem #12: If the guardian is a partner of the ward, and he sells his share to a stranger, or if a general agent happens to be a partner of his client, and he sells the share of his client to a stranger, then there shall be hesitation in the establishment of the right of pre-emption for the ward (in both cases); rather its absence is not devoid of force.

Problem #13: Pre-emption is asserted either by word, saying: “I have claimed the right of pre-emption,” or “I have taken the possession of such property”, or such other words that carry the sense of his ownership of the property, or obtaining the sold share through the right of pre-emption, or by means of an act through payment of the price and taking possession of the share so that the buyer may take his hand off from it and let alone the Shafi’ and the two shares. It is a condition to pay the price at the time of claiming the pre-emption by words or action, except when the buyer agrees with the delay (in payment of the price). Of course, if the price is deferred, then apparently he shall be entitled to take possession of the property by means of pre-emption and become the owner of that share without any delay, and he shall be bound to pay the price at its appointed time, in the same way as it shall be permissible for him to take possession of the share and also make the payment of its price immediately.

Rather, it is permissible to delay taking its possession and pay its price at the appointed time, though it is more cautious to take its possession without delay.

Problem #14: The Shafi’ has no right of discrimination. Either he should take the whole or leave it entirely.

Problem #15: What the Shafi’ is bound to do at the time of getting through pre-emption is the payment of the price prescribed at the time of the conclusion of the contract of sale, no matter whether the price of the share is less or more. But he is neither bound to pay what the buyer has paid as expenditure like the remuneration of the agent or the like, nor what the buyer has paid in addition to the price and what he has paid to the seller as donation after the contract. So also he shall be entitled to whatever discount the seller has granted out of the price, and the buyer shall not be entitled to deduct that discount (from the price).

Problem #16: If the price is in kind like gold or silver or the like, the Shafi’ shall be bound to pay accordingly. If it is non-fungible like an animal, jewel, garments or the like, then with regard to the establishment of pre-emption and the necessity of paying their price at the time of sale or non-establishment at all, there are two alternatives, the latter being stronger.

Problem #17: If the Shafi' gets information about the sale, he must put up his demand immediately; otherwise, he shall lose his right of pre-emption due to procrastination or delay without any reasonable cause or rational, legal or usual excuse, contrary to the case when the non-assertion of the pre-emption is due to some excuse, that includes lack of information about the sale, even if he has been informed by some unreliable person. The same is the case if he were ignorant of his right of pre-emption or lack of permissibility in delaying the assertion of his pre-emption due to procrastination. Rather to the same category shall belong the case when he had been under the misunderstanding that the price is exorbitant, while it turned out to be otherwise, or its being in form of ready money that was difficult to obtain as gold, but later it transpired to be otherwise, etc,

Problem #18: Pre-emption is a right that drops with the elimination of the Shafi' Rather if he agrees at the very beginning with the sale to a stranger or he is offered to buy the share and he declines, he shall no more have the right of pre-emption. There is also a strong reason for its elimination by the *Iqalah* of the seller and buyer or returning of the object of sale by the buyer to the seller due to some defect or any other cause.

Problem #19: If the buyer effects some change in what he had purchased, then in case the change is in the form of sale, the Shafi' shall be entitled to get the object from the first buyer on the price paid by him. So the second purchase shall be nullified. He may also get the object from the second buyer on what he had paid. In that case, the first transaction shall be valid. The same shall be the case if the sales were more than two. In that case the Shafi' shall be entitled to demand the object from the first buyer on the price paid by him. In that case, all the subsequent sales shall be nullified. He may also get it from the last buyer, in which case all the preceding sales shall be valid. He may also get it from the middle buyer, in which case the preceding sales shall be valid and the subsequent ones invalid. The same shall be the case if the transaction were other than sale, as a charitable endowment, etc., in which case the Shafi shall be entitled to get it by pre-emption, and what had been done by the buyer shall be cancelled. Each change may be valid in the absence of a claim of pre-emption; otherwise, it shall be invalid ab initio. But there is hesitation (in the validity of this rule).

Problem #20: If the thing purchased is fully destroyed in a way that nothing of it is left behind at all, the right of pre-emption shall also drop. If it were after the assertion of the pre-emption and the destruction occurred due to an act of the buyer, or without his act but due to the procrastination in the delivery after the assertion of the pre-emption with all its conditions, then the buyer shall be held responsible for it. If, however, something of it is left behind, as in the case of a house that has been razed to the ground, but its courtyard and debris are still there, or it has become defective, then the right of pre-emption (of the Shafi') shall not drop, and he shall be entitled to assert pre-emption and get what has remained of the house, for example, in the form of the courtyard and the debris for the whole price without any responsibility of the buyer. If it takes place after the assertion of the pre-emption, the buyer shall be responsible for the payment of the cost or the compensation for the defect, if it were due to his act, rather, even without his own act due to procrastination (in its delivery), as mentioned earlier.

Problem #21: According to the more cautious, if not stronger, opinion, it is a condition in the assertion of pre-emption that the Shafi' must have knowledge about the price at the time of his assertion of pre-emption. So if he says: "I have taken this object whatever may be its price", it shall not be valid, even if he gets the knowledge subsequently.

Problem #22: The right of pre-emption is transferable by inheritance, though there is hesitation in this rule. The procedure of its inheritance is that at the time of its delivery to the heirs the property is divided among them according to their respective shares as prescribed by Allah under Inheritance. If a deceased person leaves behind a wife and a son, the price shall belong to her and the rest shall belong to the son. If a deceased person leaves behind a son and a daughter, then the male shall get twice as much as a female. The right of pre-emption cannot be exercised by a few of the heirs as long as the other heirs do not agree. If some of the heirs excuse (the buyer) and forgo their right of pre-emption, then there is hesitation in the establishment of the right for the others who do not excuse.

Problem #23: If the Shafi' sells his share before getting it through preemption, then apparently his right of pre-emption shall drop, particularly when he does so after having the knowledge about his right of pre-emption.

Problem #24: It is lawful for the Shafi' to reach a compromise with the buyer on his right of pre-emption against some compensation or without it, and its effect shall be the elimination of his right of pre-emption. He does not require a separate intention for forgoing his right of pre-emption. If he has reached the compromise on forgoing the right of pre-emption, or giving up its demand, it shall be lawful, and he shall be bound to fulfill it.

If he does not intend to give up his right, and gets hold of the property through exercising the right of pre-emption, then whether it shall be effective, and as he has committed a sin by not fulfilling what he had undertaken, or it will not be effective, there are two alternatives, the first one is better in the first case, rather in the second as well, when the intention is to give it up with the subsistence of the right, and not to make it an indirect declaration for its elimination, the right of pre-emption shall drop).

Problem #25: If a house is the joint property of a present and absent persons, and the portion of the absent person was in the possession of a person who has sold it claiming to be his agent, there is no objection in purchasing it from him, and effecting different kinds of changes in it as long as he does not have knowledge about his falsehood.

The difficulty lies in whether it is permissible for the partner to assert his right of pre-emption and getting it from the buyer or not? The second alternative is more in keeping with the guiding principles.

SECTION TWELVE - CONVEYANCE

Conveyance is a mutual agreement on the mutual surrender of ownership of a real estate or usufruct or relinquishing a debt or right, etc. It is not a condition that there be a dispute (between the two parties).

It may be executed in respect of anything, except what has been excluded, the details of which shall follow, and in respect of any matter except what renders a lawful thing unlawful or an unlawful thing lawful.

Problem #1: Conveyance is itself an independent contract and a separate topic. So neither the rules of the other contracts are affiliated with it, nor do their conditions apply to it, even if it contains their advantages.

So the conveyance having the advantage of a contract of sale does not admit of the rules and conditions of sale, and so the options particularly meant for sale do not apply to Conveyance, like the Options of Meeting, Animal, or Pre-Emption.

So also there is no condition of actual possession of the two things exchanged in it as is required in the exchange of gold and silver.

The conveyance having the advantage of a Gift (Hibah) does not admit of actual possession of the property as required in a Gift.

Problem #2: Conveyance is a contract that requires Declaration and Acceptance generally even when it contains the advantage of release from a liability and relinquishing a right, according to the stronger opinion.

So the release from the liability of a debt or relinquishing a right, though not dependent on Acceptance, but when executed by way of Conveyance are suspended until Acceptance is accorded to it.

Problem #3: In Conveyance no special words are required, and it is executed by any words conveying the sense of mutual surrender of something by transfer or agreement between two parties, as by saying: "I have entered into Conveyance with you on the house or its usufruct for such", or whatever conveys this sense.

Problem #4: A contract of Conveyance, binding for both the parties, is not revocable except by *Iqalah* or option, even in case it contains the advantage of a lawful Gift. Apparently it admits of all options except the Options of Meeting, Animal and Delay that are exclusively meant for a contract of sale.

There is hesitation in the establishment of indemnity in case of appearance of a defect in the property subject of Conveyance or its equivalent; rather, its non-establishment is not devoid of

force, as, according to the stronger opinion, its return due to infliction of some calamities of the year is also not established.

Problem #5: What is concerned with a Conveyance is a property, usufruct, a debt or a right, and in all suppositions, it may be accompanied by a consideration or without it. In the first case, the consideration is a property, usufruct, debt or right. All these forms are lawful.

Problem #6: If a Conveyance concerns a property or usufruct, it shall have the advantage of its transfer to the person executing Conveyance, regardless whether it is accompanied by a consideration or is without it.

Similar shall be the case, if it concerns a debt on some one other than the person in whose favour Conveyance has been executed, or a transferable right, as the two rights of interdiction and exclusion. If it concerns a debt on the person executing Conveyance, it shall have the advantage of its release.

The same rule shall apply to the right that can be relinquished as the two rights of pre-emption and option.

Problem #7: A contract of Conveyance is valid if it concerns merely the usufruct of a property or the open space, in the same way as Conveyance executed for residence in his house or that a person may use a garment for a period of time, or he may place the logs of his roof on his wall, or the rain water of his house may flow on the roof of that person's house, or that his rain pipe may have an outlet in the courtyard of that person's house, etc., or a flank of his house may be in the open space of his property or the branches of his trees may extend up to the open space of his land, etc. All this is valid with or without a consideration.

Problem #8: A Conveyance is valid in respect of rights that can be transferred and relinquished, so that it is valid in respect of rights that cannot be transferred or relinquished, as the right to demand a debt, or the right of recall in a revocable divorce, or the right of recourse for ransom in a Khul', etc.

Problem #9: All the conditions required in the two parties in a contract of Sale are also required in the two parties executing a contract of Conveyance.

Problem #10: Apparently a contract of Conveyance may be executed by an unauthorized person, even in respect of relinquishing a debt or surrendering a right, and has the advantage of releasing or relinquishing in cases where execution by an unauthorized person is not applicable.

Problem # 11 A Conveyance may be executed in respect of fruits and vegetables, etc before their existence, even within a single year and without an addition, though it is not allowed to sell them.

Problem #12: There is no objection in excusing in a Conveyance for ignorance in case of inability of both the parties executing it to have any knowledge about the object for which Conveyance is executed at all, as the goods of one of the parties is mixed with that of the other, and they do not

know their respective amounts, and so they enter into a contract of Conveyance for having an equal or different shares in it. According to the most apparent opinion, the same is the rule when it is not possible for both of them to have knowledge about the goods due to unavailability of scales and measure. It is not far from being excusable even when at present they are able to know its amount.

Problem #13: If a person owes a debt to another, or has some property of another with him whose amount he knows, but not the other person, and so they enter into a contract of Conveyance for less than what is lawfully right, it is not lawful for him to receive more than that except when the creditor or owner knows it and agrees with it. The same is the case when he does not know the amount of both, but has brief knowledge that what is agreed upon is more than the actual amount of Conveyance. Of course, if he has anyhow agreed to enter into a compromise on his actual right, in a way that if the actual position comes to light he shall have a compromise on it with pleasure, the surplus shall be lawful to him.

Problem #14: If a person reaches Conveyance to charge extra on the growth of his commodity, then, according to the stronger opinion, the rule of Ribā' shall apply to it, and it shall be declared void. Of course, there shall be no harm in case of ignorance about the amount, though there is likelihood of charging extra, as when each of them has a food of the other, but both of them are ignorant of its amount, and so they enter into a Conveyance that whatever is with each of them shall belong to him despite the possibility of some surplus.

Problem #15: It is lawful to enter into a Conveyance in respect of a debt for debt, regardless whether both of them are prompt or deferred, whether they are of the same or different categories, and whether they are owed by a single person or two persons, as when he owes an amount of wheat from Zayd who also owes an amount of barley to Amr, so he enters into a Conveyance for what he owes from Zayd for what he owes to Amr. It would be valid in case of two things of the same category that can be measured or weighed with a surplus. Of course, if he enters into a Conveyance in respect of part of a debt, as when he owes some Dirhams with deferred payment from another, and enters into Conveyance for half of it for prompt payment, then there shall be no objection if he intends to relinquish the surplus and release from its liability, and suffice with something deficient (i.e. half) as is intended usually in such compromise, and not to charge anything between the surplus and deficient.

Problem #16: It is allowed for two partners to reach a Conveyance on that to one of them should belong the capital while the other should have the loss or gain.

Problem #17: It is allowed for two litigants on debt, property or usufruct to enter into a Conveyance against the object of litigation or something else including even the denial of the defendant, and thereby the litigation is dropped. Similar is the case with the right of oath enjoyed by the complainant against the denying party, and after it the complainant shall have no right to file the case again. This is, however, an apparent solution through which the litigation is apparently cut short, while the actual situation does not change. So if a person claims that another owes him a

debt, but the other person denies it, and then they reach a compromise on half of it. This Conveyance shall lead to the termination of the claimant's claim, but if he be on the right, half of it shall remain as a liability on the defendant, even if he believes that he is not on the right, except when it is supposed that the claimant has entered into a Conveyance on his entire property. If his claim was actually wrong, whatever he has received from the denying person shall be forbidden for him, except when it is supposed that he was actually clean at heart and not that his consent was meant to be released of his false claim.

Problem #18: If the defendant says to the claimant: "Enter into a Conveyance with me", "it shall not amount to his acknowledgement of the right, as it has already been mentioned that a Conveyance is valid in spite of denial. But if he says: "Sell it to me," or "Make its owner", it shall be an admission that the thing is not owned by him, but whether it shall amount to acknowledgement of the claimant's ownership, there is hesitation in it.

Problem #19: If a person has a garment whose price is twenty, and another person has also a garment whose price is thirty. Then both the garments become mixed up. If one of them gives the option of decision to the other, and he does justice, and declares that what has been opted by him for himself belongs to himself and the other to the other, but then both of them become annoyed. Then if both of them intend to differ as to the monetary aspect, so that each of them had purchased the garment for sale, they shall sell the garments and divide the sale-proceed between them in proportion to their respective share. But if they mean the garments, and not their respective prices, the matter shall be decided by casting lots.

Problem #20: If a person - has some Dirhams and also another an amount of the Dirhams deposited with a trustee or some third person, and then some of the Dirhams are lost, but it is not known as whom they belonged, then if the amount was equal so each of them had deposited, for example, two Dirhams, then it is not far from deciding that the loss may be borne equally by them and the remainder may be divided between them on the basis of half and half. If the amount differs, then, either the lost amount equal to that deposited by one of them and less than that deposited by another, or it less than the amount deposited by both of them. Then in the first case, it is not far from deciding that the other shall be given what is left from his amount after the loss, and remainder shall be divided equally between them; as, suppose, one of them had deposited two Dirhams and the other one Dirham, and the amount lost was one Dirham then the depositor of two Dirhams shall be given one Dirham, and the remaining Dirham shall be equally divided between them. Or one of them had deposited Dirhams and the other two Dirhams, while the amount lost was two Dirhams, then depositor of five Dirhams shall be given three Dirhams and the remainder, i.e. two Dirhams, shall be divided equally between them.

In case of the second supposition, it is not far from deciding to give to each them what is left from the amount deposited by him, and the remainder shall be divide equally between them. So, suppose, one of them had deposited five Dirhams and other four Dirhams, and the amount lost was three Dirhams, the depositor of five Dirhams shall be given two Dirhams and that of four Dirhams one

Dirham, and the remainder shall be divided equally between them But caution must not be given up by reaching compromise in the various types of situations, particularly in a case other than when person had deposited with another two Dinars, and the other one Dinar, and Dinar from each one was lost. Such problems related to the discussion concerning Dinars and Dirhams. It is not far from applying to it the rule relating to two things of identical category, as of two Maunds and one Maund where one Maund is lost, and the Case becomes mixed up. Here too caution must not be given up.

Of course, if there are two things of identical category in which mixture allowed, as oil and wheat, so that they are mixed, and a part of it is lost, then this loss shall be in proportion to both. In case of two Maunds and one Maund, if they are mixed and one Maund is lost, the remainder shall be divided into three parts, (So that one of them shall be given two parts and one of them one part). If both the things have some price, like a garment and an animal, then either the matter is to be decided by reaching compromise, or the amount of loss shall be determined by casting lots.

Problem #21: It is allowed to build balconies above thorough fares and public highways when they are at high altitude in a way that they may not disturb the passerby and no one has the right to forbid it, including even the owner of the house on the opposite side even if it comprehends the width of the road in a way that it may not allow the construction of a balcony on the opposite side except when it passes from the wall of the opposite balcony. Of course, if it leads to the neighboring house coming within sight, then there shall be hesitation in its permissibility, even if we may permit a similar case of constructing a higher building in one's own land. So caution must not be given up.

Problem #22: If a person builds a balcony above the road, then it falls down or he demolishes it, then if he does not intend to rebuild it, there shall be no restriction if the person on the opposite side occupies that space and he shall not need to obtain permission of the person who had built the balcony earlier; otherwise, there shall be difficulty, rather its non-permissibility is not devoid of force, if the former has demolished it with the intention of rebuilding it.

Problem #23: If a person builds a balcony above the road, then is the person on the opposite side allowed to build another balcony above or under it without the permission of the former? There is hesitation (in its permissibility), particularly in the first case, (namely above the former colony), rather its non-permissibility is not devoid of force. Of course, if the second balcony is so high that it would not occupy the space needed by the owner of the former balcony according to the usual practice for sunlight or the like, there shall be no objection.

Problem #24: As it is allowed to build a balcony above the public highway, it is also to open new gates beside it, regardless the owner has already a gate or not. Similar is the case with the building of grills and small holes (or wind-catchers) above it, or fix a rain- pipe.

Same is the case of building an arcade above the public highway, if it does not rest on the wall of the other person without his permission, and is not a source of disturbance for the passers-by, even from the point view of darkness If it is supposed that as it is disturbing for the passers-by in one respect, it is also beneficial for them in one or more respects, as protection against heat, cold and

saving from dust, etc, then apparently it is obligatory to refer to the legal ruler and act upon his order.

As regards the permissibility of construction of sewers for drainage of rain water even avoiding any disturbance to the passers-by, or drilling basements under the public highways despite fortifying its foundation and roof in a way that it is safe from infiltration or caving in or demolition, there is hesitation, though its permissibility is not far from support by the opinion close to traditional authority.

Problem #25: It is not allowed to building anything like a balcony, flank, arcade, or fix a rain-pipe, open a gate, or drill a basement or the like on lanes that are not thorough fare without the permission of their landlords, regardless whether they are a source of disturbance or not.

Likewise, no landlord is allowed to do so in such blind lanes without the permission of other partners. If some of them have compromised with the landlords or some of them regarding construction of something of the type, it shall be valid and binding, regardless whether it is with some consideration or without it. God willing, some of the rules relating to the roads or high ways will be mentioned in the Section on Development of Wastelands.

Problem #26: No one is allowed to build anything on the wall of his neighbour or place the girders of his roof on it except with his permission and consent. If a person requests his neighbour for it, the latter is not bound to accede to it, though it is emphatically approved.

If a person places his girders with the permission and consent of his neighbour, then if it were binding as in the form of a condition or Conveyance, or the like he shall not be allowed to retract.

If, however, it were a mere permission or leave, he shall be allowed absolutely to retract before the construction and building on the girders. But after it, caution must not be given up by reaching a compromise and mutual agreement, even if the former has to retain it against payment of some compensation or the neighbour demands indemnity for not demolishing it, though according to the opinion closer to the traditional authority, it is permissible to retract without compensation.

Problem #27: A partner in a wall is not allowed to make any changes in it by building anything or a roof or putting some wood or pillar, etc. in it except with the permission of his partner or obtaining his consent, even if by apparent indication, as it is usual in such small matters as leaning against a wall, or placing his hand on it, or put clothes on it etc.

Rather apparently such small matters do not require obtaining permission and consent, as is the usual practice. Of course, if the person has clearly forbidden it or has expressed reluctance, it shall not be permissible.

Problem #28: If a person demolishes a common wall, and one of the partners intends to repair it, he shall not be allowed to compel his partner to share in its repair. Whether the person is entitled to repair it with his own money without the permission of his partner? There is no objection in it, as he

is entitled to do so when its foundation belongs exclusively to him and he builds it with his own implements and tools, as there was no hesitation in its non-permissibility if the foundation belonged exclusively to his partner.

If it were common, then if it were divisible, he shall not be entitled to repair it without the permission of his partner. Of course, he is entitled to demand division, and build the wall on his separate portion.

If the wall were not divisible, and his partner were also not agreeable to share in anything, he may refer the matter to the judge so that he may have the option in a number of matters, namely, sale, lease or sharing with him in its repair or building it with his own money.

The same shall be the rule in case of partnership in a well, a river, a subterranean canal or a Persian wheel, or the like. In all these cases, the matter is referred to the judge where division is not possible. If he agrees to repair them with his money, and water gushes forth, or its amount increases, he shall not be entitled to deny his partner who has not spent his money on the repair to take his share of water.

Problem #29: If the girders of the house of a person are placed on the wall of his neighbour, and he does not know how they have been placed on it, it shall be supposed that they have been placed rightfully, until it is proved otherwise. The neighbour shall not be entitled to demand him to remove them from his wall. Rather he shall also not be entitled to prevent him from replacing them if the roof falls down.

The same rule shall apply if a person finds a building, water-way or the fixture of a rain pipe in the property belonging to another, and does not know its reason.

In all such cases, judgment shall be given in their being rightful, except when it is proved that they were as a result of transgression or by way of a temporary arrangement that is subject to revision.

Problem #30: If the branches of the trees (to a person's house) have extended to an open space belonging to the neighbour unrightfully, the latter shall be entitled to demand the former to turn the branches or chop them off from the limits of his property.

If he fails to do so, the latter may turn or chop them off. However, if it is possible to turn them, it is not permissible to resort to chopping them off.

SECTION THIRTEEN - IJARAH

Ijārah, meaning Hire or Lease, either concerns properties in the ownership of person, like an animal, house or real estates, a commodity, garment or the like. It denotes ownership of the usufruct against some consideration, or concerns a person as a free person's giving himself on hire for the performance of an act or labor. Generally it denotes giving the ownership of one's labor to another against a prescribed remuneration or wages.

Sometimes it means giving the ownership of one's usufruct without labor as a nurse's giving herself on hire for fosterage and not arranging fosterage (by another nurse).

Problem #1: A contract of *Ijarah* constitutes words consisting of Declaration denoting the usual expression of executing it with a special relation leading to giving ownership of a usufruct or labor against a consideration, and Acceptance denoting consent for it and ownership of the usufruct or labor against a consideration.

The express words used in a Declaration are: I have given on hire or lease, for example, this house to you for so much, or I have given the ownership of the usufruct of this house to you", intending thereby giving the house on hire or lease, but these words are not included in the express words denoting hire or lease.

It is not a condition to express it in Arabic language, and it can be expressed in whatever words carrying the sense-intended, in whatever language that may be.

As in the case of a contract of sale, in this contract too signs can be used by a dumb or such other person in place of words understood to carry the sense intended. In the first category, apparently Mu'atāt can also take place, and that is in case of the contract concerning the property in the ownership of some person.

It takes place by giving domination to a stranger on the property having the usufruct intending thereby the effect of hire, or a special relation and delivery of the property to a stranger. It is not far from its taking place even in the second category as well by placing himself at the disposal of the other party in this respect, or by starting the performance of the job.

Problem #2: There are some conditions for the validity of *Ijarah*, some of which concern the two parties to the contract, namely, the Mu'ajjir, i.e. the lessor or the landlord, and Musta'jir i.e., the lessee or the tenant, while some of the Conditions concern the property hired, and some concern the usufruct: and others concern the *Ijarah*, i.e., the Hire or Lease. As regards the conditions concerning the two parties to the contract of Hire, they are the same as required for the two parties to a contract of sale, namely, majority, sanity, intention and authority, as well as non-interdiction due to insolvency or idiocy, or the like.

As regards the property that is the subject of hire, the following conditions are required in it.

1- Specification If the person has given on hire one of his two houses, or one of his beasts of burden, it not be valid.

2- Knowledge If it is property having an external existence, it may be discernible by inspection or description of its features that may lead to the difference in its attraction for hiring. The same is the rule when the property is away or a whole.

3- It must be possible to hand it over. So it is not permissible to give on hire a restive beast of burden, or the like.

4- It must be such as one may utilise its usufruct with subsistence of the subject itself So it is not lawful to give in hire a thing whose usufruct cannot be utilized, as when a person gives on lease an agricultural land with the impossibility of supply of water to it, and the rain water, etc. can also not be utilized for it or it is not sufficient for it. The same rule shall apply to what cannot be utilized except by consuming itself as bread for eating, candle or, wood for burning.

5- It must be in the property of the person or is given on hire by him. So it is not lawful to give on hire the property of another, except with the latter's permission.

6- It must be lawful to utilise it. It is, therefore, not lawful to give on hire a woman having courses to clean mosque personally.

As regards the usufruct, it has also the following conditions.

1- The utilization must be lawful. It is, therefore, not lawful to give on hire shops for keeping or selling intoxicants, or beasts of burden, or ships (or boats) for carrying them, or a slave-girl for singing, or the like.

2- Utilization must have such value as justifies the spending of money by reasonable persons in lieu of it.

3- Determination of its type if the property has several types of utilization If a person hires a beast of burden it must be specified whether it is to be used for riding, loading or drawing a hand mill, etc. Of course, it may be hired for all utilizations, in which case the hirer may use it for all of them.

4- Its amount must be specified either by specifying the time as residence in a house for a month, repairing or building in a single day, or specifying the nature of work as stitching a specific garment, or special style of stitching as Iranian or Rumi (or Turkish) style without specifying time if it is not important; otherwise, it would be indispensable to specify its duration.

As regards the wages, it is also a condition that it must also be determined by specifying it in measure, weight or number, if it is subject to measure, weight or counting, or by inspection or description in other categories. It may also have an external existence or be wholly owed by someone, or a transferable labor, usufruct or right as a price in a sale.

Problem #3: If a person hires a beast of burden for loading, it is indispensable to specify the nature of goods to be loaded on it, due to the difference of purposes with its difference, as well as its amount even if to be determined by inspection and estimate. If he has hired it for traveling, it is indispensable to specify the route, and the time of journey whether it shall be during the day or night, etc. Rather it is also indispensable to show the rider or his description that may remove ignorance or risk..

Problem #4: As regards the knowledge of the amount of time of utilization, it is indispensable to specify it whether it would be for a day, a month or a year, etc It is not, therefore, lawful to leave it indefinite.

Problem #5: If a person says: “You shall pay one Dinar a month for whatever period you live in this house”, it would not be valid, if what is intended is *Ijarah*. It shall be apparently valid if what is intended is *Ibāhah* against consideration, the difference being that a tenant is the owner of the usufruct in an *Ijārah*, but it is not so in an *Ibāhah* as a person with whom *Ibāhah* is executed is not an owner of the usufruct, and the landlord shall be the owner of the consideration in lieu of the utilization, if intended If a person says: If you stitch this garment in an Iranian style, you shall receive a Dirham, and if in a Rumi style two Dirhams”, in such case, it shall not be a valid *Ijarah*, but a valid *Juālah*.

Problem #6: If a person hires a beast of burden to carry himself or his luggage to a place at a definite time, as when he hires a beast of burden to carry him to Kerbala on the day of ‘Arfah, but it fails to carry him, then if it were due to insufficiency of time or impossibility of carrying him due to some other reason, then the *Ijārah* shall be void. If there was sufficient time, and it has failed to carry him on the specified time, the lessor shall not be entitled to anything as wages, regardless whether it was due to his fault or not, as when he lost the way. If, however, the person had hired him to carry him to a certain specified place, but had stipulated that he must reach there at such time, and it was not possible for him to do so, or he violates the condition, the *Ijārah* shall be valid with the specified wages, but the hirer shall have the option to revoke it due to violation of the condition. If he revokes the contract, the specified wages shall revert to the hirer, while the lessor shall be entitled to proper wages.

Problem #7: If the time specified was the pilgrimage on the day of Arfah, and the person hires a beast of burden, but he does not arrive (at the specified time), and so he loses (the reward for the pilgrimage, according to his faith), the *Ijarah* shall be valid, and the lessor shall be entitled to the entire wages without any option, in case he the hirer had not stipulated in the contract of *Ijarah* that the lessor must take him so that he may reach there on the day of ‘Arfah, while there is also no indication signifying such specification.

Problem #8: It is not a condition to attach the period of *Ijārah* with its contract. So if a person leases out his house in a definite future month, it shall be valid, regardless whether it was on hire in the previous month or not. If the contract were in general terms, it shall revert to attaching it with

the contract, if it was not leased. So if he says: "I have leased my house to you for a month", the general sense shall revert to the time of the conclusion of contract. If he has leased it for a month, and the generality of the term is understood to mean the month attached as well as isolated from the contract, then according to the stronger opinion, it shall be void.

Problem #9: A contract of Lease is binding on both parties, and it is not revoked unless assented to by both of them, or by the option giving the right of revocation. Apparently all the types of options apply to it, except the Options of Meeting, Animal and Delay. So the Options of Condition, Violation of Condition, Defect, Deception and Inspection, etc. apply to it. An *Ijārah* executed by way of *Mu'atāt*, according to the stronger opinion is binding like Contract of Sale by way of *Mu'atāt* and caution must be observed in it as mentioned under the latter.

Problem #10: A contract of *Ijarah* is not cancelled by a contract of sale, and the commodity is transferred to the buyer without any profit for the period of *ijarah*. Of course, in case of ignorance, the buyer shall have the option to revoke the contract. Rather he shall also have the option, even if he had the knowledge, but was under the impression that the time is short, but it turned out to be long. If the lessee revokes the contract of *Ijarah*, or it is (automatically) revoked, the profit for the remaining period shall revert to the lessor and not to the buyer.

As an *Ijārah* is not cancelled by a sale of the property that is subject of the *Ijarah* to one other than the lessee, it is also not called by its sale to him. If a person hires a house, and then purchases it, the *Ijārah* shall remain intact, and the ownership of the usufruct for the remaining period shall belong to him by dint of the *Ijarah* and not due to its being subordinate to the property itself. If the *Ijarah* is (automatically) revoked, the usufruct for the remaining period shall revert to the seller. If the sale is cancelled due to any of its causes, the ownership of the usufruct of the buyer who is also the lessee shall remain intact.

Problem #11: Apparently *Ijarah* of capital assets is not cancelled neither by the of the lessor nor by that of the lessee, except when the ownership of the lessor for its usufruct was confined to his lifetime so that it is cancelled on his death, as when the usufruct of a house according to the testator was confined to his lifetime, and he leased it for two years, but died after a year. If the usufruct of the house was meant to continue for the remaining period with the heirs of the testator or others, then they may assent to it for the remaining period. In the same way if a person belonging to the first degree of heirs leases an endowment property and dies before the expiry of the period, then the lease shall be cancelled unless it is assented to by the next degree of heirs. Of course, if the administrator of an endowment leases the endowment property in the interest of the endowment and the next degree of heirs for a period exceeding the lifetime of some of the next degree of heirs, it shall continue to be in force during the lifetime of the other heirs of the next degree, and shall not be cancelled neither by the death of the lessor nor by the death of the degree of heirs existing during the currency of the lease. All this relates to the lease of the capital assets. As regards the hire of persons for some jobs, it is cancelled by the death of the hired person. Of course, if a person accepts

the performance of a job as his liability, it is not cancelled by his death, but remains a debt on him, so that its compensation is deducted from his inheritance.

Problem #12: If the guardian gives on hire a boy under his tutelage or his property for a period of time observing his interest and satisfaction, and the boy attains to maturity before the expiry of its term, he shall be entitled to terminate the contract of hire relating to the remaining term, except when his interest requires the execution of the hire before his maturity for a period extending till after his maturity, so that if it were executed for a shorter period it would go against his interest. In such case he shall not be entitled to rescind the contract after reaching maturity and majority.

Problem #13: If the lessee finds some defect in the property leased that has existed since before the lease, he shall be entitled to rescind the contract if the blemish would cause decrease in his benefit, as lameness of the beast of burden or hireling may cause decrease in its wages, as when its ears or tail are chopped off. This is when the contract of hire relates to a specified object. If, however, it is something whole, and the specimen delivered is defective, then he shall not be entitled to revoke the contract, but shall rather be entitled to demand a substitute, except when it is not possible, then he shall be allowed to revoke the contract. This is the case where what is hired is a capital asset.

As regards a hireling, if it was a specific person, and the lessee finds some defect in him, he shall be entitled to revoke the contract. Whether the lessee may demand compensation, there is hesitation in it. If it were a whole, he may demand its substitute, and he shall not be entitled to revoke the contract, except when its substitute is not possible.

Problem #14: If some deception comes to light on the part of the lessor or the lessee, the party (subjected to deception) shall have the Option of Deception, except when it is stipulated to be relinquished.

Problem #15: A lessee owns the usufruct in the lease of capital assets, and labor in the hire of person for the performance of some job or labor. Similarly the lessor and the hireling shall become the owner of the wages immediately after the execution of the contract, but neither shall be entitled to demand from the other what he owns unless he surrenders the ownership of the corresponding subject. Each of them is bound to surrender what he is bound to, but at the same he is allowed to deny it if he finds the other denying doing what he is bound to do.

Problem #16: If the lease concerns a capital asset, then the usufruct shall also be surrendered along with its surrender. But as regards the surrender of labor when it concerns a person, its wages shall be contingent with the completion of the job, as offering prayers, keeping fast, performing Hajj, drilling a well in the house of the lessee, and the like, in case they do not concern the property of the lessee that is in the possession of the lessor. So before the completion of the job, the hireling is not entitled to demand his wages, and after the completion of the job, the lessee shall not be allowed to procrastinate (payment of the wages). Of course, if there is a stipulation made by both the parties in the contract expressly or implicitly to the effect that the wages shall be paid wholly or partly before the completion of the job, as when it is the usual practice, the lessee has to abide by it, and

shall follow it. If, however, it relates to the property of the lessee in the hands of the lessor, as a garment to be stitched or a ring to be manufactured, or the like, then as regards its surrender after the completion of the job as in the former case, or at the time of surrender of the subject of labor like the garment or the ring, there are two alternatives, rather two opinions, the stronger being the former.

Accordingly, therefore, if the garment is destroyed, for example, after the completion of the job in any way when he is under no liability, he shall not be held responsible for it, and shall be entitled to demand his wages. In case he was required to be under the liability, he shall be held responsible for restoring it duly stitched and not its price as it was before stitching in any case including the latter case, due to stitching being subordinate to the object itself, and when he hands over the garment duly stitched, he shall be entitled to his wages, as he has accomplished his job by surrendering the substitute.

Problem #17: If the lessee pays the wages, or he was entitled to delay its payment according to the condition made in the contract, and the lessor denies surrendering the subject of lease, he shall be compelled to do so. If it is not possible to compel him, the lessee shall be entitled to rescind the contract and have recourse for the payment of the wages. He shall be entitled to let the contract subsist and demand compensation for the loss of the usufruct due to the lessor's failure to honour his obligation. The same rule shall apply if he takes it from him after the surrender immediately or during the currency of the lease. In the latter case, however, if he rescinds the contract, it shall be cancelled in proportion to the remaining period. So he shall be entitled to have recourse for the corresponding wages.

Problem #18: If a person leases a beast of burden to Zayd , and it escapes, the contract shall be cancelled, regardless whether it escapes before it delivery or after it during the currency of the contract, if it were not due to the fault of the lessee in its protection.

Problem #19: If the lessee receives the leased property, and does not make use of its usufruct until the expiry of the lease time, as when he hires a house for a period of time and takes hold of it, but does not reside in it until the time expires, then if it was in his control, the rent shall be established on him. The same shall be the rule if the lessor is ready to deliver the leased property, but the lessee fails to take hold of it or utilise it, until its lease time expires. The same rule applies in case of hiring some one for labor, so that if the hireling surrenders himself to the hirer and is ready to perform the job for him, but the hirer fails to get hold of him, in the same way as when a person hires another for stitching a specific garment for him within a prescribed time, but fails to give him the cloth until the time expires, then the latter shall be entitled to his wages, regardless whether the hireling engages himself in some other job for himself or for someone else, or had been free (doing nothing): during that time when the hirer had refrained (from giving him the cloth). If it were due to some excuse, the contract shall be cancelled, and the hired person shall not be entitled to his wages. If it was some usual excuse in a way that due to it the hired object was not capable of being utilized by him, as when a person hires an animal for riding to go to a certain place, but there had been a

snowfall obstructing the passage, or the way was blocked for other reason, or when he hires a house, but it becomes unfit for residence due to war or its become the abode of beasts, or the like, in case such incidents take place during the currency of the lease period after the lessee has utilized for part of the period, the contract shall be cancelled proportionately. If, however, the excuse concerned the lessee exclusively, as when he falls ill and is not able to ride the hired animal, then whether it would cause cancellation of the contract or not, there are two alternatives, the latter not being devoid of preference. This is when personal utilization is stipulated in the contract, so that he may not be able to utilise it even by giving it on hire (to some one else); otherwise, the contract shall not be cancelled at all.

Problem #20: If a usurper has usurped the leased property, and restrained the lessee from utilising it, then if it were before its possession by the lessee, the lessee shall have the option either to revoke it or have recourse to the lessor for the return of the specified rent if he has already paid it to the lessor, or have recourse against the usurper for the payment of the proper rent. If it was after taking its possession, he shall adopt the latter course, (namely, have recourse against the usurper for the payment of the proper rent).

Problem #21: If the hired property is destroyed before its possession is given to the lessee, the contract shall be cancelled, and also even after it without a considerable interval or before the start of the release period. If it is destroyed during the currency of the lease period, it shall be cancelled in proportion to the remaining lease period, and he shall have recourse for the corresponding rent, for its half if it were half, and its one-third if it were one-third. This is so when the rent is the same with the passage of time, but if it were different, it shall be fixed in consideration of the proportion. For example, if the rent of the house during winter is twice as much as during other seasons, and the time left are three months of winter, he shall have recourse for two-third of the prescribed rent and the rent for the expired period shall be one-third of the prescribed period.

This shall be the rule when the contract is revoked or is cancelled by itself due to one of the causes during the currency of the lease period. This is the case when the leased property is destroyed totally. If, however, part of it is destroyed, it shall be cancelled in proportion to it as when it is destroyed in the beginning or during the lease period, in the manner already explained.

Problem #22: If a person hires a house, and it is destroyed, its contract of lease shall be cancelled if it has ceased totally to be capable of being utilized for the purpose it was hired. If it were before its possession was taken by the lessee, or after it without any interval before he started residing in it, the entire rent shall be returned, otherwise proportionately, as explained earlier. If it is possible to utilise it for the purpose for which it was hired considerably as per usual practice, the lessee shall have the option either to retain it or revoke the contract of lease. If he opts for the revocation of the contract, it shall be governed by the rule already mentioned. In case a part of it has been destroyed, and the lessor gets it repaired in a way that its utilization is not affected at all, according to the stronger opinion, there shall be no revocation or cancellation by itself; otherwise, the rent shall be

cancelled in proportion to the damage caused to the property, and shall remain intact in proportion to what has retained as compared to the rent. The lessee is entitled to discriminating its parts.

Problem #23: In all cases where the contract of lease is vitiated, proper rent is established for lessor to the extent the lessee has utilized the property or it was destroyed while in his possession or under his liability. The same rule applies to hiring a person for some job, so that the person hired is entitled to his proper wages for his job.

Apparently there is no difference in it whether the lessor and lessee were ignorant about the cancellation of the contract of lease or had knowledge about it. Of course, if the cancellation was done from the side of the lease without rent, or from what usually has no financial value, he shall not be entitled to anything, without there being any difference in case of knowledge about its cancellation or otherwise. If he believes the thing to have some financial value that usually has no financial value, then apparently he shall be entitled to proper rent.

Problem #24: It is allowed to lease a joint property, regardless whether a part of the joint property belongs to the lessor or he were the owner of the entire property, and he leases part of it jointly as half or one-third. But in the first case, the lessor shall not be allowed to hand over the possession of the property to the lessee except with the consent of his partner. Similarly it is allowed, for example, for two persons to hire a house jointly and reside together in it with mutual agreement or divide it according to the living rooms on the basis of justice or casting lots in the manner two partners divide a joint house, or may divide its use turn by turn as, for example, one of them should live in it for six months and then the other (should live for another six months), in the same way as two persons hire a beast of burden for riding turn by turn, where the use of riding does not take place except turn by turn, for example, one of them should ride it one day and the other the other day, or one of them should ride it for a Farsakh, and then another for a Farsakh.

Problem #25: If a person hires a property, but does not stipulate to use it personally, he shall be allowed to lease it (to some one else) for the same, somewhat less or more than for what he has hired. This applies to other than a room, a house, a shop or a hireling, as in these cases it is not allowed to give them on hire for more than he has hired, except when he has done something additional in it, as repair or whitewashing, or the like. It is not far from being permissible even if the hire is in a kind other than the previous one. It is more cautious to include caravansarai, hand mill and boat in it, though it is not far from being otherwise. If a person hires a house, for example for ten Dirhams, and resides in half of it and leases the remaining half for ten Dirhams, without making any additional change it, it would be lawful, as it is not a case of leasing for more than he had hired for. The same rule applies in case he lives for half of the lease period and leases it for the remaining half lease period for ten (Dirhams). Of course, if he leases it for the remaining lease period or half of it for more than ten (Dirhams) it shall not be lawful.

Problem #26: If a person accepts the performance of a job neither without the condition of performing it personally, nor any likelihood of such implication, he shall be allowed to hire some

other person for that job for the same wages or more, but nor for less than that, except when he makes some additional change, or performs part of the job though slightly, as when he accepts to stitch a garment for a Dirham, then he cuts it or stitches part of it, though slightly, then there is no objection if hires another for less than that, even if for one-tenth or one-eighth of a Dirham. But there is hesitation in the permissibility of hiring someone else for the performance of a job or leasing a rented property to another without the permission of its owner, though it is not devoid of force.

Problem #27: If a hireling gives himself on hire in a way that all his usufructs should belong to the hirer in a specified period of time, it is not permissible for him to do anything for himself or another during that period gratis or by way of *Ju'alah* or *Ijārah*.

Of course, there is no objection in some of the jobs that are neither related to *Ijārah* nor are they included in it, at the same time are they also not repugnant to what is included in it, as when the tenor of *Ijarah* or its implication relates to engagement during the day, there is restriction on engagement in some of the works at night for himself or for another, except when it has a negative effect on his engagement during the day even if slightly.

If, during that period, the person performs something that is not beyond the subject of *Ijarah* if it were for himself, the hirer shall have the option either to revoke the contract, or in case he has not performed anything for him, return the entire wages, or in case he has performed part of the job, part of the wages, or let the contract be intact and demand from him proper wages for the work he has done for himself.

Similarly, if he has done some job for some other person gratis, by way of *Ju'alah* or *Ijarah* the hirer, besides endorsing *Ju'ālah* or *Ijārah* shall be entitled to receive the specified wages.

Problem #28: If a person has given himself on hire to perform a definite job personally in a definite time, there shall be restriction on his doing something for himself or another during that time what is not repugnant to the former job, as he has given him on hire for tailoring or calligraphy during the day, and then gives him on hire for keeping fast for another during the same day, if it does not cause weakness in his job. He is, however, not allowed to perform a job of the same nature or repugnant to it for himself or for another.

If he does so, then if it were of the same nature, as he gives himself on hire for tailoring during the day, and he engages himself during the day in tailoring for himself or for another gratis or on hire, its rule shall be the same as mentioned under the preceding case, namely, giving option to the hirer for two alternatives if he does something for himself or for another gratis, and three alternatives if he does it by way of *Ju'ālah* or *Ijārah*.

If it were of a different nature, as when he gives himself on hire for tailoring, and is engaged in calligraphy (after performing tailoring), then the hirer shall have option for two alternatives, either

to revoke the contract absolutely and demand the return of the entire wages or demand compensation for the loss of the usufruct.

Problem #29: If a person gives himself on hire for the performance of a job without the condition of its being performed personally, even if within a definite period of time or without any limit of time, even with the condition of performing it personally, he shall be allowed to give himself in hire to another for the performance of a work of the same nature or repugnant to it before the performance of the job for which he had already given himself on hire.

Problem #30: If a person hires a beast of burden for carrying him to a town at a definite time, and rides it at that time to go to the town deliberately or inadvertently, he shall be bound to pay the prescribed rent due to the fact that it had been established by the delivery of the animal, even if he had not utilized it for the purpose intended. Whether he will also be bound to pay the proper rent of the purpose for which he has utilized it, so that he shall be bound to pay two rents, or he shall be bound to pay only the difference between the proper rent for his utilizing it and the rent for the utilization he had rented it for, if there is such difference. So if he has hired it for carrying him for five, and rides it, while the rent for riding it is ten, he shall be bound to pay ten. If there is no difference between them, whether he shall not be bound to pay except the prescribed rent? There are two alternatives in such case; the latter shall not be devoid of preference, though it is more cautious to reach a compromise.

Problem #31: If a person gives himself on hire for a job, but he performs some job other than that without the permission of the hirer, as when he was hired for tailoring, but he performed calligraphy, he shall not be entitled to anything, whether he does so deliberately or inadvertently. Similarly, if he hires a beast of burden for carrying the luggage of Zayd to a place, but he carries the luggage of Amr, he shall be entitled to rent for neither of them.

Problem #32: It is allowed to hire a woman for feeding a child with milk, rather even for suckling it, so that she may suckle the child for a definite period, even if she does not perform any other job. It is not required to obtain the permission or consent of her husband for its validity. Rather the husband shall not be entitled to prevent her if it is not an obstacle in his enjoyment of her. In case it is an obstacle, it is condition to obtain his consent or permission for its validity. Similarly, it is allowed to hire a sheep for its milk, or a well for using its water; rather, it is not far from being valid to hire trees for utilizing their fruits.

Problem #33: If a person is hired to do a job of construction or stitching a particular garment, or something else without the condition of doing it personally, and another person performs it gratis on his behalf, it shall be as if he has performed it himself, and so he shall be entitled to the prescribed wages. If the other person performs it gratis on behalf of the owner, the hireling shall not be entitled to anything; rather, the contract shall be cancelled due to the forfeiture of its position, and so the agent shall not be entitled to any wages from the owner.

Problem #34: It is neither allowed for a person to give himself on hire for the performance of something he is obliged to do itself, as offering daily prayers, nor what he is bound to do as a collective obligation, according to the more cautious opinion, when its obligation is with some special name, as washing the dead, shrouding them or burying them. But what is obligatory for the protection of the public order or the need of the people, as the industries requiring it, or medical profession, or the like, there is no objection in giving oneself on hire for them and charging some rent, as there is no objection in giving oneself on hire on behalf of another, alive or dead, for the performance of what is obligatory on him, and in whose case proxy is lawful.

Problem #35: It is allowed to hire someone for the protection of one's luggage from loss, guarding the house and gardens against theft for a specified period, and it is also allowed to stipulate liability in the event of loss or theft, even if without the fault of (the hireling), so that it is made binding in the contract that if some luggage is lost or something is stolen from the garden or the house, he shall be liable to compensate for it. The liability of a guard is legal if some lawful thing is lost and he has made himself legally liable for it.

Problem #36: If a person asks another to do something for him, and he performs it, he shall be entitled to the proper wages for his performance, if it were something for which he is entitled to wages, and he did not intend to do it gratis, so that if he intended to do it gratis, he shall not be entitled to any wages, even if the person requiring him to do did intend to pay him wages.

Problem #37: If a person hires another for acquiring something having no owner, as when he hires him for the collection of wood, dry grass or bring water, intending to be the owner of whatever he collects or brings. So all that he collects during that period shall be the property of the hirer, provided that the hireling intends to do the job for him and fulfills the contract of hire. But if he intends its ownership for himself, it shall be his property, but he shall not be entitled to wages. If he does not intend anything, then apparently the things shall continue to be ownerless. If the person has hired him for the collection of the things and not for their ownership, as he has some reasonable purpose for the collection of the wood and dry grass, and he has hired him for it, he shall not own what the hireling collects and brings with the intention of fulfilling the contract, and so there shall be no restriction on someone else owning it.

Problem #38: It is not allowed to lease a land for the cultivation of wheat or barley, or generally for anything produced in it against the amount produced in it, or against some of the amount to be owed on the condition of its payment from what is produced. But according to the opinion closer to the traditional authority, it shall be allowed to lease it against wheat or barley, etc. without any qualification, and without any stipulation of the rent being paid from its product.

Problem #39: The property on lease is a trust in the hands of the lessee during the period of the lease. So he shall not be liable in case it is lost or becomes defective, except by his omission or commission.

The same is the case with the property belonging to a hirer that is in the hand of a person who has given him on hire for doing some job on it, as a cloth for tailoring or gold for preparing jewellery, for which he is not responsible if it is lost or becomes defective without his omission or commission.

Of course, if he spoils it by dying, bleaching or stitching or even by cutting the cloth, etc, he shall be held responsible, even if it was done inadvertently, rather even if he were an expert person and had exercised extreme caution and minuteness in his job.

The same rule shall apply to every person who gives him on hire for the performance of a job in the goods belonging to a hirer, and spoils it, he shall be held responsible for it.

To this category belongs the case when a butcher is hired for slaughtering an animal, and he slaughters it contrary to the lawful manner in a way that it becomes prohibited, he shall be liable for the payment of its price. Rather, apparently this will be the rule even if he slaughters the animal gratis.

Problem #40: A person performing circumcision shall be held responsible if he exceeds the limits, even if he were an expert. There is hesitation in his liability in case he does not exceed the limits, when he performs the circumcision and the boy dies then apparently he shall not be held responsible.

Problem #41: A physician shall be held responsible if he treats a patient personally. Rather he shall be held responsible even in case he hires someone else for the treatment according to the usual practice and has not treated the patient personally.

Of course, if he mentions a medicine and says it is useful for such and such disease, or simply says: "Your medicine is such", without advising the patient to use it, then, according to the stronger opinion, he shall not be held responsible.

Problem #42: If the porter stumbles and breaks what was, suppose, on his back or head, he shall be responsible for it, contrary to the case of a beast of burden hired for carrying something, when it stumbles, and destroys what it was carrying or makes it defective, its owner shall not be held responsible for it, except when he were responsible for beating it or driving it to a slippery place, etc.

Problem #43: If a person hires a beast of burden for loading, he should not load it more than stipulated or the usual amount of load, if it is left unmentioned in the contract. If he loads it more than that, he shall be responsible for its destruction or becoming defective. The same rule shall apply if he takes it to more distance than stipulated.

Problem #44: If a person has been hired for guarding some luggage, and it is stolen, he shall not be held responsible for it, except when it was due to his fault or his liability was stipulated (in the contract).

Problem #45: An owner of a public bath is not responsible for the garments, etc. (of the customers), if they are stolen, except when they were placed under his custody, and he was responsible for omission or commission.

Problem #46: If a person hires a land, and some calamity befalls it, and consequently the crop is spoiled, the contract shall neither be cancelled, nor shall it lead to any reduction in its rent.

Of course, if it has been stipulated in the contract that the lessor shall release the lessee of the amount of the damage, or, for example, one-half or one-third of it, it shall be valid, and he shall be bound to fulfill it.

Problem #47: It is allowed to lease a land for utilising for farming, etc. for a specified period of time, declare its rent to be the cost of its repair like digging canals, cleaning wells, plantation of trees, levelling the earth, removal of the stones, and the like, provided that these actions are specified in a manner that it may remove any risk or lack of knowledge, or described in a way that may dispense with their specification.

SECTION FOURTEEN - JU'ALAH

By Ju'alah is meant the commitment for a prescribed consideration for a lawfully intended job, or it means instituting the commitment for it or laying a prescribed consideration on such job.

It is an easy matter. The person instituting the commitment is called "Ja'il", the person for whom the job is done 'Amil" and the consideration "Ja'l or Ja'liyah".

It requires Declaration, expressed in whatever words conveying that commitment, and that may either be general as when one says: "Whoever, for example, returns my beast of burden, stitches my garment, or builds my wall shall have so much or it may be exclusive, as when one says to a particular person: "If you return my beast of burden, you shall have so much". Ju'alah does not, however, require Acceptance, even in an exclusive one.

Problem #1: There are following differences between Ijārah and Ju'alah

1. In an Ijārah, the hirer owns the labor of the hireling, and the latter owns the wages with the conclusion of the contract. On the contrary, in a Ju'alah, it has no effect except that the entitlement of the person performing the job is established after the performance of the job.
2. Ijarah is one of the contracts, while, according to the stronger opinion, Ju'alah is one of the Iqa'at (or unilateral obligations).

Problem #2: Like Ijārah, Ju'alah is valid for every lawfully intended job in the eyes of the sensible persons. So it is neither valid for an unlawful job, nor for what is foolish in the eyes of the sensible persons.

It is foolish to spend for such acts as going to dangerous places, climbing high mountains and lofty buildings and jumping from one place to another, when there is no rational purpose in doing so.

Problem #3: As Ijarah is not valid in individual obligations, rather, according to the more cautious opinion, even in case of collective obligations, details of which have already been mentioned under its relevant section. Ju'alah is also not valid in such obligations in the same manner.

Problem #4: It is a condition in a Ja'il or the person instituting a Ju'alah that he must possess the capability of contracting Ijārah, namely, majority, sanity, maturity, intention, authority (or free will) and non-interdiction. In an Amil, or the person doing the job, there is no condition but that he must be able to perform the job, in the sense that there should be no obstacle rationally and legally in his way. So if he has entered into a Ju'alah for sweeping a mosque, it cannot be performed by a person disqualified by Shari'at due to Janabat (or uncleanness due to discharge of semen) or one having courses. If such a person performs the sweeping, he (or she) would not be entitled to anything for it. It is also not a condition that he must have the ability to enforce right of disposal. So he may be a discreet boy, even without the permission of his guardian, rather apparently even if he is not

discreet, or is a lunatic. All such persons shall be entitled to their prescribed wages by the performance of their job.

Problem #5: The job is allowed to be left unspecified in Ju'alah, though such omission cannot be excused in Ijarah. So in Jualah, if a person says: "Whoever returns my beast of burden shall have so much", it shall be valid, though he has neither mentioned distance, nor has specified the beast of burden, despite there being difference in the beasts of burden as regards overpowering them easily or with difficulty. It can also be executed for something to be returned with a joint Ju'alah, as when a person says:

"Whoever returns my horse or my donkey shall have so much", by discrimination, saying:

"Whoever returns my horse shall have ten and whoever returns my donkey shall have five". Of course, it must not be so much indistinct and vague that it may not be possible for the agent to find it, as when a person says; "Whoever returns what I have lost shall have so much", or "Whoever return the animal lost by me shall have so much", without specifying it in any way. All this concerns the job.

As regards the consideration, it is indispensable to specify its kind, type and description, rather in measure, weight or number, if it has it. If he prescribes it as what he has in his hand or what he has in his pocket, the Ju'alah shall be void. Of course, it shall be valid, if the person prescribes it to a specific part of the thing to be returned, even if the person has neither inspected it, nor it has been described. Similarly, it shall be valid if he specifies for the agent what is surplus from the principal, as when he says: "Sell these goods for so much and the surplus shall be yours", as has been mentioned earlier.

Problem #6: In every case where the Ju'alah is cancelled due to being indistinct, the agent shall be entitled to proper wages. Apparently it is of this type as is prevalent when a person announces an unspecified amount of sweets for one who finds a lost child or animal.

Problem #7: It is not a condition in Ju'alah that Ja'l must belong to the person for whom the job is performed. So a person may appoint a Ja'l from his own property for a person who stitches Zayd's garment or returns his animal.

Problem #8: If a person prescribes a Ja'l for a person, but the job is done by someone else, neither the former shall be entitled to Ja'l for the non-performance of the job, nor the latter who has performed it, as he had not been ordered to do the job, and the Ja'l had not been prescribed for his job. So he is like one doing the job gratis. Of course, if the Ju'alah has been entered into for the performance of the job without any restriction of its performance by the agent personally, so that if the agent gets the job done by hiring some one, or by his deputy or by Ju'alah, it shall also be included in Ju'alah, and if it were done gratis for the agent or as a help for him, he shall be entitled to the prescribed Ja 'l.

Problem #9: If a Ju'alah is entered into for the performance of the job, but some one has done it before its conclusion, or has done it gratis without charging any wages, his act would be done without Ja'l and wages.

Problem #10: A person performing a job not gratis shall be entitled to the prescribed wages, even if he has not performed it for the sake of the wages. It is not a condition in such case for him to have knowledge about the prescription of wages by the principal.

Rather even if he has done it by mistake or forgetfully, or indiscreetly, as by an indiscreet child or a lunatic, apparently he shall be entitled to the wages, as mentioned earlier. Of course, if the falsehood of the reporter comes to light, as the reporter reports that the such has said: "Whoever returns my animal, he shall have so much", and he returns it relying on his report, he shall neither be entitled to anything from the owner of the animal nor from the false reporter. If his statement had produced satisfaction in the man, it is not far from holding him liable for the payment of proper wages for his act due to deception.

Problem #11: If a person says; "Whoever leads me to my (lost) property shall have so much", and someone who had his property in his possession leads him to it, he shall not be entitled to anything, as he was legally bound to do so. If a person says: "Whoever requires some distress and expenditure, as a restive animal, he shall be entitled to the prescribed Ja'l, if he does not possess the property by way of usurpation. But if it were not so, as it were some Dirhams or Dinars, he shall not be entitled to anything.

Problem #12: An agent becomes entitled to the Ja'l by the surrender of the subject of Ju'alah. So if the return of the animal to its owner has been made the condition for the Ja'l, and a person brings it to the town, but it escapes, he shall not be entitled to anything. If, however, the Ja'l has been made payable by simply bringing it to the town, (and a person brings the animal to the town, but it escapes), he shall be entitled to the Ja'l. So also, if the Ja'l was made payable by simply leading to it, he shall be entitled to it, even if he has not brought it anywhere.

Problem #13: If a person says: "Whoever returns, for example, my animal shall have so much," and a group of persons return it, they shall all share the Ja'l equally, provided that they have had an equal share in the act (of searching for the animal). Otherwise, it shall be divided among them proportionately.

Problem #14: If a person specifies a Ja'l to give to another for building a wall or stitching a garment, and a third person also shares in that job, the Ja'l specified for that job in lieu of the job of the third person shall drop, and if their cor to the job does not differ, he shall get half of it; otherwise, he shall receive it proportionately. As regards the other, he shall not be entitled to anything.

Of course, if it has not been stipulated that he should perform it personally, and what is intended is the performance of the job without any such condition, even if it is performed by the participation

of a third person, and the participation of the third person with him was intended to be without any payment and for sake of just helping him, the person with whom Juá'lah has been entered shall receive the entire Ja'l.

Problem #15: (Cancellation of) Juá'lah is permissible for both the parties to it, even after the person hired to do the job has been engaged in that job and has started it, so that he may stop its performance, in the same way as the hirer is entitled to rescind the Ju'alah and cancel his commitment, If it were before the hireling is engaged in the job, he shall not be entitled to anything. If it was after it, and it is the hireling who withdraws, he shall not be entitled to anything. If, however, it is the hirer who withdraws, the hireling shall be entitled to his proper wages for the job.

There is likelihood of some difference in the first case. This is when the withdrawal is made by the hirer at a time when the person hired, suppose, for stitching a garment or building a wall, or the like, is engaged in the job and has already performed part of it, or the job may relate to returning a lost thing, which requires engagement in some external preliminaries, the hireling shall be entitled to the proportion he has already performed in the first case, contrary to the second case, where he shall not be entitled to anything.

This is the case when the Ja'l is not contingent to the completion of the job like stitching a garment or building a wall; otherwise, the rule similar to the return of a lost thing shall apply. There is likelihood of difference between the two cases. If the hirer rescinds the contract, then it is said that the hireling shall be entitled to the specified wages proportionately in the first case, while he shall be entitled to proper wages in the second. If the job is like stitching a garment or building a wall, and he has performed part of the job, and then the hirer withdraws the contract, the hireling shall be entitled to the specified wages proportionately. If it were like returning a lost thing, or, if it were contingent on the completion of the job, he shall be entitled to proper wages.

The problem has some difficulty, and so caution must not be given up in any case by settling the matter by mutual consent and compromise.

Problem #16: As regards our statement that the hireling shall be at liberty to withdraw from his job in any case, even after he is engaged in his work, it is allowed in the event it is not detrimental to the hirer; otherwise, once he has started the job, he shall be bound to complete it.

For example, if the Ju'alah relates to operation of the eye or any of the operations prevalent among the medical doctors of this time, he shall not be allowed to withdraw once he is engaged in the job and has started it, as the interest of the patient and his treatment depends on its completion, while if it is left incomplete, it shall be harmful for the patient.

If he withdraws, he shall not be entitled to anything in such case in proportion to the part he has performed, as the payment of Ja'l in such case is made subject to the completion of the job.

If it is supposed to be similar to the case of stitching a garment, then apparently he would be entitled to proper wages in proportion to the part of the job he has already performed, but he shall also be liable to indemnify the loss sustained by the patient due to his withdrawal.

SECTION FIFTEEN - 'ARIYAH

'Ariyah means giving possession of something to another in order that he may utilise it gratis, or it means the contract of which it is a consequence, or its consequence is donation of the utilization. It is one of the contracts that require Declaration to be made by whatever words conveying its meanings in the prevalent usage, as when one says: "I have donated it to you", or "I have given you permission to utilise it," or "Utilise it," or "Take it to utilise it", or the like.

It also requires Acceptance, meaning whatever signifies consent. It may be in the form of an act, by taking it after Declaration by the donor in this sense.

Apparently it may also take place by way of Mu'at as when a person gives another a shirt to wear, and he takes it to wear, or he gives another a utensil or bed for his use, and he uses it.

Problem #1: It is a condition in the donor that he must be the owner of the utilization (of the thing donated), and should have the capability of making changes in it. So it is not lawful for a usurper to donate a property or its utilization.

There is a strong opinion in the application of the donation by an unauthorized person (to be invalid) until it is validated by the consent of its owner.

So also a donation by a minor, a lunatic or a person interdicted due to idiocy or insolvency is not valid except with the permission of his guardian or the creditors. The likelihood of validity of a donation by a minor with the permission of his guardian is not devoid of force.

Problem #2: It is not a condition for the donor to be an owner of the property, and it is sufficient that he should be owner of its utilization by lease or being the legatee in a legacy.

Of course, if it is stipulated in the contract of lease that the lessee should utilise it personally, the lessee shall not be allowed to donate its utilization to some one else.

Problem #3: The donee must have the capability to utilise the property (whose utilization has been donated by the donor). So it is not allowed for an infidel to accept the donation of the utilization of the holy Quran, or acceptance of a prey for one who has tied irrespective of its having been donated by one who has tied Ihram or one who has not tied it.

Likewise, it is a condition to specify the thing utilization of which is donated. So if one says: I have donated the utilization of one these two things, or one of those things, it would not be valid.

It is not a condition that the donee be a single person, as donation of the utilization may be made to a group as well, as when one says; "I have donated the utilization of this book or utensil to those ten persons, so that they may utilise it turn by turn or by casting lots as in case of a leased property".

According to the stronger opinion, it is not allowed to donate the utilization of a thing to an unlimited group.

Problem #4: It is a condition in the thing whose utilization is donated that its lawful utilization may be possible with the subsistence of the property itself, such as real estates, beasts of burden, garments, books, commodities, or the like, rather even a male animal for copulation, a cat, a dog for hunting or guarding, or the like.

It is not allowed to donate the utilization of things that have no lawful utilization, as equipments for entertainment, or utensils made of gold or silver for using them for a unlawful purposes, or what cannot be used except by consumption, as bread, oil, drinks and such other things for drinking and eating.

Problem #5: The permissibility of donation of a goat for utilization of its milk or a well for getting water from it is not devoid of justification and force.

Problem #7: If a property subject to donation of its utilization is exclusive as regards its special utilization, as a bed for bedding, a quilt for covering or a tent for shelter, or such other things, it is not necessary to explain their use at the time of donating them for utilization, even if they may have several uses, as a land that can be used for farming, plantation and building, or a beast of burden can be used for loading, riding, or the like. If however, the donation is meant for a special utilization or utilizations, it is necessary to mention it, and in that case its utilization is confined exclusively to those special purposes for which it has been donated. If, however, it is meant for a general use, then it is allowed to generalize it and explain it generally. It is also allowed to leave the purpose unspecified, as when one says: "I have donated for utilization this beast of burden to you". In such case, it may be brought into any lawful utilization.

Of course, some of the utilizations are made in secret, and are not included in the general utilizations, and they are required to be mentioned as such expressly or in a way that they may be generalized, and they are like burial, which, though included in the utilizations of land, but it is not included in the general utilizations, (and so it must be mentioned expressly).

Problem #8: (The cancellation of) a donation for utilization is allowed by both the parties. So the donor may withdraw whenever he likes, and the donee may, likewise, reject it. Of course, in a particular case of donation of land for burial, it is not allowed to withdraw after throwing earth on the dead body, or, according to the more cautious opinion, after digging the grave. But before that it is allowed to withdraw, even after placing the dead body in the grave before throwing earth on the dead body. If the donor withdraws after it, he shall not be liable to pay the wages for digging the grave and its expenses, in the same way as the *Wali* of the deceased shall also not be obliged to fill the pit dug with the permission of the donor.

Problem #9: A donation for utilization stands cancelled by the death of the donor; rather, even by his loss of control due to insanity, or the like.

Problem #10: It is obligatory on the donee to confine the utilization to the type of utilization specified by the donor. He is not allowed to transgress it to any other utilization, even if it were insignificant and small in harming the donor. Similarly, it is obligatory on the donee to confine the utilization to the nature of the utilization as per usual practice. So if a person hires a beast of burden, he should not load it more than what is usual practice as regards the animal and the load, the time and place. If he contravenes the usual practice in nature and manner, he shall be deemed to be a usurper and shall be liable for it. He shall be liable to pay to the donor the wages he has earned due to transgression if he has contravened regarding the nature of utilization. But if he has contravened in the manner of utilization, it is not far from being liable to pay the wages for the excess.

Problem #11 If a person has donated land building or plantation, he shall be allowed to retract, and shall be entitled to demand the donee to uproot the plants, but he shall be liable to pay compensation. The same rule shall apply if he has donated the land for farming, if he withdraws before the crop is ripe. It is likely that the donor shall not be entitled to demand the donee to uproot the farm, if the donee is ready to pay compensation for its retention. There is likelihood of compelling the donee without payment of compensation. The problem with its branches is very difficult to decide. So caution must not be given up by reaching mutual agreement and compromise.

Similar is the case when a person allows another to fix his beams in his roof, but withdraws after he has already fixed them in the building.

Problem #12: The property donated for utilization by the donor is a trust in the hands of the donee, he is not responsible if it is destroyed except by his commission or omission. Of course, if liability is stipulated (in the contract), he shall be held responsible, even if it is not due to his commission or omission, in the same way as when the property donated was gold or silver, the donee shall be responsible in all circumstances, except when the elimination of liability is stipulated in the contract.

Problem #13: The donee is not allowed to donate it to another for utilization or lease it to another without the permission of the owner. In such case his donation shall be deemed to be a donation by the owner, and the donee shall be considered to be a representative and deputy of the owner. If the donor subsequently lost the capability of donation, as due to insanity, the latter donation shall remain intact.

Problem #14: If the property donated is destroyed by some act of the donee, if it were as a result of some authorized act without any transgression from the usual practice, he shall not be held responsible for it. If it were due to some other reason, he shall be held responsible.

Problem #15: The donee is released of the liability if he returns the property donated to him to the donor or his representative or Waif If he returns it to its guard where formerly it was without handing it over to the owner or without his permission, he shall not be released from the liability, as

a person returns a beast of burden to a stable and fastens it there without the permission of its owner, and then it is lost, or someone causes its loss.

Problem #16: If a person receives donation from a usurper, then if he has no knowledge about its being usurped, the liability for it shall go to the usurper. If the object donated is destroyed while in possession of the donee or not while it was in his possession, then the owner shall have recourse against the usurper as well as the donee for the compensation of the loss of his property. So if he has recourse against the donee, the latter shall have recourse against the usurper. But if the owner has recourse against the usurper, the latter shall not have recourse against the donee.

The same rule applies to the compensation for the profit etc. accrued to the donee of which the owner has been deprived during the donee's possession of the property. If the owner has recourse against the donee, the latter shall have recourse against the usurper, but not vice versa. If, however, the donee knew about the usurpation, the donee shall not be entitled to have recourse against the usurper when the owner has recourse against him. Rather, the case shall be otherwise, so that the usurper shall have recourse against the donee if the owner has recourse against him when the property is lost while in the donee's possession. The donee is not allowed to return the property to the usurper once he comes to know about the usurpation. Rather he shall be obliged to return it to its owner.

SECTION SIXTEEN - WADI'AH OR DEPOSIT

A Wadi'ah or Deposit is the contract effective in appointing another as one's deputy or representative for protection (of something handed over to him) or it is the appointment as deputy for the said purpose, or, in other words, it means placing some property with another so that he may protect it on behalf of its owner, and mostly it is applied to the property deposited. The owner of the property is called Mudi' or the Depositor, while the other person is called Wad'i or Mustowdi' or the Trustee.

It requires Declaration, in whatever words conveying the sense of appointing another as one's deputy or representative, as one may say: "I have entrusted you this property", "Protect it", "It is a trust with you", or the like. It also requires Acceptance leading to consent for deputyship or representation in protection. It is not a condition to express Declaration or Acceptance in Arabic language, and they may be expressed in any language.

The Declaration is allowed to be in words and Acceptance to be expressed by deed, so that after the Declaration the other party receives the property.

It is also valid if executed by way of Mu'âtât, one party entrusts a property to another, and the other party receives it.

Problem #1: If a person throws, suppose, a garment to another and says: "It is a trust with you". Then if he accepts it in words or by deed denoting Acceptance, it shall constitute a Wadi'ah. There is hesitation in its execution by silence leading to consent.

If the other party does not accept it, it shall not be a Wadi'ah, even in case a person throws something before another for this purpose, and goes away, and leaves the thing with the latter, so that the other party shall not be responsible for it, though it is more cautious to act to protect it, if possible.

Problem #2: Acceptance of a Wadi'ah is allowed for a person who is capable of protecting it. If, however, a person is not capable, he is not allowed to accept it, according to the more cautious opinion, except when the owner of the property is unable to protect it and there is no one else capable to do so to whom it could be entrusted. It is far from being permissible particularly in case the depositor is himself aware of the person's incapability to protect it.

Problem #3: (Cancellation of) Wadi'ah is allowed by (either of) the two parties to it. So the owner of the property is entitled to get back his property whenever he likes. Similarly, a trustee is entitled to return it to the owner, and the latter shall not be entitled to refuse it. If the trustee revokes it by himself, it shall stand revoked, and the trust of ownership shall drop, and it shall become a trust according to Shari'ah. So the trustee shall be bound to return it to its owner, or one who stands in

his place, or announce its revocation. If he dilly-dallies it without any legal or rational excuse, he shall be held responsible for it.

Problem #4: It is a condition in such contract that both the parties to it must have majority and sanity, so that it is not valid for a minor or a lunatic to receive or deposit anything as a Wadi'ah , without any difference whether the property belongs to themselves or some one else from among the adult persons. Rather it is not allowed to receive anything deposited by them, so that if a person receives anything from them as a Wadrah, he shall be held responsible for it, and he shall not be released of its liability if he returns it to them. However, he shall be absolved of the responsibility if he returns it to their guardian.

There is no objection in receiving it, if there is fear of its being destroyed or lost if it remains in their possession. So it shall be received as something to be guarded and protected, but it shall not thereby become a Wadi'ah or an ownership in trust. Rather it shall be a legal trust that he shall be obliged to protect and take necessary action to see that it reaches their guardian, or he must inform the guardian that the thing is in his possession. But he shall not be held responsible if it lost while in his possession.

Problem #6: If a person deposits anything with a minor or a lunatic, they shall not be held responsible in the event of its loss, rather even if they destroy it, when they happen to be indiscreet. If they happen to be discreet, and capable of being entrusted, it shall not be far from likely to hold them responsible for the loss if it takes place due to their failure in its protection, not to speak of the case when they themselves have destroyed it.

Problem #7: It is obligatory on a trustee to protect it in the manner according to the usual practice for its protection and keep in a safe place suitable for it, as a locked box for garments, Dirhams, jewellery and the like, a stable with a locked door for beasts of burden, and a similar pen for sheep. In short, he should guard them in a place that according to the usual practice, he may not be called responsible for wastage, immoderation and treachery, even in case when the depositor knows that he has no safe place for keeping the property entrusted to him.

After the acceptance of the responsibility of protecting the property, it is obligatory on him to make arrangement necessary for him for its protection. Similarly, it is obligatory on him to take all precautionary steps required for safeguarding it against blemish and loss, as in case of a silken or woollen garment he must spread it in the sun during summer, and in case of a beast of burden he must give it fodder and water and protect it against cold and heat. If he commits carelessness in such precautionary measures, he shall be held responsible.

Problem #8: If the depositor has specified a particular place for keeping his property and it is understood that it is of a restrictive nature, the trustee shall confine himself to that particular place, and shall not be allowed to shift it to any other place once he has placed it there, even if it is safer. If he shifts it, he shall be held responsible (for any loss). If it was threatened with destruction or loss in that place, it shall be allowed to shift it to some safer place, and he shall be under no liability

despite the restraint by the owner, by saying: “Do not shift it, even it is threatened with loss”, though in such case it is more cautious to refer to the judge (for his permission), if possible.

Problem #9: If the entrusted property is destroyed while in the possession of the trustee without his commission or omission, he shall not be held responsible for it. Similar is the case when it is forcibly snatched from him by an oppressor, regardless whether he has snatched it from his possession or has ordered him to give it to him and he gives it to him under compulsion. Of course, his liability shall be strengthened if he had caused it, even by informing him about it or displaying it at a place that is the place where there is the risk of the oppressor’s arrival. In such case, his possession may be changed into a liable possession, irrespective of whether the oppressor has reached there or not.

Problem #10: If it is possible for the trustee to adopt some measures for the protection of the entrusted property from the oppressor, he shall be bound to adopt them, even if he is compelled to falsely deny its existence or swear it, he shall be allowed to do so, rather he shall be bound to do so. If he fails to do so, he shall be held responsible for it.

As regards the obligation of its concealment, if it is possible, there is hesitation in it, according to the more cautious opinion it is so, though according to the stronger opinion it is not so.

Problem #11: If the defense of the property leads to his physical harm like wound, etc, or damage to his honour, or financial loss, he shall not be bound to defend it; rather, he shall not be allowed to do so except in the latter case, and in that event too in some cases. Of course, in case the discomfort is very significant that is mostly tolerated by the people, as when he uses a harsh language in conversation with him, if it is not considered to be a damage to his honour or his nobility of rank, though it may naturally be painful for him, then apparently he shall be bound to tolerate it.

Problem #12: If it is possible to prevent the entrusted property from the oppressor by payment of some money belonging to himself or some other person. If it is possible by payment of a part of it, he shall be bound to do so. If he neglects it, and the oppressor succeeds in occupying it entirely, he shall be held responsible for the amount that could be paid to him instead of the entire one, so that if half of it could be paid to him, he shall be held responsible for half of it, and if he could be paid one-third, he shall be responsible for two-third of it, and so on.

Similar shall be the case when he has been entrusted with two properties of a single person, and one of the properties could be given to the oppressor, but due to his negligence the oppressor snatched both of them. If a single property could be given to the oppressor, the trustee shall be held responsible for the other. If he could be paid one of them without specification, the trustee shall be held responsible for the one having higher value. If safety from the oppressor depended on a compromise with him by payment of some of his own property, he shall not be bound to pay it voluntarily or gratis. If (he pays it) with the intention of having recourse to the owner for it, when it was possible to obtain his permission or one occupying his position, like the judge in case it was not possible to find him, he would be bound to do so. If he pays it without obtaining permission from

the owner, he shall not be entitled to have recourse to him for it. If it was not possible to obtain permission from the owner, according to the more cautious opinion, he would be bound to pay it, and he shall be entitled to have recourse to the owner for it after having such intention.

Problem #13: If what is entrusted to the trustee is a beast of burden, he shall be bound to give it water and fodder, even if the owner has not ordered him to do so, rather even if he has forbidden him, or he must return it to its owner or the one occupying his place. It is not necessary for the trustee to give water and fodder to it personally, nor to do so in its place. He may assign the job to some one else, and, likewise, he may also take it out from its place for the purpose of giving it water and fodder. If possible, he must arrange water and fodder in its place after the prevalent practice. If, for example, the route was risky, he shall not be allowed to take it out, in the same way as he is not allowed to assign the job to some one else, if it was not safe, except when accompanied by himself or another reliable person. In short, it is indispensable for him to adopt measures for its protection after the usual practice in a way that he may not be called to have committed omission or commission according to the prevalent practice.

This is with regard to giving it water and fodder only. As regards the expenditure on it, there is no objection if the owner has kept something itself or its cost, or has permitted to spend from his own money as a debt to him. In case otherwise, he is bound firstly to obtain permission from the owner or his agent. If it is not possible, he must refer the matter to the judge in order to obtain his order as he deems proper, even if he has to dispose of part of it to meet the expenses. If it is not possible for the judge, he shall spend on it out of his own money, and have some witnesses for it, according to the better and more cautious opinion, and have recourse to the owner when intended by him accordingly.

Problem #14: A Wadi'ah is cancelled on the death of the depositor or the trustee or the lunacy of either of them. If it were the former, the entrusted property shall remain in possession of the trustee as a legal trust, and he shall be bound to return it immediately to the heirs of the depositor or his Wali or inform them about it. If he neglects without any legal excuse, he shall be held responsible for it.

Of course, if the delay was due to the lack of knowledge about the person who is claiming to be the heir of the deceased or whether the person who is known as the heir of the deceased is his sole heir, and he has delayed the return or informing them in order to make necessary inquiry and investigation about it, then he shall not be held responsible for it, according to the stronger opinion. If the deceased has several heirs, he shall entrust the property to all of them or to one who is their representative. If he entrusts it to some of them, he shall be held responsible for the shares of the rest.

If it was the trustee (who has died or has become lunatic), the property shall remain a legal trust in the hands of his heir or Wali, if, suppose, it is in their hands, and he shall be bound to return it to the depositor or his representative, or inform him immediately.

Problem #15: It is obligatory to return the entrusted property on demand at the earliest possible time, even if the depositor is an infidel whose property has to be protected, or even if he is a *Harbi* infidel whose property can be lawfully confiscated, according to the more cautious opinion. What is obligatory on him is to dispossess himself of the thing and release it between himself and the owner and not shift it to the owner. If it were in a locked box or a locked house, he shall open them and say (to the owner): “Take you entrusted property”, and thereby he has fulfilled his duty, and is absolved of his responsibility, as it is obligatory on him to adopt the usually possible immediacy. He is not bound to rush, etc, to come out of the bathroom, for example, immediately, or leave taking meals or offering prayers, even if it were a supererogatory one, or the like. Is he allowed to delay to arrange witnesses for it? There are two opinions about it, the stronger being in favour of answering it in the affirmative, if arranging the witnesses for it would not cause considerable delay. Otherwise, it shall not be allowed, particularly when the act of entrusting is done without witnesses. This is when the depositor does not allow delay and lack of haste and hurry; otherwise, there is no objection in not expediting it.

Problem #16: If a thief entrusts a person what he has stolen, the trustee is not allowed to return it to him, if possible, and it shall remain in his possession as a legal trust, and he shall be bound to deliver it to its owner, if he knows him; otherwise, he must try to find him out in a year. If he fails to find him out, he must not give up caution by giving it in charity on behalf of the owner. If the owner comes after it, he shall give him the option of selecting (divine) reward (for charity) and indemnity. If he opts for the reward for the charity, he shall have it, but if he opts for indemnity, he shall indemnify him; and the (divine reward) shall go to him for indemnity, though it is not far from applying the rule of *Luqatah*

Problem #17: As it is obligatory to return the entrusted property when demanded by the owner, so also it is obligatory to return when there is fear of its destruction, theft, fire, or the like. If it is possible to deliver it to the owner or his general or special agent, it shall be obligatory to do so; otherwise, he shall carry it to the judge, if he were capable of protecting it. If the judge is also incapable of protecting it, or there was risk of its destruction even while in his possession, he shall give it in the custody of some trustworthy person who is capable of protecting it.

Problem #18: If the signs of death appear for the trustee due to some illness, etc, he shall be bound to return the property under his custody to its owner or his agent, if possible; otherwise, to the judge. In case there is no judge, he shall make a will before witnesses. If he neglects it, he shall be held responsible for it. The making of will before witnesses is to be done in a manner that it may lead to the protection of the property for its owner, and it is indispensable to mention in it its kind, description, specification of its place and owner, so that it is not sufficient for him to say: “I have in my custody a property of a person.” Of course, its lack of necessity is initially strong if the heir already knows it, and he happens to be a trustworthy and reliable person.

Problem #19: The trustee is allowed to go on a journey and leave the entrusted property in his safe place with his wife and family. If the journey is not necessary, or the protection of the property

depends on his presence, he may not go on journey, or return the property to its owner or his agent, and if it is not possible, to the judge, and if a judge is also not available, then he shall have to opt for staying and abandoning journey. According to the more cautious opinion, he is not allowed to take the property along with him on the journey, even if the passage is safe, and the protection of the property is the same whether he stays or goes on journey. If it is said that there are different entrusted properties, and it is allowed to take some of them on journey, it would be all right, but caution must not be given up in all circumstances. According to the stronger opinion, it is not allowed to entrust it to any trustworthy person.

If his journey is necessary for him, and it is not possible for him to deliver the property under his custody to its owner, or his agent, or the judge, he shall resort to entrusting it to a trustworthy person. If this also not possible, he may take the property along with himself in the journey and protect it as far as possible, and he shall no more be responsible (for its loss). Of course, in case of long journeys with lot of risk, it is necessary for him to act as one whose signs of death appear, as already mentioned in detail earlier.

Problem #20: A trustworthy trustee is not held responsible in case of destruction of the property in his custody, or when it becomes defective, except in case of his commission or omission, and this rule applies to the case of all trustees.

As regards omission it means negligence in the protection of the property, and avoiding what is necessary for its protection according to the usual practice, in a way that the person may be considered to be responsible for its wastage and negligence, as when he keeps it in a place that is not safe, and leaves it without taking its care, or fails to give fodder and water to a beast of burden, or spreading a silken or woollen garment in the sun during summer, or gives it in the custody of someone else, or fails to protect it from dampness in case dampness damages it, as books and some garments, or he takes it along with him on a journey. Of course, it is forbidden to generalize the journey and considering journey in all circumstances as an act of omission.

As regards commission, it is the utilization without permission of the owner, as when he wears a garment, spreads bedding or rides a beast of burden, when the protection of the entrusted property is not dependent on such utilization, as when the protection from worms of a garment depends on wearing it and a bedding on spreading it, or he does some act relating to it that is repugnant to custody, without an excuse of forgetfulness, or the like.

Commission and omission assemble together when a person throws the garment, cloth, books or the like, where they are damaged. Sometimes it includes the act when the owner entrusts, suppose, Dirhams in a sealed, or stitched or fastened purse and he breaks its seal, or opens its stitching or fastening without any need or interest.

Among an act of commission is when a person mixes up his own property with the one kept in his custody, regardless whether it was of the same category or not, or whether it was equal in quality or superior or inferior, or when he mixes up the property entrusted to him of identical category as

when someone placed in his custody Dirhams in two unsealed and fastened purses, and he places them in a single purse, then apparently it shall be a case of commission, while there is likelihood of the depositor's intention being to keep them separate, let alone when he had expressed such intention.

Problem #21: By saying that the property shall be subject to liability in case of commission or omission is meant the liability of the trustee in case of its destruction, even if it is not destroyed due to his commission or omission.

In other words, his case of trust without liability changes into that of treachery along with liability.

Problem #22: If a person intends to make some change (in the entrusted property), but does not do it, he shall not be held responsible for it. If, however, he intended to usurp it by intending to occupy it for himself and overpower its owner like other usurpers, he shall be held responsible for it, and his possession turns into a possession of transgression. If he changes his intention, the liability shall not change. Similar is the case when he denies it, or when he is asked to return it, he fails to return it despite his ability to do it rationally and legally. He shall be held responsible simply by such failure, and shall not be absolved of the liability, even if he withdraws from his denial or refusal to return it.

Problem #23: If the entrusted property was, suppose, in a sealed purse, and the trustee breaks it open, and takes out part of it, he shall be liable for the entire. Rather he shall be held responsible by simply breaking its open, as mentioned earlier. If the entrusted property was not placed in a safe cover by the depositor, or it was kept in a safe place by the trustee, and he takes out part of it, if he intended to confine himself to that, apparently his liability shall also be confined to that much. But if he intends to take the whole bits by bits, it is not far from his being liable for the whole. This is the case when the trustee has kept it in his own safe place. If, however, the owner takes a safe cover and places the thing in it, and seals or stitches it, and then hands it over in the custody of the trustee, then the trustee shall be held responsible for the whole by merely opening it without interest and necessity.

Problem #24: If a person entrusts something to his wife, son or servant to keep it in safety, he shall be responsible for it, except when they are like a tool, due to the things being within his presence, knowledge and inspection.

Problem #25: If a person commits omission in the entrusted property, and then withdraws from it, by placing it in a strongly safe place, and does what is necessary for its protection, or is responsible for some commission, and then withdraws from it, as when he wears a garment, and takes it off, he shall not be absolved of the responsibility of it. Of course, if the owner executes another contract after rescinding the first one, the responsibility shall also be eliminated. It is like the case when a property was in the possession of a usurper, who places it in the custody of another, and then apparently thereby the liability is relinquished due to the case of transgression to custody. If he holds the trustee absolved of the liability, then there are two opinions regarding the elimination of

the liability, the more in keeping with the principles is in favour of its elimination. If it is destroyed while in the trustee's possession and he is held responsible for its compensation, there shall be no objection in declaring him to be absolved of the liability.

Problem #26: If a person denies having entrusted with a property, or admits it but claims that it has been destroyed or returned to its owner, without having any evidence, then his word shall be entertained followed by his oath. The same shall be case if both the parties reach a compromise on destruction, but the depositor claims the trustee is responsible for commission or omission.

Problem #27: If the trustee returns the entrusted property to some one other than its owner, and claims that he had obtained the owner's permission, but the owner denies it, but there is no evidence. Then the word of the owner shall be entertained. But if he admits having given permission, but denies its delivery to the person for whom he had given his permission then it shall be a case similar to the one relating to the trustee's claim of having returned it to the owner, as it is he whose words are to be entertained.

Problem #28: If a trustee denies having received the property in his custody, but when the owner adduces evidence, he admits it, but claims that it had been destroyed before his denial, his statement shall not be entertained. Neither his oath shall be accepted, nor his evidence, though there is hesitation in accepting this rule. But if he claims that the entrusted property was destroyed after his denial, his word shall be entertained, but it would require his oath, but in spite of that he shall be held liable if his denial was without any excuse.

Problem #29: If a person admits that he had received a property in his custody, and then dies. If he has specified some personal property existing at the time of his death, it shall be taken out from his inheritance. Similar shall be the case if he has specified it among several things of the same category admitted by him and existing at the time of his death, as when he has said: "One of these goats is a goat given in my custody by such person." If the heirs consider his statement likely to be true, but do not distinguish how to deal with it in view of having brief knowledge about one of the goats being the property of such person. According to the stronger opinion, the matter is to be decided by casting lots. If the entrusted property is determined, but the owner is not specified, then it shall belong to an unknown owner. Its rule has already been mentioned under the Section of Khums.

Whether the statement of the owner would be relied upon, and its confirmation is necessary if he has specified it in the specified property, and there is likelihood of its veracity, there are two alternatives, the more significant being that it is not necessary to confirm it. If he does not specify it in any of the two ways, by saying: "I have in this inheritance an entrusted property belonging to such person", and then he dies between the interval in which its return or its destruction without omission was possible, then apparently his word is to be relied upon, and so, according to the more cautious opinion, it is obligatory to find release through a compromise, though it is more likely to resort to casting lots. In case of there being one of these two possibilities, then there is hesitation in

its being obligatory, if one says: "I have in this inheritance an entrusted property", If he says: "I have an entrusted property", without specifying anything further, or by specifying briefly without saying that it is included in my inheritance, then nothing shall be necessarily payable from the inheritance unless its destruction as a result of his commission or omission is known.

CONCLUSION

A deposit in trust (*Amanat*) is of two kinds: quasi-proprietary and legal.

The first kind, namely quasi-proprietary trust is the one that is entrusted by and with the permission of the owner, regardless whether his act is confined merely to it, as a Wadi'ah, or as subsidiary to some other thing actually intended, as mortgage, 'Ariyah, lease and Mudārabah, in which case the property is in the possession of the party a trust of quasi-proprietary nature, where the owner has entrusted it to him and left it in his possession without the instruction to take care of it and making its protection his liability

The second kind, namely the legal one, is the one in which its possession is not the result of entrusting by and with the permission of the owner, and the property in question comes into possession without oppression, but rather involuntarily as it has been put into his possession, suppose, by wind or flood and now it has come into his possession, or it has been given to him by the owner, but without the knowledge of either of them, as when a person buys a box, and he finds in it something belonging to the seller without his knowledge, or it is received by the seller or buyer in addition to his right, suppose, due to the mistake in accounts, or with the permission of law as Luqatah, something lost-and-found, or what is snatched from a thief or a usurper to be conveyed to its owner, or, likewise, what is taken out of the property of a minor or a lunatic with the sole purpose of protection under the fear of destruction if allowed in their possession, or an object or property whose protection is considered morally obligatory and is taken out of a place of destruction or loss, as an animal whose owner is known is found in a place abounding in beasts or a place of flood, etc., in all these cases the property remains in possession of the occupant as a legal trust and it is his duty to protect it and convey it to its owner at the first possible opportunity even though without demand, but he is not to be held responsible if it is lost while in his possession without his commission or omission, as is the case of the quasi-proprietary entrusted property.

It is likely to declare that it is not obligatory on him to convey it (to its owner) and it is sufficient to inform its owner of its being his possession, and let it be free between him and its owner so that the owner may have it whenever he likes. Rather, it is not devoid of force.

If the entrusted property is in the quasi-proprietary possession subsidiary to some other position, and that position is removed, as in case of a leased property after the term of lease, the mortgaged property after the release of the mortgage, or the property in the possession of the agent after the revocation of the Mudārabah, then in its being a quasi-proprietary or legal nature, there are two alternatives, or two opinions, the former, i.e., its being of the proprietary nature, not being devoid of preference.

SECTION SEVENTEEN - MUDARABAH

Mudārabah, also called “Qirad”, is a contract entered into by two persons on the condition that the stock or Rās al-Māl in trade shall belong to one of them, and the labor to another, and in case profit is accrued, it should be divided between both of them. If the whole profit is stipulated to go to the proprietor (of the stock) it is called “Bida’ah”

As a contract, it requires Declaration to be made by the Proprietor, and Acceptance by the Agent, (called Mudārib). A Declaration may be made by any words conveying this sense in the common parlance, as saying: ‘Darabtuka, (I have entered into Mudārabah with you), Qaradtuka, (I have entered into Qirād with you), or ‘Amaltuka, (I have entered into Mu’āmalah with you), on such conditions. In Acceptance, one may say:

“Qabiltu”, (I have accepted), or similar words.

Problem #1: It is a condition for both the parties to it, that they must have majority, sanity and authority, or free will. The Rabb-i Mal, or Proprietor of the Stock must be free from Interdiction for Insolvency; while, the Agent must possess the capability to trade with the Rās al-Mal, or the Capital or Stock. If he is absolutely incapable, the contract shall be declared void. In case, however, of partial incapability, it is not far from being valid proportionately, though with an amount of hesitation.

Of course, if the Agent suffers the incapability during the engagement in trade, the contract shall be declared invalid since the time of incapability in relation to the entire contract, if he suffers the incapability absolutely. According to the stronger opinion, the contract shall, however, be declared partially invalid if he suffers a partial incapability.

It is a condition in the Rās al-Mal, or the Stock, it is a condition that it must be ‘Ayn, or real asset, and it is not valid to be a usufruct or loan, regardless whether it is due from the Agent or some one else, except after its possession, and that it must be in Dirhams or Dinars. It is not valid if it is in the form of silver or gold not in minted form, ingots or merchandise. Its validity in the form of currency notes, or other currencies, except gold and silver, is not devoid of force. The same is the case with black money. Moreover, it must be clear and not ambiguous, as when one says; I have entered into Qirad with you against one of these two, or whichever you like”. It must also have a definite amount and description.

As regards the profit, it is a condition that it must be specific. So if one says: “You shall have what has been promised by such person for his Agent”, that is known to neither of them, it shall be invalid. It must be a commodity that can be expressed in fractions, as one-half, or one-third. If one says: “On the condition that out of the profit shall get hundred and the rest shall be mine,” or vice versa, or “You shall get, (example), half of the profit and ten Dirhams”, it shall not be valid.

Moreover, it must be (divided) between the Proprietor and the Agent, and no one else should share it with them. So if they reserve a share out of it for a stranger, it shall be invalid, except when he is assigned a job related to the trade.

Problem #2: It is a condition that the profit must be gained through trade. If a person gives some money to a farmer to spend it on agriculture, and the produce be divided between them, or he gives the money to a manufacturer to spend it in his profession, and the profit be divided between them, it shall not be valid, and shall not constitute a Mudārabah.

Problem #3: A Mudarabah may be constituted with counterfeit Dirhams if they are in currency despite their being such, and it is not a condition that they must be pure. Of course, if they are not genuine, and it is obligatory to break them and it is not allowed to have a bargain with them, it shall not be valid.

Problem #4: If a person has some debt owed to a third person, it is allowed for him to authorize another to get it back from him and then enter into a Mudarabah against it as making Declaration and Acceptance on behalf of both the parties. Similarly, if the debtor is to work as an agent, it is allowed to authorize him to specify what he owes as the specified money for the creditor, and then enter into a Muciarabah by pronouncing the Declaration and Acceptance.

Problem #5: If a person gives some merchandise to another, and says: “Sell it, and its sale proceeds shall be the money for Mudārabah”, it shall not be valid, except when Mudārabah is entered into after the sale of the merchandise.

Problem #6: If a person gives a net to another on the condition that the fish caught shall be divided, for example, half and half, it shall not be a Mudarabah. Rather it shall be an imperfect bargain. So whatever fish he catches shall go to the catcher to the extent he had intended for himself, but as regards the share he had specified for the other, there is hesitation as to its ownership, and it is likely to continue to be ownerless, but he shall have to pay proper rent for the net (to its owner).

Problem #7: If a person gives some money to another to buy palm-trees and sheep with the condition that their fruits and offspring shall be divided between them, it shall not be Mudarabah. Rather it shall be an imperfect transaction, and the fruits and offspring shall be the property of the proprietor of the money, and he shall have to pay proper wages to the agent.

Problem #8: A Mudārabah can lawfully be concluded with undivided money as with a divided money. If there is a specified amount of Dirhams jointly belonging to two persons, and one of them says to an Agent: “I have entered into Qirad with you with my share in these Dirhams”, it shall be valid, provided that he knows the amount of his share. So also if a man has, suppose, one thousand Dinars, and he says: I have entered into Qirād with you for half of these Dinars”, (it shall be valid).

Problem #9: There is difference if one says: “Take this stock as a Qirad , and each one of us shall have half of the profit”, “and the profit shall be divided between us:” and you shall get half of the

profit”, “ and I shall have half of the profit”, as apparently they have specified half of the profit for each of them. Similarly, there shall be no difference if one says: “Take it as Qirād, and you shall have half of the profit”, or” you shall have profit of half of it,” as the meaning of all of them is the same in the common parlance.

Problem #10: It is allowed for the Proprietor to be a single person and the Agents to be several in a single stock, with the condition of having an equal share in what they get as I their share in the profit, or the preference of one of them over others, even if they have an equal contribution in labor. If the Proprietor says; “I have entered into a Qirad with both of you, and both of you shall get half of the profit,” they shall have an equal share in it.

Similarly, it is allowed for the Proprietors to be several and the Agent to be a single person, so that the stock may belong to them jointly, and both of them enter into a Qirad with the single Agent on the condition that, suppose, half of the profit should be divided equally between them, so that half of the profit should belong to the Agent and half of it to be divided equally between both of them, or differently, so that half of the share should go to one of them out of their share of half of the profit, and one-third to the other. So if the profit is twelve, the agent must have five, and one of the partners three and the other four.

Of course, when there is no difference in the share of the Agent in relation to the share of the two partners, and the difference be between the shares of the partners, as when they stipulate that half of the profit would go to the Agent and another half to the two partners to be divided between them with a difference, but having equal share in the stock of capital, so that the Agent would receive six out of twelve, and one of the partners two and the other four, then there are two alternatives, or two opinions, on the validity of such bargain, the stronger being in favour of its being invalid.

Problem #11: A Mudarabah is to be entered into by both the parties, and so it can be revoked by either of them before the start of its execution or after, before gaining the profit as well as after it, and whether the whole stock has turned into cash, or it includes some commodities that have not been turned into cash. Rather if both the parties stipulate a period of time for its maturity, each of them shall be allowed to revoke it before the expiry of its maturity.

If both of them stipulate non-revocation, then if their intention is its being binding in a way that it may not be revoked if revoked by one of them so as to make it a sign of its being binding by mentioning an indication which may lead to it, according to the stronger opinion, the condition is declared void, but not the Mudārabah. But if the intention were declaring it binding for both of them in the sense that it may not be revoked by both of them, then there is no objection in it, and it is not far from being binding for action by both of them. Similarly, if both the parties add such stipulation in a lawful contract as long as it is not revoked, (it shall be binding). If they make such a condition in an external binding contract, as sale, conveyance, or any other similar one, there is no hesitation in declaring action on it as binding.

Problem #12: Apparently Mu'at and unauthorized contracts also take place in a Mudarabah, so it is valid by way of Mu'at, and if made without authorization by the Proprietor or the agent, it is validated by the permission of both of them.

Problem #13: A Mudarabah is cancelled on the death of the Proprietor or the Agent. Is it permissible for the heirs of the Proprietor to endorse the contract so that it may remain intact by their permission or not? According to the stronger opinion, it is not permissible.

Problem #14: An honest Agent is not held responsible in case of the loss of the stock, or if it becomes defective while in his possession, except due to his commission or omission, as also he has no liability if there is some loss sustained in the trade. Rather the loss is borne by the proprietor of the stock. If the Proprietor has stipulated that the Agent shall share the loss with him, as he shares in profit, there are two alternatives in this regard, the stronger being against his sharing in the loss.

Of course, if his authority for such stipulation is the possibility of sustaining loss by the owner and so the Agent must bear, suppose, half of the loss from his pocket, there shall be no objection in it, and action on it shall be binding if it has taken place in a binding contract. Rather, it is not far from being binding for action even if it has taken place in a lawful contract as long as it is intact.

Of course, he is entitled to revoke it and remove its subject, as there is no objection in the condition according to an alternative not very far (from being permissible), if his authority were shifting the loss to him after its occurrence in his stock by way of the condition of consequence.

Problem #15: After the conclusion of a Mudārabah, an Agent is bound to fulfill his duty as is done by one who represents a trader according to the prevalent practice in such trade in such place and such time, and by such agent with regard to, for example, displaying, spreading or folding the cloth, receiving the price, and keeping in a safe place, and hiring according to the usual practice a broker, one who weighs as well as a porter, and pay their wages from the actual capital. Rather if he performs all these jobs himself without the intention of doing them gratis, then apparently he shall be allowed to draw the wages. Of course, if he hires someone for the performance of a job that is usually performed by the agent personally, its wages shall be borne by him.

Problem #16: In case of a Mudarabah without any special restrictions, an agent shall be allowed to trade with the stock according to his discretion in observing the interest of the principal as regards the kind of material bought, seller or buyer, etc. including even the fixation of its price. He is not bound to sell it in cash, but he is rather allowed to sell in kind for another kind, except when there is a usual practice according to which generalization reverts to some particular practice. If the Proprietor stipulates forbidding him from a particular commodity or nothing but a particular commodity or to sell it to a particular person or tribe, etc, he shall not be allowed to violate such conditions. If he violates them, he shall be held responsible for the capital and loss, but if the bargain earns profit, and the trade is profitable, the proprietor shall share it as prescribed in the contract.

Problem #17: An agent is not allowed to mix up the stock with another stock for himself or another, except with the permission of the proprietor generally or particularly. If he mixes up, he shall be held responsible for the stock as well as loss. But if he trades with the whole mixed commodity and earns profit, it shall be divided between both the commodities proportionately.

Problem #18: In case a Mudarabah has no restrictions, the agent shall not be allowed to sell the stock on credit particularly on some special occasions and some special persons, except when it is the usual practice among the traders, or a particular place or commodity in a way that the generalization reverts to such practice. If he violates except in case of the reversion, he shall be held responsible. But if he accomplishes it, and earns a profit, it shall belong to both of them.

Problem #19: An Agent is not allowed to undertake journey by land or sea with the stock and trade in other towns and except where the stock exists and except with the permission of its proprietor, even due to the reversion to the usual practice. If he undertakes the journey, he shall be held responsible for the loss sustained or destruction suffered. If, however, he earns profit, it shall be divided between them.

The same rule shall apply if he is ordered by the proprietor to undertake the journey to a particular direction, but he undertakes it in another direction.

Problem #20: An agent is not allowed to spend anything from the stock of the Mudarabah while in his town, even if it were as small as a few pennies for drinking water. Similar is the case while he is on journey, except with the permission of the Proprietor, If, however, it were with the permission of the Proprietor, he shall be allowed to spend it from the principal capital, except when the proprietor has stipulated that the expenses on his maintenance shall be borne by the agent. By maintenance is meant what is required for food, drinks, garments, means of transport tools and implements like water-skin, gunny bags, house rent, and such other expenses suitable for his position according to the usual practice with economy.

If he spends money lavishly, it shall be borne by him. If he spends niggardly, or if he does not need to spend on himself, for example, due to being a guest, it shall not be accounted for in his expenses. His maintenance shall not include his rewards and presents, feasts, etc. as they shall be borne by him, except when they were in the interest of the business.

Problem #21: A journey with the authority of expenditure from the capital means a usual one and not permitted by law. So it includes even a journey shorter than the distance (entailing Qasr), as it may last for ten days or more in some places when required for considerations of journey, as taking rest due to or waiting for companions, or fear on the route, etc. or for matters connected with business, like payment of the ‘Ushr (one-tenth part), or obtaining passport. If his stay is meant for amusement or making money for himself, or the like, then apparently he shall pay for his maintenance, when his stay was for the sake of such purposes after the completion of his job.

If, however, before it, his stay was meant for the completion of his business job or some other purpose, then it is not far from permissible to divide the expenses in proportion to both, though it is more cautious to account for such expenses as his own. If the completion of the business work did not depend on his stay, and it was for some other purpose, then it is more cautious that he should pay it from his own pocket, while the expenses on his return may be deducted from the Qirad money, if he had undertaken the journey for the sake of the trade, though in the meantime some other purpose also came up, although it is more cautious to divide the expenses in such case. It is more cautious than that to pay the expenses from his own pocket.

Problem #22: If a person is an agent for two or more, or is working for himself as well as for another, the maintenance shall be divided. Whether the division shall be on the basis of the two stocks or the two jobs, there is hesitation and difficulty in deciding the matter. So caution must not be given up by adopting the lesser of the two, when he was working for himself as well as for another, though he must absolve himself of the responsibility by reaching a compromise between both of them if he were working, for example, for two persons.

Problem #23: Accruing of profit is not a condition for entitlement for maintenance. Rather a person shall spend from the principal capital, even if no profit is earned. Of course, if the agent spends on his maintenance, and subsequently he earns some profit, all the expenses made out of the capital like the penalties and losses shall be made good from the profit. The Proprietor shall be paid his whole capital, and if there is some residue, it shall be divided between both of them.

Problem #24: Apparently an agent is allowed to make purchases with the principal capital of Mudarabah. It is by specifying an amount of Dirhams and buy something with it, as he is also allowed to purchase something entirely on credit and make its payment out of it, so that he may purchase some commodity entirely on credit for one thousand Dirhams payable by the proprietor, and subsequently pays it from the capital he has with him. If the money of the Mudarabah is lost before the payment of the credit, the proprietor shall not be obliged to pay it from another source, as there was no such permission in this case. What is binding in the Mudarabah contract is the permission for purchasing entirely confined to payment out of the capital of the Mudarabah, it is also counted among trade with capital according to the usual practice. Of course, the agent is allowed to specify some special amount of Dirhams and make purchases with it, though usually it does not happen in transactions, but it is certainly allowed, and it is one of the items called trade with the capital. This is the case when there are no particular conditions or restrictions (in the Mudarabah contract). In case, however, there are some conditions of special nature, then the agent shall have to observe them accordingly.

Problem #25: An agent is not allowed to authorize another in trading, so that he authorizes another in the trade itself without the permission of the proprietor. Of course, he is allowed to appoint an agent and trade for some preliminaries, rather in some transactions where it is usual to entrust it to brokers.

Likewise, the agent is not allowed to enter into a Mudarabah with another, or make him a partner in it except with the permission of the proprietor. If he enters into a Mudārabah with another with the permission of the proprietor, it shall, nevertheless, revert to the first Mudarabah as regards revocation, and the conclusion of the new Mudārabah between the proprietor and another agent, or between him and the agent along with another jointly. If, however, the intention is the conclusion of a Mud between the agent and another, so that the second agent may be an agent of the first agent, then, according to the stronger opinion, it shall be invalid.

Problem #26: Apparently it is lawful for either of the parties to a Mudarabah to stipulate in the contract some money or job for the other, as when the proprietor stipulates for the agent to stitch a garment for him, or give him a Dirham, or vice versa.

Problem #27: Apparently the agent becomes the owner of his share in the profit as soon as it accrues. It neither depends on turning into cash nor on division, as apparently he becomes a partner in the existing stock itself with the proprietor proportionately, and so it is lawful for him to demand division. He is entitled to occupy his share by way of sale and conveyance. All the consequences of ownership apply to him like inheritance, payment of Khums and Zakat, obtaining capability, and payment of the right of the creditors, etc.

Problem #28: There is no hesitation in that the loss incurred on the stock of Mudarabah is made good from the profit as long as Mudārabah subsists, regardless whether the profit is precedent or subsequent. The agent's ownership wavers with its appearance. It disappears wholly or partly with the appearance of loss until it stabilizes. The stability is obtained after it is turned into cash, and the Mudārabah is terminated, and division takes place finally. Nothing is made good after it. As regards its materialization before the finalization of the three conditions, there are several reasons and opinions, the stronger being in favour of its materialization by termination of Mudārabah along with the finalization of division, even if the profit has not been turned into cash. Rather it is not far from its materialization by the termination of Mudarabah and turning the profit into cash, even if division has not taken place, or its materialization is not devoid of force by the termination of Mudarabah only, or the maturity of its period, if some period of its maturity has been specified.

Problem #29: As the loss is made good by profit in trade, so also the destruction of the stock is made good from profit, regardless whether it takes place after the circulation of the trade, before it or after its start, and whether the destruction has been total or partial. If he buys the stock on credit for one thousand, and the capital was one thousand that is destroyed. Then if he sells the stock purchased for two thousand, and pays one thousand (for the stock purchased), there remains one thousand to make good the loss of the capital. Of course, if it is destroyed totally before the start of trade, the Mudārabah shall be cancelled except when the destruction of the capital has taken place with a guarantee and there is possibility of its receipt.

Problem #30: If Mudarabah is revoked or it terminates by itself, then if it does not take place before the start of the agency and its preliminaries, there is no difficulty, and the agent shall receive

anything nor there shall be any liability on him. The same shall be the case if it takes place after the finalization of the agency, and change of the profit into cash, because they shall divide the profit when it accrues, but if no profit is earned, the proprietor shall have his initial capital (invested in the business), and the agent shall neither receive anything, nor shall there be any liability on him.

If it takes place during the circulation of trade after the agent has been engaged in his job, then if it were before earning the profit, the agent shall not receive anything, and no wages shall be paid to him for the work done by him, regardless whether the revocation has been done by him or by the proprietor, or the termination has taken place by itself, as also he shall not be liable for anything, even if the revocation has taken place from his side during a journey permitted by the proprietor. He shall also have no liability for his maintenance out of the principal capital, even if there is something in the stock that cannot be changed without the permission of the proprietor. Similarly, the proprietor shall not be entitled to compel the agent to sell or turn it into cash.

If it were after earning the profit, then if it were after turning it into cash, then the job is finalized, and they shall divide the profit, and each of them shall have his share. If it were before turning the profit into cash, then, according to what has been mentioned before that the agent becomes the owner of his share as soon as the profit accrues, he shall share the stock with the proprietor. If they agree to division in such condition, or to wait until the commodity is sold and changed into cash, they shall be allowed to do so, and there shall be no objection in it. If the agent demands its sale, the proprietor shall not be compelled to accede to it.

Similarly, if the proprietor demands its sale, the agent shall not be bound to abide by it, even if we declare that the agent's ownership of the profit is not established except after it has been turned into cash. At the most in such case if some loss has been incurred after it before the division, it shall have to be made good from the profit, but the basis for the establishment of the agent's ownership has already been mentioned.

Problem #31: If the stock included some debts on the people, whether the agent is authorized to receive them, and add them after the revocation or termination or not, is a question whose answer is in the negative according to the opinion more keeping with the principles of jurisprudence, particularly when the revocation is ascribed to other than the agent, but caution must not be given up, specially when the agent has revoked it, and the proprietor demands him to receive the debts.

Problem #32: After the revocation or termination (of the Mudārabah), the agent is not obliged but to release between the proprietor and his stock, and he is not bound to convey it to him, even if he has sent the stock to some place other than the place of the proprietor, and it was done with the proprietor's permission.

If, however, it were without the proprietor's permission, the agent shall be bound to return it to him, even if it required some expenditure on wages, it shall be borne by the agent.

Problem #33: If the Mudarabah were declared invalid, the entire profit shall belong to the proprietor, if there is no condition of Mudārabah in his permission for the trade, otherwise it shall depend on his permission. After the permission is accorded, the profit shall belong to him, irrespective of whether both of them were ignorant of the invalidity of the Mudārabah, or both of them had its knowledge, or one of them had knowledge to the exclusion of the other. The agent shall be entitled to his proper wages for his job, if he were ignorant of its invalidity, regardless whether the proprietor had knowledge about it or was ignorant of it. Even if the agent had knowledge about its invalidity, his entitlement to proper wages also shall not be devoid of reason, if profit has accrued to the extent of what would be his share on the supposition of its validity to be equal to the proper wages or more. In case, however, there is no profit or it is less than the proper wages, then, if he had its knowledge, it shall not be far from declaring absence of his entitlement in the first case, his non-entitlement to more than his share in the second. In case of his ignorance, it is more cautious to reach a mutual compromise. Rather, caution must not be given up in all circumstances. In any case, the agent is not responsible for the destruction of the stock or any defect taking place in it. Of course, according to the stronger opinion, he shall be responsible for what he spends on himself out of the capital during the journey, even if he were ignorant of the invalidity of the Mudārabah.

Problem #34: If a person enters into a Mudarabah with money belonging to another without acting as his agent or representative, it shall be considered to be an unauthorized one. If the proprietor accords permission, it shall be deemed to be on his behalf, the loss shall be borne by him, and the profit shall be divided between him and the agent according to what has been stipulated by both of them. If the proprietor rejects it, then if it were before the agent starts trade with his capital, he shall demand it back, and the agent shall be bound to return it to him. If it is destroyed or becomes defective, the proprietor shall have recourse against both the Mudārib (and the person entering the Mudarabah) and the agent. If he has recourse against the first, the latter shall not be entitled to have recourse against the agent. If he has had recourse against the agent, the latter shall have recourse against the Mudarib. This is the case when the agent is ignorant of the actual position; otherwise, the responsibility shall lie on the person in whose possession the property was when it was destroyed or became defective. In that case, the matter shall be reversed. If it takes place after the conclusion of the bargain with him, the bargain shall be unauthorized. If he endorses it, it shall be as if it has been concluded on his behalf, and the whole profit shall belong to him, and he shall also bear the whole loss. If he rejects it, he shall have recourse against both the Mud and the agent, as he likes, similar to the case of destruction. He is allowed to permit it on the condition that it earns profit, and reject it in case of loss, in order to observe his own interest, so that he may endorse it if he finds it profitable; otherwise reject it. This is the position of the proprietor in relation to both the Mud'ārib and the agent.

As regards the position of the agent vis-à-vis the Mudarib, if he has not performed anything, he shall not be entitled to anything. The same shall be the case if he had knowledge about the stock belonging to a person other than the Mudārib. If he has performed something, and did not know that

the stock belonged to someone else, he shall be entitled to his proper wages for his labor, and shall have recourse against the Mudārib.

Problem #35: If the agent takes hold of the stock, he shall not be allowed to give up trade, and let it lie with him for a period not allowed by the usual practice, when such person is considered indolent and negligent. If he leaves it in such a way, he shall be held responsible if it is destroyed, but the proprietor shall not be entitled to anything except the stock itself, and shall not be entitled to demand any profit that would be earned had he traded with it.

Problem #36: If the agent buys something on credit with the proprietor's permission, the debt shall be owed to the proprietor, and the creditor shall have recourse against him. He may also have recourse against the agent, particularly in case of his ignorance about the actual position. If he has recourse against the agent, the latter shall be entitled to have recourse against the proprietor. If it is not clear to the credit or that the purchase has been made for some one else, he shall be entitled only to have recourse against the agent, though, in fact, he is entitled to have recourse against the proprietor as well.

Problem #37: If a person enters into a Mudarabah with another against five hundred, and pays it to him, and the agent starts trading with it, and during the course of trade, he pays another five hundred by way of Mudarabah. Then apparently they shall be two contracts of Mudārabah, so the loss of one shall not be recouped by the profit of the other. If, however, he enters into a Mudarabah against one thousand, and pays five hundred, and later pays another five hundred, they shall both constitute a single contract of Mudārabah, and so the loss of one shall be recouped by the profit of another.

Problem #38: If a capital belongs to two persons, and both of them enter into a Mudarabah with a single person, then one of the partners revokes the contract, it shall be terminated in relation to the share of that partner, but in relation to the share of the other, there is hesitation in its effect.

Problem #39: If the proprietor has a dispute with the agent regarding the amount of capital, but there is no evidence, the word of the agent shall be preferred, regardless whether the capital exists, or is destroyed for which he is liable. This is the case when their dispute is not regarding amount of the agent's share in the profit. Otherwise, there is a detailed rule.

Problem #40: If the agent should claim the destruction of the stock, or loss, or non receipt of the debts without the liability on him, and the proprietor should claim otherwise, and there is no evidence (in favour of either of them), the word of the agent shall be preferred.

Problem #41: If the proprietor and the agent differ regarding profit, but there is no evidence (in favour of either of them), the agent's word shall be preferred, regardless whether they differ as to its earning itself, or to its amount. The same shall be the rule if the agent says that there was so much profit, but subsequently there was loss equal to the same amount, and so the profit was gone.

Problem #42: If the proprietor and the agent differ as to the share of the agent in the profit, whether it is one-half or one-third, and there is no evidence in favour in of either of them), the proprietor's word shall be given preference.

Problem #43: If the stock is destroyed, or loss is sustained, and the proprietor alleges treachery on the part of the agent or his omission in its protection, but there is no evidence, the agent's word shall be preferred. The same rule shall apply if the proprietor claims of a stipulation against him or of violation of a stipulation by the agent, as when he claims that he had stipulated that he should not purchase such commodity, but he did purchase it, and consequently he incurred a loss, but the agent denies having any such stipulation or having violated what was stipulated against it. Of course, if the dispute related to the issuance of the proprietor's permission in what an agent is not allowed to do except without the proprietor's permission, as when he carries the stock along with himself on a journey or purchases something on credit, and the stock is destroyed or loss sustained, and the agent claims that it was with the permission of the proprietor, but the proprietor denies it, then the proprietor's word shall be preferred.

Problem #44: If the agent claims to have returned the stock to the proprietor, but the latter denies it, preference shall be given to the one who denies.

Problem #45: If the agent purchases some commodity, and earns profit on it, and then he says that he had purchased it for himself, but the proprietor claims that he had purchased it for the Qirad (i.e. Mudarabah), if loss is sustained and the agent says that he had purchased it for the Qirad but the proprietor claims that he purchased it for himself, the agent's word followed by his oath shall be given preference.

Problem #46: If destruction takes place or loss is sustained, and the proprietor claims that he had given the money as a loan (to the agent), while the agent claims that he had given the money for Qirad, there is likelihood of resorting to oath by both in view of the nature of the dispute, though there is also likelihood of preferring the agent's word in view of its reversion. (On the contrary), if there is profit, and the proprietor claims that it was for Qirad, but the agent claims that it was on the money given to him as a loan, there is likelihood of resorting to oath by both in view of the situation, though the proprietor's word may also be preferred due to its reversion. Probably, the latter would be closer to likelihood in both cases.

Problem #47: If the proprietor claims he had given the stock as merchandise, so that the agent may not be entitled to anything out of the profit, but the agent claims that he had given it to him by way of Mudārabah, and so he had a share in the profit, apparently the proprietor's word followed by his oath is to be preferred, so that he swears denying Mudārabah. He shall have the whole profit, if there is any. The likelihood of oath by both is weak..

Problem #48: A Ju'alah is allowed in a trade with stock, and making Ja'l a share from the profit by saying: 'If you trade with this stock, and earn profit, then half or one-third of it shall be yours.' In such case, it shall be a Ju'alah, giving the benefit of Mudārabah, but without stipulating in it what is

stipulated in a Mudārabah. So there is no condition of the capital being in cash, but it may be a commodity, debt or usufruct.

Problem #49: A father or paternal grandfather is allowed to enter into a Mudarabah with the minor's capital, provided that there is no cause of corruption, but they must not give up caution of observing the minor's interest. Similarly, it is allowed for a legal administrator like a legatee or the judge of a religious court provided that there is safety from destruction, and observation of satisfaction and interest. Rather a legatee of one third of the deceased is allowed to enter into a Mudārabah with it, and spend his share of profit in the expenditures prescribed by the deceased for the one-third (of inheritance), if the deceased has bequeathed it. If the deceased has not bequeathed it, but has left the matter of the one-third to the discretion of the legatee, he shall seek what is advisable in it.

Problem #50: In case the agent dies, and he has in his possession a property given to him by way of Mudārabah, if it is known what he has left in his inheritance as the property of the Mudarabah then there is difficulty. But if it is known to be in his inheritance without being specified so that it was incorporated in his inheritance along with his personal property, or there may be in his inheritance entrusted things and capitals of others, which have mixed up with one another, action will be taken as it is taken in similar cases of confusion regarding the property of several people. In solving this problem whether action shall be taken by casting lots, or arranging a mutual compromise, or division of the inheritance among them in proportion to their respective shares? There are several alternatives, the stronger being in favour of casting lots, but the more cautious is to reach a mutual compromise.

Of course, if the deceased has left several creditors, and he had also some property given to him by way Mudarabah but it is not known which property belongs to whom, then it is an example of creditors. The same shall be the case when the property is known as to its category and amount, but it has become confused with the property of similar category, without being mixed up, then, according to the stronger opinion, the matter shall be decided by casting lots, particularly when the commodities are different as to the superior and inferior qualities. In case they are mixed up, the aggregate shall be the joint property of the owners proportionately.

If it is known that it does not exist in the inheritance, and there is likelihood of it's having been returned to its master or might have been destroyed due to omission by him or some one else, then apparently its liability shall not be adjudged to fall on the deceased, and so the entire inheritance shall belong to his heirs.

The same shall be the case if there is likelihood of its existence in the inheritance, and it is known that an amount of the property given to him by way of Mudarabah before his death was incorporated in these existing commodities left behind by him, but it is not known whether they are still incorporated in the inheritance, or they were returned to their master, or were destroyed.

So there is difficulty in its solution, even if the likelihood of the properties being part of the inheritance is not devoid of force, though it is more cautious to exclude them from inheritance (and paid to their masters), provided there is no minor among the heirs.

SECTION EIGHTEEN - PARTNERSHIP

Partnership (Shirkah or Shirkat) denotes the belonging of a single thing to two or more persons, and its consists of a capital asset, debt, usufruct or right, and its cause is either inheritance or a transfer contract, as when two persons purchase a property, or hire a capital asset, or enter into a conveyance of a right.

There are also two other causes that are exclusively related to Partnership in capital assets, one of them is Hiyāzah or Acquisition of Title, as when two persons uproot an ownerless tree together, or scoop an ownerless water into a single pot at the same time; and the other is Imtizāj, or Mixing together, as when the water or vinegar of a person mixes up with the water or vinegar of another, regardless whether it takes place of itself, deliberately or voluntarily.

There is also another cause, and that is the partnership of one person in the property of another, and it is called Tashrik, and it is different from Contract of Partnership from one aspect.

Problem #1: Imtizāj sometimes leads to actual and true partnership, and that when a complete mixture takes place between two liquids, both belonging to the same category as water with water, and oil with oil, or even if they happens to belong to two different categories, as, for example, the almond oil with walnut oil, and this mixture may usually remove distinction according to the actual position, though rationally it may not be so.

As regards the mixture of two soft solid things with each other, as flour, there is hesitation and difficulty in their being a cause of actual partnership, and it is not far from being external.

Sometimes it causes external-legal partnership (that is treated as actual partnership), and that is like mixture of wheat with wheat and barley with barley.

According to the stronger opinion, it also includes the mixture of small grains with grains of identical category, as poppy with poppy, and millet and sesame with the same and identical categories.

As regards their mixture with something of a different category, then apparently there shall be no partnership in that case. The release in such case may be sought through reaching a compromise, or the like, as it is more cautious to seek release through a conveyance or the like in case of a mixture of walnut with walnut and almond with almond. Similar is the case of mixture of Dirhams and Dinars with their identical categories when they are mixed up in a way that there exists no distinction. Partnership is not created, actually or prima facie, if non-fungible things are mixed up with one another, as when garments having close quality are mixed up with one another, or sheep with sheep, etc., the solution in such cases lies in reaching a compromise or casting lots.

Problem #2: It is not allowed for some of the partners to make changes in the jointly held property, except with the consent of the rest. Rather, if one of the two partners permits his partner to make changes, the latter shall be allowed to make changes, but not the one who has given permission, except with the permission of his partner. The person who is permitted must confine himself to the extent he has been permitted, in quality as well as quantity. Of course, permission of a thing also includes its requisites in general. There are different situations that have to be kept in view. Sometimes the permission given to a person for living in a house also includes permission for his family, wife and children to live in it, rather, with some hesitation, even his friends, and entertaining guests up to the usual number. This is all allowed, except when he forbids all of them or some other, in which he must obey his order.

Problem #3: As partnership is applied in the sense mentioned before, that it is belonging of a single thing to two or more persons, it is also applied in the latter sense, that it is a contract entered into by two or more persons about the transaction of a property common to them, and it is called a contractual or acquisitive partnership, and its consequence is the permission for the partners to make changes in what they share by earning with it, and the profit or loss is to be divided between them in proportion to their respective share.

It is a contract that requires Declaration and Acceptance, and it is sufficient for them to say: “We have entered into Partnership”, if one of them says so, and it is accepted by the other. It is not far from the application of Mu’atāt to it, so that both the partners mix up their respective stocks with the intention of their partnership in having business and transaction with it.

Problem #4: All the conditions required in financial contracts are also required in a contractual partnership, as majority, sanity, intention, free will and non-interdiction on account of insolvency or idiocy.

Problem #5: A contractual partnerships are not valid except in properties, in cash or kind, and it is called Shirkat al-Inan. It is not valid in acts, and, (therefore) it is called a Partnership of Bodies, so that the contract is entered into on the condition that the wages of the labor of each of them must be shared by both, regardless whether they have a common labor as both being tailors, or they are different, as a tailor and a weaver. This is why the contract between two persons on the condition that whatever is obtained by each of them by collection of, suppose, fuel wood shall be shared by both of them, no partnership is created thereby, and the wages of each of them, or whatever is acquired by him, shall belong exclusively to him. Of course, if one of them enters into the contract of conveyance with the other on half of his usufruct until a period of a year or two shall be in exchange for half of the usufruct of the other until the same period, and the other accepts it, it shall be valid, and each of them shall share the other during that period whatever wages or earnings are received by him. Similar shall be the rule if one of them enters into a contract of conveyance with another on half of his usufruct until a period of time in exchange for, suppose, a Dinar, and the other also enters into a similar contract of conveyance with him on half of his usufruct in exchange for the same amount.

So also the partnership of honors is also not allowed. The more prevalent meanings are contained in the story that two persons who enjoy honour and respect among the people having no property enter into a contract on the condition that each of them should purchase something on credit for a period of time, to be shared by both, then they should sell and pay their respective debts, and the profit so accrued shall belong to both. So if they intend to get this result by the legal method, each of them shall make the other his agent in sharing him in whatever he buys, so that he may buy it on their behalf and on their liability, and in that case the profit or loss should be shared by both.

So also the partnership of Mufawadah is not valid. It is when two persons enter into a contract on the condition that whatever each of them gets by way of profit in trade, gain in agriculture, or earning (by labor), inheritance, legacy, etc. shall be shared by the other, and similarly whatever penalty or loss is sustained by one of them shall be shared by the other. Thus, the valid contractual partnership is confined to the 'Inan partnership.

Problem #6: If two persons have given themselves on hire through a single contract for a single job against a specified wages, the wages shall be divided between them. Similarly, if two persons acquire something ownerless together, as they uproot an ownerless tree together, or fill in water in a single pot at the same time, whatever they have acquired shall be divided between them. It is not among the partnership of bodies that may be declared invalid. So their wages and earning shall be divided between them in proportion to their labor. If the proportion of their labor is not known, then it is more cautious to reach a mutual compromise.

Problem #7: It is a condition in an 'Ināni contract that the capital contributed by both the partners should be so mixed that there should remain no distinction before or after the contract, irrespective of the two capitals being in cash or kind, partnership has been created by them like liquids or not, as Dirhams and Dinars, whether they belong to the same category or are non-fungible. In case of different categories in which mixture that removes distinction is not allowed, according to the more cautious opinion, it is indispensable to employ any of the causes of partnership. If the property is joint, as an inheritance, it is allowed to enter into a contract against it. In such cases, the benefit is its permissibility for trade.

Problem #8: Neither a contract of partnership nor its general nature require permissibility for change by each of the two partners in the property of the other by earning, except when the implication of the situation or words so demand, as when partnership is obtained in the property, as in inheritance, and then both of them enter into the contract. In case there is no such implication, it is indispensable to obtain the permission of the owner of the property. This is applied whether there are some restrictions in the contract or not. If they stipulate that the labor shall be by one or both of them together, it shall be strictly followed. This is in respect of the agent. As regards labor and earning, in case of a general permission, whatever both of them consider advisable shall be allowed to be acted up on as is the case with an agent in Mudarabah. If some special direction is contained in the contract, as sale of sheep or food, or their purchase, or trade in cloth, etc., action shall be confined to them, and there shall be no permission to cross its limits.

Problem #9: As each of the partners is like a representative and agent of the other, so when they enter into a contract on simple occupation or some special profession, it shall be confined to the usual one. Neither sale on credit is allowed, nor is a journey along with the merchandise, except as usual. There are different cases in it. Otherwise, it must be with special permission. Each of them is allowed to do what is usual regarding the commodity purchased, the seller and the buyer, and the like. Of course, if some restriction has been made, neither of them shall be allowed to violate it, except with the permission of the partner. If either of them violates what has been restricted or what is usual, he shall be held responsible for the loss or destruction.

Problem #10: An unrestricted partnership requires division of the profit between both the partners in proportion to their respective capital. If it is equal, it shall be divided equally between them; otherwise, they shall get more according to the difference in their respective capital without there being difference of labor as it was contributed by one of them, or it was equal or different. If they have stipulated difference in the profit despite equal investment, or equality despite its difference, then if they have stipulated extra profit for the one who labors from among both of them, or one who has labored more, it shall be valid without any objection. If some greater share is prescribed for other than the one laboring, or for one whose labor is not more, then there are different opinions regarding the validity of the contract and condition together, or the invalidity of both of them, or validity of the contract to the exclusion of the condition.

Problem #11: The person acting as the agent from among both the partners is a trustee. So he is not responsible for destruction except in case of commission or omission. If he claims destruction of the stock, his word shall be accepted. Similarly, if the other partner alleges commission or omission on the part of the agent, and he declines, (the agent's word shall be accepted).

Problem #12: A contract of partnership is valid when instituted by both the parties, and so it is permissible for either of them to revoke it, and, consequently, it is cancelled.

Apparently, if the partnership has been created as a result of its contract, the actual partnership is cancelled, contrary to the case when it is created by mixture, or the like, like the mixture of almond with almond and walnut with walnut, or Dirhams and Dinars with their identical category.

In such cases, if the contract is revoked, the whole capital reverts to its owner, and release takes place in it by mutual compromise. Similarly, it is cancelled by the infliction of death, lunacy, swooning and interdiction due to insolvency or idiocy. In such case, the subsistence of the actual partnership is not far from likelihood with the permissibility of any change by the partner.

Problem #13: If both the partners specify a period of time for the partnership, it shall not be binding. Each of them is allowed to withdraw before the maturity of the period, except when they have stipulated in the contract not to withdraw, in which case each of them shall be bound to fulfill

it. Rather, this is also the case if such a condition has been incorporated in a legal contract, so that its fulfillment is obligatory as long as the contract subsists.

Problem #14: If the invalidity of the contract of partnership comes to light, the transactions made before it shall be declared valid if there is no condition of the permission of both when their partnership has been created by a contract, or of the validity of the contract in case otherwise.

This is the case when each of them or one of them has traded independently; otherwise, there is no objection. In case of validity, both of them shall be entitled to the profit, and shall also be liable to share the loss, in proportion to their respective investment. Each of them shall get the proper wages for his labor in relation to the share of the other (in the labor).

Chapter One - Division of Shares of the Partners

The Division of Shares of the Partners denotes the separation of the shares from one another, i.e., determination of the shares when they were not actually determined, and not separation of what was actually determined and apparently confused.

It is neither sale nor exchange (Mu'awadah). In it, neither Option for Meeting is applicable, nor Option for Animal, that are exclusively meant for sale. Ribā' or Usury is also not included in it, although we have generalised it for all exchange transactions.

Problem #1: In a Division, it is indispensable for the shares to be equal. This is either according to the fractions and quantity by means of measurement, weight, counting or survey. It is called a Division of Ifraz (or setting apart). It is carried out in things of identical nature like grains, oils, milks, and in some of the non-fungibles having equal portions as a single piece of cloth while all pieces are equal in size, or a piece of vast land when all pieces are equal in area.

Or it may be according to the value and price, as in case of non-fungibles when they are several, as sheep, real estates and trees, when some of them are equal to the others in price, as when two persons are partners in three sheep, the price of one of them being equal to that of two others. So one of them shall be counted as one share, while other two as one share. Such division is called Division of Ta'dil.

Or it may be done by adding to it an amount of the capital of some other shares in order to equalize its value with that of the other share, as when a person has two sheep, the price of one of them being five Dinars while that of the other four Dinars. So when we add half a Dinar to the latter, it becomes equal to the former. It is called the Division of Radd.

Problem #2: Apparently it is possible to apply the Division of Radd to all types of partnerships, in which division is possible, including even in those where there is a single commodity from among identical things, by dividing it despite one of its share be more in value than the other, and by adding, for example, some Dirhams to the deficient one in order to recoup the deficiency, and it may become equal to the one having greater value.

Similarly, when there are three sheep, the value of one of them being equal to other two. Now in order to make the dearer one equal, it shall be merged with one of the other two to make it a single share, and then something shall be added to the share of the other that may equalize them in value, and so on.

As regards the Division of Ta'dil, it does not apply to some of the types like the first example, as the Division of Ifraz does not apply, like the second example. Sometimes all the three Divisions apply, as when two persons share a load of wheat valuing ten Dirhams, a load of barley valuing five Dirham and a load of grams valuing fifteen Dirhams, if they are divided separately, it shall be a Division of Ifraz.

If wheat with barely is made one share, and grams another, it shall be Division of Radd. There is no objection in the validity of all with mutual agreement except Division of Radd, where there is possibility of other divisions, as there is hesitation in its validity.

Rather apparently it shall be invalid. Of course, there is no objection in a compromise containing the benefit of Division of Radd.

Problem #3: It is not necessary to determine the amount of shares in Division, if they are equal. If there is a heap of wheat whose weight is not known and which is shared by three persons, and it is divided into three equal parts through a means of measurement whose amount is not known, or there is a piece of land with equal parts held by them, and it is divided into three equal parts through a stick or rope whose length is not known, it shall be valid.

Problem #4: If one of the two partners demands division through one of its types, then if it were Division by Radd, or it would cause loss, the other partner shall be entitled to forbid it, and cannot be compelled to accede to it. It is called Division of Tarad, or Mutual Agreement. If it is neither Division of Radd, nor would incur loss, then the person disagreeing shall be compelled to agree. It is called Division of Ijbar, or Compulsion.

If the stock is such that it cannot be divided except through Division of Ifraz or Division of Ta'dil then there shall be objection. In case both of them are possible, and the partner demands Division of Ifraz, then the disagreeing partner shall be compelled to agree, contrary to the case when he demands the Division of Ta'dil.

If two persons were partners in different types of equal parts, like wheat, barley, dates and raisins, and one of them demands the division of each type to be carried out through Division of Ifraz, the disagreeing partner shall be compelled to agree. If he demands Division of Ta'dil, he shall not be compelled.

Similarly, if two persons were partners in two pieces of land, two houses or two shops, the disagreeing partner shall be compelled to agree if he disagrees on the division of each of them separately, but shall not be compelled to agree on Division of Ta'dil. Of course, if their separate division would cause loss, but not their division by Ta'dil, the disagreeing partner shall be compelled to agree with the second, and not the first.

Problem #5: If two persons are partners in a two-storey house, and it can be divided by way of Ifraz (or separately) in a way that each of them should get his share in both the storeys, or in a way that each of them should get his share in both the storeys by way of Ta'dil, or in a way that one of them should get the higher storey and the other the lower. If one of the partners demands the division in the first way, and it would not cause any loss, the other shall be compelled (to agree to it).

The other partner shall, however, not be compelled if the former demands division in one of the last two methods. This is with the possibility of the first method, and without causing any loss; otherwise, in the last two methods, the first one shall be preferred, and the other partner shall be compelled to agree to it, if he disagrees with the second method. Of course, if the division is confined to that method only, he shall be compelled to agree to it provided that it would neither cause loss nor Radd; otherwise, he shall not be compelled, as already mentioned. What we have already mentioned shall also apply to the examples given here.

Problem #6: If a group of persons are partners in a house having several rooms or a caravansarai having several cells, and some of the partners demand division, then the others shall be compelled, except when it would cause some harm due to their being narrow and the partners being in a large number.

Problem #7: If two persons are partners in a garden of palm-trees and other trees, then they shall be compelled in case of the division of the palm-trees and other trees by way of Ta'dil, contrary to the case of the separate division of the land and the land, as it would be Division of Tarad in which the disagreeing partner cannot be compelled.

Problem #8: If two persons are partners in an agricultural land, the land and the farm can be divided separately, irrespective of the crop being fresh or having formed into spikes (of grain), and the division shall be compulsive. If the land and the farm are divided together, it would be a Division of Tārad, in which case the disagreeing partner shall not be compelled, except when it is the sole possible method of division and is free from any harm, in which case he shall be compelled. This is the case the crop is fresh or has formed into ears. If, however, the farm consists of grains buried in the earth, or the grain has come out of the earth but has not taken a complete form of vegetation, then there is no hesitation in dividing the land separately and leaving the farm to remain a joint property. It is more cautious to divide the farm separately through a compromise. As regards the division of the land along with the farm in a way that the farm may be an adjunct to the land, there is hesitation in it.

Problem #9: If a group of persons are partners in several shops, situated closely or distantly, then if the division of each of them separately is possible, and it is demanded by some of the partners, while some other partners have demanded the division by Ta'dil so that their share may be determined in a complete shop or more, preference shall be given to those who have demanded the former method of division, and the other partners shall be compelled to agree to it, except when the second method is the sole possible method in which no loss would be incurred, in which case the first group of partners shall be compelled to accede to.

Problem #10: If two persons are partners in a public bath or something like it in which division is not free from loss, the disagreeing partner shall not be compelled in it. If the public bath (Hammām) is so large that it could be used as a public bath (even after the division) without any harm, even if

by adding another furnace and well, then it would be closer to traditional authority to compel (the partner disagreeing with its division).

Problem #11: If one of the two partners owns, suppose, one-tenth of a house, and it is not suitable to live in, and he shall also incur loss if it is divided, but not the other partner, then if he demands division due to some consideration, his partner shall be compelled (to accede to it), but he shall not be compelled, if the other partner demands division.

Problem #12: It is sufficient in a harm obstructing compulsion that it may cause harm to the property or its value due to division that is not usually ignored, even if it does not lose the capability of utilization all at once.

Problem #13: In division it is indispensable first to equalize the shares, and then cast lots. The procedure of equalisation is that if the shares of the partners are equal, as when there are two partners each of them having half, or when they are three each having one-third, and so on, the shares shall be equalised with the number of the partners, and each share shall be marked in a way that it could be distinguished from the rest. If a land, having equal parts, belongs to, for example, three partners, it shall be divided into three pieces of equal area. They shall be distinguished through a mark, as the first piece to belong to one of them, the second to another, and the third to the third.

If a house, consisting of several rooms, belongs to, for example, four persons, it shall be divided into four parts of equal value, if it cannot be divided separately without causing loss, and each of them shall be distinguished by a distinctive mark, as the eastern, western, northern and southern wings, demarcated by such limitations. If, however, the shares are different, as a property belongs to three persons, so that it's one-sixth belongs to 'Amr, one-third to Zayd, and half to Bakr. The shares shall be divided according to the least. So in the given example, there shall be six shares and they shall be divided through a distinct marks, as mentioned before.

As regards the procedure of casting lots, in the first case, where the shares are equal, the pieces of paper shall be taken equal to the number of the partners, two pieces when there are two partners, three if there are three partners, and so on. There is option between writing the names of the partners, for example, on one Zayd on another Amr, or the names of the shares, as the first on the first, and the second on the second, and so on. Then they should be mixed up and covered, and a person who has not seen them is ordered to take them out one by one.

If there are the names of the partners written on the pieces of paper, the share shall be fixed like the first, and the piece of that name shall be taken out, intending thereby to reserve the share for that person whose name has come out. So the share shall belong to that person whose name has come out. Then the share of the other shall be determined, and another piece shall be taken out for that share, so that it shall belong to the person whose name has come out, and so on.

If the names of the shares have been written on the pieces of paper, one of the partners shall be chosen, and then one piece of paper shall be taken out, so whichever share has come out shall belong to him. Then another piece shall be taken out for another partner, and so on.

In the second case, when the shares are different, as in the preceding example, the shares shall be divided according to the least, and that is one-sixth.

The procedure in it is that pieces of paper are taken according to the number of the partners, and on one of them is written, for example, Zayd, on another Amr, and on the third Bakr, and they are covered, intending that the name of who so ever person comes out on the share, shall be his, followed by another, till his share is completed. Then one piece shall be taken for the first share, if the name of the owner of one-sixth, it shall be reserved for him.

Then another piece shall be taken out for the second share. If the name of the owner of one-third comes out, the second and third shares shall belong to him. Then the fourth, fifth and sixth shares remain for the owner of half. There is no need to take out the third piece. If the name of the owner of the half is written on it, the second, third and fourth shares shall belong to him, and the rest shall remain for the owner of the one-third. If the name of the owner of one-third is written on what has come out on first share, the first and second share shall belong to him.

Then another piece shall be taken out for the third share. If the name of the owner of one-sixth comes out, it shall belong to him. The last three shall remain for the owner of the half. If the name of the owner of half comes out, the third, fourth and fifth shall belong to him. Then the sixth remains for the owner of the one-sixth. And so on.

Problem #14: Apparently there is no special procedure for casting lots. It depends on the agreement of the divider and the recipients of the divided shares to let their matter be dependent on something that has no hand of the creatures (or the human beings) in it, and leaving their case to the Creator, whose Glory is Exalted, irrespective of its being written on pieces of paper or putting marks on pebbles, stones (of fruits), leaves, pieces of wood, etc.

Problem #15: According to the stronger possibility, the division is complete with casting of lots, as mentioned before, and there no need for another mutual agreement between the parties, let alone its emergence, though it is more cautious in case of a division of Radd.

Problem #16: If some of the partners in the joint property demand utilization by turn, then it can be either according to the time, as one of them should reside, suppose, for a month and then another should reside for a month, or it may be according to the its parts, as one of them should reside, suppose, in the upper storey and the other in the lower, it shall neither be binding on his partner to accede to it, nor shall he be compelled if he disagrees. Of course, it shall be valid with mutual consent, but not binding, and each of them shall be entitled to withdraw. This is the case with partnership of capital assets. But as regards the partnership in usufructs, its Ifrāz is confined to exercise in turns, but in that too it is not binding. Of course, if the judge of the Shariah Court gives

judgment in its favour in a case in order to put an end to dispute, then the person who disagrees shall be compelled, and it shall be binding.

Problem #17: The division in capital assets after finalization and casting lots shall be binding, and no partner shall be entitled to cancel or revoke it. Rather apparently they shall not be entitled to cancel or revoke it by mutual consent, as apparently an Iqalah is not allowed in it. But without casting lots there is hesitation in declaring it to be binding.

Problem #18: Division is not allowed in joint debts. If there are debts of Zayd and Amr together on people by a cause necessitating partnership as inheritance, then if both of them intend to divide them before their settlement, they shall equalize them, so that the debt owed by the person living in the town should belong to one of them and that owed by the one living in the desert should belong to the other, it shall not be Ifraz but shall remain joint. Of course, if they are partners in a debt owed by one person, and one of them gets back his share in a way that the debtor and creditor should both agree that what he is receiving is towards the settlement or payment of his debt, then apparently it shall be considered to have been settled, and the share of the other creditor shall remain due to the debtor.

Problem #19: If one of the two partners claims that the division has been wrong, or there has been no equalisation in it, while the other party denies it, his word shall not be entertained except with evidence.

If he adduces evidence, the division shall be annulled, and a new division shall be required. If he has no evidence, he shall ask his partner to take an oath.

Problem #20: If two partners make a division, each of them getting a room in his share, and before it the (rain-) water of one room would flow to the other, the other would not object to it, except when both of them have stipulated at the time of the division to remove the water from there.

The same rule shall apply to the case when the passage of one's room falls under the share of another in the house.

Problem #21: It is not allowed to divide the property of an endowment among those in whose interest it has been entailed, except when some dispute arises among them that may lead to its damage, and the dispute is not settled except by division.

So it shall be divided among the class of donees existing at that time, and it shall not be applicable to the next class, when it is against the intention of the donor, due to the difference in the descendants in being in large or small number.

Of course, separation of the endowment from the property not falling under the endowment shall be valid as well as their division if half of the property was a joint endowment and the other half ownership.

Rather the separation of one endowment from the other is also allowed. This is when a property belonged to a single person. He endowed half of it to Zayd and his children and the other half to Amr and his children. The separation of one of them from the other through partition is allowed. The persons in charge for it shall be those present from among the donees, and they shall be the Wall of the next generation of donees.

SECTION NINETEEN - MUZARA 'AH (METAYAGE)

Muzara'ah or Metayage is a bargain in which a person tills the land (belonging to another) against a fixed share. It is a contract that requires a Declaration by the owner of the land, and that may be made by any words conveying such meanings, as by saying; "I have entered into a Muzara'ah (Metayage) with you", or "I have entrusted to you the land for so much time on the condition that you would till it on such terms", or the like, and Acceptance by the farmer conveying its sense like other contracts. Apparently the Acceptance may be expressed in deed, while the Declaration is expressed in words, so that the farmer accepts the land for this purpose. It is not a condition in this contract to express it in Arabic language, so it may be expressed in any language. It is not far from to apply Mu'atāt in it after specifying what is required to be specified in it.

Problem #1: Besides the conditions required in the two parties to a contract, namely, majority, sanity, intention, free will, and non-interdiction due to insolvency, when its occupation is financial and not otherwise, as in case of a farmer who has to put in labor only, in a Muzara'ah the following conditions are also required:

First: The crop is to be jointly owned by both the parties. So if the whole produce is to belong to one of them, or some special one produced earlier or produced from a special plot to belong to one and that produced in the other to belong to the other, it shall not be valid.

Second: Fixation of the farmer's share, half, third or fourth (of the produce), or the like.

Third: Fixation of the time in specified number of months or years. If it is confined to mentioning only the produce in a single year, then there are two opinions regarding its sufficiency for the condition of time, the preferable one being in favour of the former.

In case however the beginning of cultivation is specified, and when the time is mentioned with the period, it is indispensable that it must be a period that is usually required for the ripening of the crop, and it is not sufficient to mention a period that is shorter than required for the ripening of the crop.

Fourth: The land must be arable (or capable of producing the crop), even if by treatment, repair, filling the pits, digging canals, or the like..

If it is barren and not suitable for farming, or there is no water for it, and the rain water is not sufficient for it, and it is not possible to obtain water for it, as by digging a canal, or a well or purchase (water) it shall not be valid.

Fifth: Fixation of the crop, whether it is wheat, barley, etc. when there are different purposes in them. It is sufficient if there is usual practice for implication. If he generalizes as usual practice, it shall be valid, in which case the farmer shall have the option to choose whichever crop he likes.

Sixth: Fixation of the actual land. So if it is specified as a plot out of these plots, or a farm out of these farms, it shall be void. Of course, if he specifies a particular piece of land, the parts of which do not differ, and says: "I have entered into Muzāraah with you for a Jarib (44 yards) of this piece of land entirely as prescribed," then apparently it shall be valid, and the choice for selecting the Jarib shall lie with the landlord.

Seventh: Fixation of the liability for the seed and other expenses, as to which of the two parties shall be responsible for them, if it is not to be determined by usual practice.

Problem #2: In a Muza'arah it is not a condition that the land is to be owned by the farmer, and it is sufficient for him to own its utilization, or utilization by lease, or the like, provided, that there is no condition of its utilization by him personally, or he has taken it from the land through a Muzāra'ah, or the land is a Kharāji land and he has taken it from the ruler or some one else without the condition mentioned before.

If he has no title to it, or no control over it at all, as in case of wastelands, Muza'arah in them shall not be valid, even if it is possible for him to share with another in its cultivation and produce by sharing in its seed, but it shall not be a Muzaraah.

Problem #3: If the owner of the land or the farm has given a general permission to the effect that whoever tills it shall be entitled to, suppose, half of the produce and a person tills it, its owner shall be entitled to his share in it.

Problem #4: If both of them stipulate that the produce would be divided between them after taking out the land tax, taking out the cost of the seed for the supplier of the seed, or what had been spent on the development of the land for one who has spent it, then if they are satisfied with something that is left from the produce after all this, it is to be divided between them, it shall be valid; otherwise it shall be void.

Problem #5: If the fixed time has expired, and the crop has not become ripe, the farmer shall not be entitled to retain it, even against payment of compensation. Rather the landlord shall be entitled to remove it without payment of indemnity, and he shall be entitled to retain it gratis or against some payment if the farmer agrees.

Problem #6: If the farmer abandons the farm until the expiry of the prescribed time, shall he be liable for proper compensation, or what is equal to the share of the landlord as per estimate, or shall he not be liable for anything at all? There are several alternatives, the most reasonable being in favour of his liability for proper compensation in case the land was in his possession and he has abandoned the farm neglecting it. In case otherwise, he shall not be held liable though it is more cautious to reach a compromise and mutual agreement. This is the case when he has abandoned the farm without any usual excuse as extraordinary snow or the place turning into an army camp or abode of beasts, or the like; otherwise, the Muzāra'ah shall be cancelled.

Problem #7: If a farmer starts tilling a land, and later it transpires that it has no water at present, but it can be obtained by digging a well or the like, it shall be valid, but the agent shall have the option to revoke the contract. Similar shall be the rule, in case it transpires that the land is not suitable for agriculture except by a complete treatment, as when it is submerged with water, but it is possible to stop it. Of course, if it transpires that neither is there presently any water in it, nor is it possible to procure it, or it has some obstacle that can neither be removed, nor is it hoped to disappear, it shall be cancelled.

Problem #8: If the landlord has specified a particular type of crop like wheat, but the farmer cultivates some other seed, then if the specification were in the form of a condition made in the contract of Muzara'ah, the landlord shall have the option either to revoke the contract or endorse it. If he endorses it, he shall receive his share. If, however, he rescinds the contract, the crop shall belong to the farmer, and he shall be bound to pay the land rent to the landlord.

If it were a mere restriction, the landlord shall be entitled to the land rent, and an indemnity in case of damage to the land.

Problem #9: Apparently it is valid to stipulate in the contract of Muzāra'ah that the land and labor shall belong to one party, and the seed and the ploughing implements (like the ploughing animal) to the other, or one of these to be contributed by one and the rest by the other. Rather, it shall be valid if both of them share in all the materials. It is, however, indispensable to prescribe all this at the time of concluding the contract, except when there is the usual practice, it can be dispensed with.

It is not necessary for a Muzara'ah to be concluded by two persons only. It is allowed for the land to belong to one person, the seed to another, the labor to a third one and the ploughing implements to a fourth person, though it is more cautious to avoid such situation, and not to exceed the number from two. Rather this caution must not be given up, if possible.

Problem #10: A farmer is allowed to make another person a partner in his Muzāra'ah, and specify a share for him out of his own share, as he is allowed to transfer his share to another person, and stipulate that he would perform the job of farming. However, he shall be responsible to the landlord, and shall be bound to perform the job even if through some agent. As regard the second contract of Muzara'ah, as the farmer is responsible to the landlord, it shall not be deemed a Muzāra'ah, and so it shall not be a contract as such. The permission of the landlord is neither a condition for the validity of making a (a third person as) partner in Muzara'ah nor for transferring his share to another person. Of course, according to the more cautious opinion, it is not allowed to give the land in the possession of another person without the permission of the landlord, as when the landlord stipulates that the farmer has to perform the job personally and not make another person as his partner and that he must not transfer his share to another, then it has to be acted upon.

Problem #11: A contract of Muzāraah is binding for both the parties. So it is not terminated by revocation by either of them, unless he has such option. Like all other contract, this contract is also

cancelled by Iqalah by both of them, as it is cancelled and is terminated automatically if the land ceases to be suitable for farming due to some reason and it is not possible to solve it.

Problem #12: A Muza'arah is not terminated on the death of either of the two parties. If the landlord dies, his heir shall stand in his place. Similar shall be the case if the agent dies. If, however, the heirs complete the job, they shall be entitled to the share of the propositus, or they shall have to hire some one for the completion of the job from the property of the propositus even if it is out of the said share. If there is some residue, it shall belong to them. Of course, if it has been stipulated that the agent shall perform the job personally, the contract shall terminate on his death

Problem #13: If, after the farmer starts tilling the land, it transpires that the contract was void, then if the landlord was to contribute seed, the crop shall belong to him, and he shall be bound to pay the wages for the agent and the rent for the (ploughing) implements, if they belonged to the agent, except when the invalidity of the contract was due to the ascription of the entire produce to the landlord, in which case, according to the stronger opinion, he shall not be bound to pay the wages for the labor and rent for the implements. If the seed belonged to the agent, the crop shall belong to him and he shall be bound to pay the land rent. The same rule shall apply to the implements if they belonged to the landlord, unless the invalidity of the contract was due to the ascription of the whole produce to the farmer, in which case he shall not be bound to pay the rent for the land and the implements, and the farmer shall not be entitled to retain the farm until the ripening of the crop, even by payment of its compensation, and the landlord shall be entitled to order for its removal.

Problem #14: The manner in which the agent shall share in the produce with the landlord shall depend on the contract actually entered into by them. Sometimes both of them become partners in the crop from the time of its appearance and manifestation. So its (dry) grass, fresh mowed grass (of barley), hay and grain all belong to them jointly, or in other case, they share in the grain only either from the time it forms into grain or afterwards until the time of its harvest, so that the (dry) grass and the fresh mowed grass and hay belong to the owner of the seed. It is also possible for the seed to belong to one of them, and the (dry) grass, the fresh mowed grass (of barley) and hay may belong to the other with their partnership in the grain. This is in case of such specification. In case otherwise, apparently what is required by the general terms of the contract is the first alternative, namely, the crop shall belong to both of them jointly right from the time of its appearance and manifestation.

There are the following different positions:

First, they also share the fresh mowed grass (or barley) and hay.

Second, Zakāt shall be charged from both of them if the share of each of them reaches the taxable limit (Nisāb). It shall be charged from the one whose share has reached the said limit, if the share of one of them has reached such limit. It shall not be charged at all, if the share of neither of them has reached such limit.

Third, if the contract is terminated by one of them due to his right of option, or by both of them by mutual Iqalah during its currency, the crop shall belong to both of them, and neither the landlord shall be entitled to receive the land rent from the agent, nor the agent to receive his wages from the landlord in relation to his past labor.

As regards the future until the ripening and harvest (of the crop), if mutual agreement has been reached between them as to the retention of the crop with or without compensation or on cutting it while still unripe, there shall be no objection; otherwise, each of them shall be the master of his respective share. So the landlord shall be entitled to demand division (of the crop) and compel the farmer to cut his share, in the same way as the farmer shall be entitled to demand his share so that he may cut his share (of the crop).

Problem #15: The tax on land and the rent on the land on lease shall be paid by the person giving the land on Muzāraah and not on the farmer, except when it has been stipulated wholly or partly.

However, as regards other expenses like digging canals, or wells, repair of the canals, providing means of irrigation, installing water wheels, Persian wheels, etc. it is indispensable to specify as to which of the two parties shall be responsible for them, except when there is usual practice in which case it can be dispensed with.

Problem #16: It is allowed for the farmer and the landlord at the time of ripening of the crop to accept the share of the other partner according to the estimate in the prescribed amount from his produce with mutual consent.

According to the stronger opinion, it becomes binding for both the parties after acceptance, even if afterwards it turns out to be more or less. So whoever has accepted that share shall be bound by that share, even if later it transpires that the share of his partner is less than that, in the same way as his partner is bound to accept it, even if later it transpires that his share was more than that, and he shall not be entitled to demand more.

Problem #17: If there remain roots of the crop in the land after collecting the produce and expiry of the prescribed time, and they grow the next year, then if there was an agreement between both of them to share the crop and its roots, the new crop shall belong to both of them according to the previous crop. If the agreement was confined to the division of only the crop of that year, then the crop of the next year shall go to the owner of the seed. If he abandons it, then it shall belong to one who is first to take it up.

Problem #18: A contract of Muzara'ah can be concluded in respect of a barren land that cannot be tilled except after its repair and developed on the condition that the agent shall develop and repair it and till it , for example, for one year or two years, for himself, after which the produce shall be divided between both of them as a joint property as per prescribed shares until a prescribed period of time.

SECTION TWENTY - MUSAQAT (SHARECROPPING OF ORCHARDS)

Musaqat is a transaction made in respect of fixed (or immovable) roots (or trees) with a person on the condition that he shall water them for a specified period of time for a (prescribed) share in their fruits. It is a contract requiring Declaration, as the owner of roots (or trees) saying: "I have entered into a contract of Musaqaṭ with you", or "I have made a mutual transaction with you", or "I have entrusted to you ...", or the like, and Acceptance as saying (in reply): "I have accepted", or the like. It is sufficient in expressing both (Declaration and Acceptance) by any words conveying the said sense in whatever language they may be. Apparently an Acceptance in deed after Declaration expressed in words is sufficient, as Mu'āṭat also takes place in it, as mentioned under the Section on Muzāra'ah.

Besides (both the above conditions of Declaration and Acceptance), it requires other conditions of the two parties entering into a contract, namely, majority, sanity, intention, free will, and non-interdiction on account of idiocy in both the parties, and on account of insolvency, except in the agent. Moreover, the person entering into the contract must own either the roots (or trees) themselves or their usufruct, or must be qualified to make changes in them in the capacity of a Wali etc. The roots (or trees) must be specified in their possession and definite in their knowledge. They must be planted, and fixed. So is a Musaqaṭ in respect of seedlings before they are planted or roots (or trees) that are not fixed like melons, cucumber, or the like.

The duration for which the Musaqaṭ is concluded must be specified and definite in way that there may not be any confusion about its being more or less, as in years and months. Apparently it is sufficient to make the duration as ripening of the fruits in a single year when the time of the start of watering has been specified.

The separate share of each of them must be fixed and specified in the joint property (of fruits) as one-half, one-third, or the like. It is not valid to specify a fixed amount of the share of one of them and the rest for the other party, or prescribe for one of them specified trees, and the rest for the other party.

Of course, it is not far from being permissible to stipulate the reservation of some particularly specified trees for one of them, and the rest to be shared by both, or stipulate for one of them a fixed amount and the rest to be shared by both, when it is known that the fruits are more than that amount and that there still remain some of the fruits (to shared by both).

Problem #1: There is no objection in entering into a contract of Musaqaṭ before the appearance of the fruits. As regards the validity of the conclusion of Musaqaṭ after the appearance of the fruits but before their ripening, there are two opinions, the stronger being in favour of its validity when the fruits require watering or some other labor due to which there may be an increase in the fruits even if qualitatively. There is hesitation in the validity of other cases, in the case of Musaqaṭ after ripening of the fruits when they need no labor except protection and plucking.

Problem #2: No Musaqt is valid in respect of non-bearing fruit trees, as a willow (tree), or the like. Of course, it is not far from being permissible in case of the trees that are useful for their leaves or flowers, as the male mulberry tree, or henna, or some varieties of willow (tree) having flowers, or the like.

Problem #3: Conclusion of Musaqt in respect of planted saplings before they bear fruits is valid on the condition that its duration is made for the time they start bearing fruits as five, or six or more years.

Problem #4: If the trees do not require watering as they can do only with the rain-water, or sucking the moisture in the earth, but they need some other labor, then, according to the opinion closer to the traditional authority, it would be valid to enter into Musaqt in respect of them when those labor cause increase in the fruits, regardless whether the increase is in quantity or quality. In other cases, there is hesitation in the validity of Musaqt. So caution must not be given up.

Problem #5: If a garden has different varieties of trees and palm-trees, it is allowed to specify for each of them a share different from that of the other variety, as specifying, for example, one-half in case of fruits of palm-trees, one-third in those of vines, and one-fourth in case of those of pomegranate trees, but when both of them know them amount of yield of each of the varieties, as the knowledge that avoids loss is a condition in a transaction made on the total with a uniform share.

Problem #6: It is known that there are several types of labor that are needed by the gardens, trees and palm-trees for their repair, development and increasing their fruits and their protection. Some of them are such as are repeated every year, as developing the land, dredging of the canals and repairing the waterways, removing the harmful weeds, clipping the branches of trees, vines, grafting, placing the trees in the sun, changing the position of the trees, and protection of the fruits until the time of their division, etc.

There are some types of labor that are not mostly repeated, as digging wells and canals, building walls, arranging water wheels and Persian wheels, and the like.

In case a Musaqt has been entered into in general terms without specifying conditions, the second type of jobs shall be the responsibility of the landlord. As regards the first type of labor, it shall follow the prevalent custom and practice, so that whichever of them is the responsibility of the landlord or the agent, shall be followed accordingly, and there shall be no need to specify it. Perhaps they differ with the difference of places. If they are not customary, it is indispensable to specify as to whose responsibility they are

Problem #7: A contract of Musaqt is binding on both the parties, and is not terminated except through an Iqalah made by both the parties to the contract, or revocation by option. It is not cancelled on the death of either of the parties, but their heirs stand in their place. If, however, there is a condition of personal performance by the agent, it shall be cancelled on his death.

Problem #8: It is not a condition that the agent must perform the job personally. So he is allowed to hire some one for the performance of some of the jobs, or their completion, and he shall have to pay wages for them. It is also allowed for someone to do the jobs gratis, and the agent shall still be entitled to his prescribed share. If he does not intend to do it gratis, then there is hesitation in it being sufficient for its validity. It shall become all the more hesitant, if he intends to perform it gratis, for the landlord. The same shall be the case if he is not obliged but to water the trees, and there is no need for it due to rains, and they do not need it at all. If, however, the agent is bound to perform some jobs other than watering, and after there is no need of watering due to rain, but there still remain the other jobs, then if they are of the nature that cause increase in the fruits, then apparently the agent shall be entitled to his share; otherwise, there is hesitation in his entitlement.

Problem #9: It is allowed to stipulate something other than his share as cash money, etc. for the agent. The same is case of share in the trees regardless whether it is joint or separate.

Problem #10: In every case when the contract of Musaqat is terminated, the fruits shall belong to the landlord, and the agent shall be entitled to a proper wages for his labor, despite his knowledge of its invalidity legally. Of course, if the contract has vitiated due to the stipulation of reserving the entire fruit for the landlord, he shall not be entitled to any wages, despite his ignorance about the invalidity of the contract.

Problem #11: The agent becomes the owner of the fruits from the time of their appearance. So if he dies before the division (of the shares), and the contract of Musaqat is terminated due to the condition of his personal performance of the job, his share shall be transferred to his heir, who shall be bound to pay his Zakāt if the amount of share has reached the taxable limit (Nisāb).

Problem #12: Mughasarah is invalid. It means lending land to another so that he must plant trees in it on the condition that whatever is planted shall belong to both the parties, regardless whether it has been stipulated that the land must also belong to the agent or not, and whether the tress must be provided by the landlord or the agent. In such case, the plants shall belong to their owner. If they belong to the landlord, he shall be bound to pay the wages for labor of the planter. If they belong to the planter, he shall be bound to pay the land rent. If both the parties mutually agree on the retention of the plants against payment of compensation or without it, well and good; otherwise, the landlord shall be entitled to order to uproot them, and he shall be bound to pay indemnity if the trees are damaged by uprooting. Likewise, the planter shall be entitled to uproot them, and he shall be bound to fill the pits or the like caused due to uprooting the trees, and the landlord shall not be entitled to compel the planter to retain the trees even without payment of compensation.

Problem #13: After the cancellation of the Mugharasah, it is possible to reach its result by entering it into some other lawful title in which both the parties may share the trees, either by way of purchasing them in partnership so that the landlord may authorize the planter in a way that whatever saplings he purchases shall be purchased on behalf of both of them, then the planter shall give himself on hire to plant the share of the landlord water them, and serve them during a specified

period of time for half of the usufruct of his land until that time or half of the land itself, or by making another owner of, suppose, half of the trees if they belong to one of them, and, in case the saplings belong to the landlord, let the consideration be plantation and labor until a specified time and stipulate for himself to let the planter's share in the land continue gratis until that time.

If they belong to the planter, let him make the consideration half of the land itself or half of its usufruct until the specified time and stipulate for himself plantation of the landlord's share and service until that time.

Problem #14: The tax charged by the government on the palm-trees and trees on the Kharāji land shall be payable by the landlord except when stipulated that it shall be paid by the agent or both of them.

Problem #15: An agent in a contract of Musaḡat is not allowed to enter into a contract of Musaḡat with another except with the permission of the landlord, but in it his permission reverts to his authorization in entering into a contract of Musaḡat on behalf of the landlord with a third person after the termination of the first contract. So the agent of the first contract shall not be entitled to anything.

Of course, an agent is apparently allowed to make another person a partner in his job.

SECTION TWENTY - ONE. DEBT & LOAN

A Debt is an absolute and definite asset owed to another person due to any of the causes. The person who owes it is called a debtor (Madin or Madyun), while the other a creditor (Dā'in or Gharim). Its causes are either borrowing or other voluntary affair, as terming it as a commodity sold (Mabi) in a Silm sale, or a consideration in lending, or wages or rent in a Lease, or a Dower in a Marriage, or Ransom in a Khul' etc. Or it may be coercive, as in cases of Guarantees, Maintenance of a permanent wife, or the like. There are some common rules and some special rules of Debt.

Chapter One - Rules Concerning Debt

Problem #1: A Debt is either Prompt, in which case the Creditor is entitled to demand its repayment, and the Debtor is bound to repay it if it is possible and easy for him whenever demanded (by the Creditor).

Or it is deferred, in which case the Creditor is not entitled to demand its repayment, and the Debtor is not bound to repay it except after the expiry of the period of maturity and arrival of the prescribed time.

The period of maturity is sometimes specified by the Debtor and Creditor, as in case of a Silm sale or Borrowing, while at some other time, it is specified by the judge, as in case of Nujum (p1. of Najm, or payment of a debt in instalments prescribed by a judge) or the instalments prescribed in a Diyat (or Indemnity for bodily injury prescribed by a judge).

Problem #2: If a debt is Prompt or Deferred, and its term has matured, so as a debtor in easy circumstances is bound to repay it on demand by the creditor, in the same way a creditor is bound to receive and get its delivery when the debtor intends to repay it and be released from his obligation. As regards a Deferred debt, there is no difficulty in it before the maturity of its term, as, in its case, the creditor is not entitled to demand its repayment. The problem lies in whether the creditor is bound to accept it or not when the debtor wants to repay it willingly? There are two alternatives, rather opinions, the stronger being in favour of the latter, except when it is known that the term for repayment, has been specified only as a leniency towards the debtor without its being a right for the creditor.

Problem #3: It has been understood that when the debtor repays his Prompt debt, the creditor is bound to receive it. If he declines, the judge shall compel him if the debtor files a petition with him. If he is not able to compel him, he shall summon him, enable him in way that it may be in his possession and domination according to the usual practice, and thereby the debtor shall be released from his liability. If, subsequently, it is destroyed, the debtor shall not be held responsible for it. If it is not possible, the debtor may deliver it to the judge, and thereby the debtor shall be released from his obligation. Whether the judge is bound to accept it. There is some hesitation and difficulty in it. In case the judge is not available, whether the debtor should specify it as a special property and leave it? There is hesitation and difficulty in it. If the creditor is not present, and it is not possible to send the repayment to him, and the debtor intends to be released from his obligation, he shall deliver it to the judge, if he is there. Whether the judge is bound to accept it, there is difficulty in it as in the preceding case. In case the judge is not available, it shall remain in his liability until he conveys it to the creditor, or one who stands in his place (i.e. his representative).

Problem #4: A person is allowed to repay voluntarily the debt of another, alive or dead, and thereby the debtor shall be released from his obligation, even if it was done without his permission, or even despite his preclusion, and the creditor is bound to accept it.

Problem #5: A debt is not specified in what the debtor specifies it, and it does not become the ownership of the creditor unless he takes its delivery. It has already been mentioned under the preceding third Problem that there is hesitation and difficulty in its specification by the debtor in case the creditor declines to accept it. If a person owes a Dirham, and he takes out a Dirham from his pocket to pay it to the creditor in repayment of the debt on him, but it is lost before it reaches in the possession of the creditor, it shall be considered a property of the debtor, and he shall be under the obligation to repay it as before.

Problem #6: A deferred debt becomes a prompt one by the death of the debtor before the expiry of its term, but not by the death of the creditor, so that if the latter dies, his heirs shall have to wait till the maturity of its term. If a dower is deferred for payment until a specified period, and the husband dies before its maturity, the wife shall be entitled to demand it after his death, contrary to the case when the wife dies, her heirs shall not be entitled to demand it before its maturity. A divorce is not affiliated with the death of a husband, so that if the husband has divorced his wife, her deferred dower shall remain intact. Similarly, the interdiction of a debtor on account of insolvency is not affiliated with his death. So if he owed some prompt and deferred debts, the property of the deceased shall be distributed among the creditors of the prompt debts, but not those of the deferred ones.

Problem #7: According to the stronger opinion, a debt cannot be sold for another debt in case both were deferred ones, even if their term has matured, and, according to the more cautious opinion, even in other cases, as when the things exchanged were both debts before the sale, if a person owes from another some foodstuff as a quantity of wheat, while he owes to another some other foodstuff as a quantity of barley, so he sells the barley for wheat. Or if a person owes from another some foodstuff, while another person owes from him some foodstuff, so he sells what he owes from another for what another owes from him. Or when one of two persons owes some foodstuff from another and the other owes some foodstuff from another, so the former sells it to the other. If both of the things exchanged were not debts before sale, and if one or both of them have become debts due to the sale, as when a person sells his property to be owed by another for the property owed by him, suppose, as a debt, then it has several sides and cases, that cannot be explained in this brief account.

Problem #8: It is allowed to change a deferred debt into a prompt one with a decrease by mutual consent, and this is what is called “Nuzul” in the jargon of the businessmen of today. It is, however, neither allowed to change a prompt debt into a deferred one, nor to extend the maturity date of a deferred debt, by some additional payment.

Problem #9: It is not allowed to divide a debt. So if there is a joint debt of two persons owed to several persons, as they sell a property held jointly by them to several people or the propositus of both of them had a debt owed to several persons, so both of them have inherited it, and, after equalization, they give over the debt owed by some of them to one of them and what is owed by others to the other, it shall not be valid.

Of course, apparently, as explained under the Section of Partnership, if two persons have a joint debt owed by a single person, it is allowed for one of them to settle the debt of his share with him. That shall belong to him, while the share of the other shall remain payable by the debtor. This shall not be a division of the debt.

Problem #10: A debtor is bound to endeavor to repay the debt by all means at the maturity of its term and on demand by the creditor, even if he has to dispose of his commercial articles, necessities of life, real states, demanding repayment of the debt due to him, rent of his properties, etc. Is he bound to do some job suitable for his position keeping in view his dignity and honour? There are two alternatives, rather opinions, in this regard, the more cautious being in favour of the reply in the affirmative, particularly in case there is no discomfort for him, and it is his profession; rather, in such case, its obligation shall be strong.

Of course, the sale of his living house, his garments that he needs, even if mean for decoration, and beast of burden when it is his domestic animal and is needed by him, are to be exempted; rather, even his household goods like his bed, sheet covers and quilts, utensils and vessels for eating, drinking and cooking, even if required for feasts and guests keeping view in all of them the extent they are needed according to his position and honour, so that if they are sold he shall fall into penury, hardship, disgrace and inferiority. They are all among the exceptions, but not all are mentioned here; rather, it is not far from including among them the scholarly books for his family according to his needs in view of his position and rank.

Problem #11: If his living house is more than his need, he shall retain as much as he needs for dwelling and dispose of what is in excess, or may dispose it of and purchase another cheaper one according to his position. If he has several houses needed by him for living purpose, he shall not dispose of any of them. The same is the case with beasts of burden, garments, etc.

Problem #12: If he has a house donated by endowment that is sufficient for his living and living, in it is not a source of disgrace and insult for him, and he has also another house owned by him, then it is more cautious for him to dispose of the house owned by him.

Problem #13: A living house cannot be disposed of in repayment of a debt as long as the debtor is alive. If he dies, and has not left anything other than the living house, or has left something, but the debt comprehends the whole house or almost comprehends it, it shall be disposed and taken possession of.

Problem #14: The meaning of exempting the house or the like from the repayment of the debt is that neither the debtor shall be compelled to dispose it of for the repayment of the debt nor shall he be bound to do so.

If however he agrees to do so for the settlement of the debt, the creditor shall be allowed to take its possession.

Of course, the creditor should not make the debtor agree to dispose of his living house and should not be a cause for its sale, even if the debtor should agree to it.

It has been related in a report by ‘Uthman b. Ziyād that he has said: I said to (Imam) Abu Abdillāh (Jafar al-Sadiq, Peace be upon him.): I have a debt due to a man, and he intends to dispose it of for the settlement of my debt. Abū Adillāh replied: I give you in Allah’s refuge that you are throwing him out of the shadow of his head” (i.e. you are depriving the debtor of his shelter). Rather caution and godliness also require it after the story of Ibn Abi Umayr, Allah’s Favour be upon him.

Problem #15: If the debtor has some necessities of life, commercial articles or real estate in excess to the exceptions that cannot be sold except on their lower prices, he shall be bound to dispose them of for the repayment of the debt at the maturity of its term and on demand by the creditor, and he is not allowed to delay and wait until he may dispose them of at their due price. Of course, if what he is selling at is extremely low price for it to the extent that it is deemed to be wastage of the article, and spoiling it, it is not far from being not obligatory to dispose it of.

Problem #16: As it is not obligatory on an incapable debtor to repay the debt, the creditor is also forbidden to press him by demanding him to settle the debt. Rather, it is obligatory on him to wait till the debtor returns to easy circumstances.

Problem #17: Delaying the repayment of the debt by the debtor despite capability to do so is disobedience (to Allah). Rather, even when he is incapable to repay it, he must have intention to repay it whenever he becomes capable to do it.

Chapter Two - Loan

Loan (or Qard) means making another owner of one's property against a guarantee to the effect that the latter shall pay it, its equivalent or its price. The person who gives loan is called 'Muqrid' (lender), while the one receiving it "Muqtarid" or "Mustaqrid".

Problem #1: It is disapproved to borrow when there is no need, but its disapproval is diminished when there is need. As much as the need diminishes, so much does the disapproval increase, and as much as the need increases, so much does the disapproved decrease until it disappears. Rather, sometimes it is obligatory (to borrow), when it becomes indispensable for something imperative as the protection of one's life, honour, or the like. It is more cautious for a person not to borrow who has neither means sufficient to repay his debt nor any hope to obtain such means, except in a dire need or when the lender has knowledge about his position.

Problem #2: Giving loan is among acts strongly recommended particularly to the needy person as it fulfils his need and removes his adversity. So it has been reported from the Holy Prophet, May Allah send His Blessings on him and his Progeny: "Whoever gives loan to his Muslim brother for each Dirhams he lends he shall receive Allah's Favour equal to the Mountain Uhud and virtues equivalent to Mount Sinā'. If he treats the borrower with leniency in demanding its repayment, he shall pass from the Sirat like a dazzling and shining lightning without any account and any torment. If a Muslim brother complains before another (of his adverse circumstances), and he fails to give him loan, Allah, the Exalted and Majestic, shall forbid for him Paradise on the day when those doing good deeds are to be rewarded."

Problem #3: A Loan is a contract that requires a Declaration, as saying: "I have given loan to you", or what conveys that sense, and Acceptance expressing consent. It is not a condition to express it in Arabic language. Rather it can be expressed in any language. Rather Mu'ātāt is also allowed in it by delivering the thing itself (by one party), and taking its delivery (by the other party) with this intention. In the lender and the borrower the same conditions are required, as required in the two parties to other contracts, namely, majority, sanity, intention, free will, etc.

Problem #4: It is a condition that the asset must be a real one, and, according to the more cautious opinion, capable of being owned. So it is valid to give on loan neither a debt or usufruct, nor anything that cannot be lawfully owned, as wine and a pig. There is hesitation in the validity of a total loan when the contract is entered into on it but only a part of it is delivered as the whole. In case of similar things, it is a condition that it must be something whose description and characteristics may be specified when they differ with the difference of price and attraction. As regards the non-fungibles, as sheep and jewels, it is not far from there being no condition of specifying their characteristics; rather it is sufficient to know their value at the time of loan, even if it is not possible to register their characteristics.

Problem #5: It is a condition that a contract of loan must take place on a definite object. It is not valid to loan an ambiguous thing, as one of these two things”, and that its amount must be ascertained through measurement in case of a thing that can be measured, by weight in case of things that can be weighed and by counting in case of things that can be counted.

It is not valid to loan a heap of foodstuff by estimate. If it is measured by particular measure and is filled in a particular vessel other than the usual measure, or is weighed by a particular stone other than the one usual among the people, it is not far from being sufficient, but it is more cautious to be otherwise.

Problem #6: It is a condition in the validity of a loan that there must be giving and taking of delivery. So the borrower does not become the owner of the loaned thing except after having received its delivery. It does not depend on mere occupation.

Problem #7: According to the stronger opinion, Loan is a binding contract. So the lender is not entitled to rescind it and withdraw the thing lent if it exists. So also the borrower is also not entitled to revoke it, and return it in case it is one of the non-fungibles. Of course, the lender is entitled, to wait and demand the repayment of the loan, even if it is before the fulfillment of his purpose or expiry of the period in which it is possible.

Problem #8: If the lent commodity is of the type that can be substituted, as wheat, barley, gold or silver, the borrower shall be liable to repay its substitute. To this category are affiliated what is manufactured in the modern factories, such as crystal and china wares, and so are the rolls of cloth, according to the opinion closer to the traditional authority. If it belongs to the category of things that are valued, like sheep and the like, the borrower shall be liable to pay its price. As regards the question whether regard shall be had to its price as at the time it was lent and delivered or at the time of its repayment, there are two alternatives, the closer to the traditional authority being the former, though it is more cautious to reach a compromise and mutual consent with regard to the difference in the two prices.

Problem #9: It is not allowed to stipulate excess (in payment) so that one may lend something on the condition that the borrower shall repay it in excess than what he had borrowed, regardless whether they have stipulated it expressly or implicitly in a way that the loan be based on it. This is the prohibited Ribā’ (or Usury) of Loan that has been strongly condemned in the reports that have come down, there being no difference whether the surplus is in the form of a real asset as ten Dirhams for twelve Dirhams, or it may be in the form of labor, as stitching a garment for the lender, or it may be some usufruct or benefit as the utilization of the commodity mortgaged with the lender, it may be in the form of quality so that he may lend him broken Dirhams on the condition of being paid unbroken Dirhams. So also it makes no difference whether the usuriously loaned commodity can be measured or weighed or is one that can be counted, as almonds or eggs.

Problem #10: If a person lends something to another on the condition that the latter shall sell for a price lower than its actual price or shall give it on rent lower than its actual rent, it shall be deemed

to be included in the stipulation for surplus. If the borrower sells something to the lender on a lower price and stipulates that the lender shall give him loan of a definite amount, there shall be objection in it.

Problem #11: A surplus is prohibited when stipulated for, but there is no objection if it is without a stipulation. Rather it is agreeable for the borrower (to pay something in extra) as it is a better way of repaying the loan, and the best people are those who repay their loan in a better way. Rather it is allowed to be given as a gift or present, if it were for the sake of letting the lender realize that he is one making the best repayment, and so he may give him loan whenever he needs a loan, or the loan were for the sake of being benefited by the borrower in his being one making the best repayment. And he compensates one who does good to him by way of a better return so that had it not been so, he would not have given him loan.

Of course, it is disapproved for the lender to accept the surplus, particularly when his giving loan was for its sake. Rather it is approved that when the borrower gives the lender something as a present, or the like, the lender must consider it to be towards the repayment of his debt in the sense that he must adjust it against the amount of loan

Problem #12: It is prohibited for the lender to stipulate the surplus by the borrower. There is no objection if the borrower makes a stipulation, for instance, to be lent ten Dirhams on the condition that he would pay eight Dirhams, or that the lender shall lend the borrower unbroken Dirhams on the condition that the borrower shall pay him broken Dirhams.

As regards the charging or payment of excess in the bills of exchange called ‘Sa’f-al Barat’ among the businessmen, and according to what is said about it, their sale and purchase of bills of exchange depends on it, if some Dirhams are given, and a bill of exchange is taken for a lesser amount, there shall be no objection. But if a lesser amount is given and the bill of exchange is of a higher amount, it shall also fall under a Ribā (transaction).

Problem #13: A loan with a condition for surplus is valid, but the condition is void and prohibited. So it is lawful to borrow from one who does not give loan but on a condition of surplus, like a Bank, etc. without accepting the condition in a serious way, and accepting the loan only. It is not prohibited to declare non-seriously to accept the condition and actual intention, the loan shall be valid but the condition shall be void without the commission of a prohibited act by him.

Problem 14 If the commodity borrowed is of the type that can be substituted, like Dirhams and Dinars or wheat and barley, it can be settled and repaid by giving what is identical with it in its attributes, regardless whether its rate of exchange has remained as it was at the time of lending it, or it has gone up or has come down. This is the settlement that does not depend on mutual consent. So the lender is entitled to demand the repayment of his loan, and he is not entitled to decline, even if its exchange rate has gone extremely up. So also the borrower has to deliver it, and the lender cannot decline to take its delivery, even if its exchange rate has gone extremely down. The repayment may be made in the form of its price instead of the commodity, so that the borrower may

pay, for instance, Dinars in place of Dirham, or vice versa. But this depends on mutual consent. So if a person gives Dinars in place of Dirham, the lender may decline to receive them, even if they were equal in value, rather even if the Dinars were higher in value, in the same way that if the lender wants the payment to be made in Dinars, the borrower shall be entitled to decline, even if the Dinars were cheaper.

If it were non-fungible, it has already been mentioned that the borrower shall be liable to pay its price, and that means to be made in the currency of that time. Its repayment does not depend on mutual consent if it is made in the currency of the time. It may also be repaid in a commodity of that value other than in cash, but it depends on the mutual consent of the parties. If the commodity lent is itself existent, and the borrower or the lender intends the repayment of the loan by delivering that commodity itself, then according to the stronger opinion, it is allowed to be declined.

Problem #15: In case of a loan in which payment of substitute is allowed, the lender may stipulate that the repayment shall be made in a kind other than what is lent. It is binding on him on the condition that both of them should be equal in price, or what has been stipulated for is lower in price than the one lent.

Problem #16: According to the stronger opinion, if the date of repayment is stipulated in a contract of loan, it shall be valid, and its compliance shall be binding, and the lender shall not be entitled to demand its repayment before the expiry of its term.

Problem #17: If the lender stipulates that the repayment and delivery of the loan must be made in a definite place, it shall be valid, and binding, even if there is some expenditure to be incurred in its conveyance. If, however, the lender demands it to be made in a place other than the stipulated one, the borrower shall not be bound to comply, the way as if the borrower repays it in a place other than the stipulated one, the lender shall not be bound to accept it. If the contract is without any condition, and no place of delivery is specified in it, and the lender demands its repayment to be made at the place where the loan was given the borrower shall be bound to comply, and if the borrower delivers it there, the lender shall have to accept it. In case otherwise, it is more cautious for the borrower to comply provided that it would not cause any harm (to him) or would not incur any expenditure if it is demanded by the lender, as also it is more cautious for the lender to accept it in the absence of any harm or extra expenditure. In case either of the things is necessary, their mutual consent shall be required.

Problem #18: It is allowed in a Qard or Loan to stipulate giving (Something in) mortgage, guarantee or surety, or incorporate any lawful condition that may not be beneficial for the lender, even if it is desirable.

Problem #19: If a person borrows Dirhams, and subsequently they are declared out of currency by the Government, and issues some other Dirhams, the borrower shall not be bound to make the repayment except in the former Dirhams.

Of course, in case of the currency notes current in modern times, if they cease to have currency value, then apparently the borrower shall be bound to make the repayment current Dirhams and Dinars.

Indeed, if it is supposed that the loan is paid in the form of special cheques. Saying: "I have given on loan these papers called (currency) notes,' then their position shall be similar to that of Dirhams (or legal tender).

Similarly, the same shall be the position in case of the transactions and seals on cheques.

Glossary

A'lam: The most learned scholar or jurist; a grand *Mujtahid*.

Aal-i Muhammad: Prophet Muhammad's Progeny, comprising his daughter, Fatimah, her husband, Imam Ali and the eleven Imams descending from both of them, Peace be upon them; almost a synonym for *Ahl-i Bayt, q.v.*

Ada' (*Salat al-*): A prayer offered at its due time, as opposed to *Qad'a'* (Prayer) which is offered in compensation for a prayer which is left unoffered at its due time.

Adalat: Moral soundness; an honourable and morally sound record.

Adhan: Call to prayers.

Adil: A morally sound person who is expected to deal with people justly, righteously and honestly.

Adl: A morally sound person; a person having an honourable and morally sound record.

Afaq: An inhabitant of a place outside Mecca.

Afd'al: A religious scholar who is superior to others in respect of religious knowledge, etc.; the more or most preferable act.

Ahl al-Bayt: Members of the holy Family of Holy Prophet who, according to the *Ithna Ashari Shi'ahs*, comprise his daughter, Fatimah, and her husband, Imam Ali, and the eleven Imams descending from both of them, namely, Imam Hasan, Imam Husayn, Imam Mahdi, Peace be upon

Ahli Kitab: A non-Muslim on whose prophet a Divine Book has been revealed, i.e., a Jew or a Christian. This term, according to the Qur'an, does not apply to the followers of Prophet Muhammad, PBUH, who have been called "*Muslimun*" or "*Mu'minun*" in the Qur'an, *Hadith* and other Islamic reference books. It is used as a synonym for *Kitabi* (with its fern. *Kitabiyyah q.v.*).

Ahwat: (Opinion): A more cautious opinion; an opinion which when adopted absolves its follower of legal liability.

Alas: A wheat-like grain of inferior quality used as food by the people of San'a, capital of Yemen.

Alim (pl. '*Ulama'*): A learned person, especially one who is well-versed in Islamic religious sciences relating to Qur'an, *Hadith* and *Fiqh*, etc.

Amanat (or Amanah, Pl. Amanat): A thing deposited in trust; a deposit.

Amd: Intention; purpose; willfulness.

Amdan: Intentionally; deliberately; willfully; opposed to *Sahvan* or inadvertently.

Amwal (Pl. of *Mal*, q.v.): Properties; possessions; chattels, goods; wealth; estate; assets, capital, stock.

Amwal - al-Muhtaramah: Objects or property whose protection is considered morally obligatory

Ansab (Opinion): A more suitable opinion.

Aqrab (Opinion): An opinion closer to traditional authority.

Aqwa (Opinion): A stronger opinion; an opinion having more weight in the eyes of the jurists.

Ariyah: Giving possession of some thing to another so that he may utilize it gratis, or the contract of which it is a consequence, or its consequence is the donation of the utilization. (For detailed rules, see Section Fifteen).

Arsh: Indemnity; penalty; fine.

Ashbah (Opinion): An opinion more in keeping with the principles of law.

Ashhar (Opinion): An opinion more widely accepted a better known opinion; a more prevalent opinion.

Asr (Prayer): A prayer to be offered in the afternoon before sunset; an afternoon prayer.

Asr: Afternoon; the time between noon and the sunset.

'Awad: Consideration; substitute; indemnity; equivalent

Awla (Opinion): A better or preferred (opinion).

A'yan: (Pl. of *'Ayn*, q.v.).

Ayat (pl, *Ayaat*): A verse of the holy Qur'an.

'Ayn: (Pl. *A'yan*): Object of material value; consideration; goods of material value; capital asset

Ayyam: (Pl. of *Yowm*, q. v.).

Azhar (Opinion): A more obvious opinion; a more prevalent opinion.

Ba 'in (*Talaq-i*): An irrevocable divorce after which a woman is free to conclude a contract of marriage with another husband, indeed, after completing the prescribed period called *Iddah* (q.v.), and the husband divorcing her irrevocably cannot recall her except by contracting a fresh marriage with her subject to the restriction of the prescribed number of such remarriages by the same husband.

Ba'th: Resurrection; the Prophet's mission as Allah's Messenger.

Baul-o Baraz: Urination and defecation; excretion.

Bay': Sale; a contract of sale. (For details, see Section Ten).

Bay' - al-Salaf (= al.Salam.q.v.)

Bay' - al-Salam: Sale or purchase in cash of a thing entirely to be delivered later on a prescribed date

Bida'ah: A *Muqarabah* in which the whole profit is to go to the proprietor of the stock or *Ras al-Mal*.

Bint-i Labun: A she-camel that has entered her third year

Bint-i Mukhad: A she-camel that has entered her second year

Bismillah: The opening verse of all the Chapters of the Qur'an, (except the *Surah al-Bara'at*), which starts with the words meaning: "With the Name of Allah" , "Every Muslim is commanded to recite it at the time of starting a work.

Bulugh: Puberty; legal maturity or majority; coming of age.

Da'in: A creditor

Damin al-Jarirah: A person who stands guarantee against an offence of another.

Damin: Guarantor; surety.

Dan: A sheep with a large, round and fat tail.

Daruriyyat: Essential things in one's life; basic duties and functions of a person.

Daruriyyat: Obligatory or necessary things; essentials.

Dayn: A debt

Dhabh: Slaughter by slitting the throat (of an animal).

Dhawi al-Arham: Relatives on the maternal side.

Dhibh: Slaughter by slitting the throat (of an animal).

Dhikr: Reciting: "*Subhana rabbiyal a'la va bihamdihi*" in *Ruku'* and "*Subhana rabbiyal 'azim va bihamdihi*" in *Sajdah* (or prostration), a special formula recited in *Ruku* and *Sajdah*. Also the words recommended for reciting once, or to be repeated thrice, in Arabic by the follower or followers in a *Jama 'at* prayer, namely: "*Subhanallahi val Hamdu lillahi va la Ilaha Illallahu vallahu Akbar*"

(Glorified is Allah. And Praise is for Allah. And there is no god but Allah. And Allah is the Greatest).

Dhimmi: A non-Muslim subject of an Islamic state as opposed to the Muslim subjects, for whom there are special laws dealing exclusively with them in an Islamic state.

Dhurriyat: Descendants; Progeny.

Dimnan: By implication; implicitly

Dinar: A gold coin (used in the past in the Arab countries). These days it has been generally replaced by currency notes of various denominations.

Dirab: Copulation (of a female animal)

Dirham: A silver coin (used in the past in the Arab countries). These days it is generally made of baser metals, like nickle, etc. of various denominations.

Du'a: A supplication before Allah for His Mercy, Blessing and Forgiveness.

Eid al-Adha: The Eid of Sacrifice on 10th of *Dhul Hijjah* , (the twelfth month of the Hijrah calendar), the day when Muslims sacrifice animals to commemorate the sacrifice offered by Prophet Abraham, Peace be upon him, of his own son, Ishmael, which was, however, replaced by a ram by Allah.

Eid al-Fitr: The Eid day on 1st of *Shawwal*, (the tenth month of the Hijrah calendar), a Day of Rejoicing for the end of the month of *Ramadan*, a month of Fasting and Blessing for the Muslims.

Eid al-Ghadir: The 18th of *Dhul Hijjah* , (the last month of the Hijrah calendar), the day when Prophet Muhammad, (PBUH), on way back from his Last *Hajj*, proclaimed Imam Ali as “the *Mawla*” (or “the Master”) of all Muslims, a term which the Shi'ahs believe to be the Prophet's proclamation of Imam Ali as his first Caliph or Successor.

Eid - i Mubalahah: The 24th of *Dhul Hijjah*, the day when the Prophet, accompanied by his daughter, Fatima, his son-in-law, Imam Ali, and his grandsons, Imam Hasan and Imam Husayn, Peace be upon them, proceeded to have “a religious bout of invocation of Allah's curse upon those who lie ”(*Mubalahah*) with the Christians of Najran, and returned triumphant as the latter declined to compete, an event referred to in the Qur'an, vide Chapter III, verse 61.

Eid: A festival; a day of rejoicing. There are special prayers to be offered by the Shi'ahs on the occasion of each Eid day.

Eid-i Dahw al-Arz': The day of rejoicing on 25th of *Dhul Qa'dah*, (the eleventh month of the Hijrah calendar), called the Eid of “Spreading Out of the Earth”.

Eid-i Mab'ath: 27th of *Rajab*, (the seventh month of the Hijrah calendar) the Prophet's Mission Day.

Eid-i Maulud (al-Nabi): 17th *Rabi' al- Awwal*;, (the third month of the Hijrah calendar), the Birth-Day of Prophet Muhammad (PBUH), according to the Shi'ah sources.

Fahl: A ram.

Fajr al-Awwal: Early dawn.

Fajr: Morning or dawn, when *Fajr* Prayer is offered.

Faqih: A jurist; an expert of Islamic Jurisprudence; a scholar well-versed in *Fiqh* or Islamic Jurisprudence.

Farsakh: A measure equal to 3 miles. (A mile = 4000 cubits whose length is equal to the breadth of 24 fingers, and each finger is equal to the width of 7 grains of barley, and each grain of barley is equal to the breadth of 7 average hair of a Turkish horse or a pony. See Chapter on A Traveler's Prayers, Problem #1).

Fasiq: A person having *Fisq* or moral depravity.

Fatwa: A verdict or decree of a *Mujtahid* or a *Mufti*, q.v.

Fisq: Moral depravity; a person having *Fisq* is not allowed to lead the prayers according to the Shi'ah *Fiqh* or Jurisprudence.

Fitrah: (= *Zakat al-Abdan*): A kind of *Zakat* to be paid by a *Mukallaf* on a prescribed rate on *Eid al-Fitr*.(For its details, see Section Five, II, *Zakat al- Abdan* , or *Zakat al-Fitrah*).

Ghafilah, Salat al-: A kind of Recommended Prayers. (For its details, see Chapter on Some Recommended Prayers, No.3).

Ghallah: (Pl. Ghallat): Grain; cereal; agricultural produce; crop.

Ghallat: (Pl. of Ghallah, q.v.)

Gharim: (Pl. Gharimun) A debtor/creditor

Gharimun: (Pl. of Gharim): Those who are under debt without having committed any offence or extravagance, but are not able to repay it, even if they possess money enough to defray their yearly expenses.

Ghassal: A person washing the dead.

Ghassalah: (Fem of Ghassal):

Ghassalah: A female agent washing the dead body of a woman.

Ghaybat: (Period of) Occultation (of the Twelfth Imam, Mahdi, PBUH)

Ghurar: Risk.

Ghusl - i Irtimasi: A ritual bath performed by dipping one's whole body in the water. (For its details, see Essentials of a Ritual Bath, Problem #6).

Ghusl - i Janabat: A ritual bath performed after pollution as a result of ejaculation of semen. (For its details, see the Ritual Bath for *Janabat*).

Ghusl - i Mas-i Mayyit: An obligatory ritual bath after touching the body of a dead person before it has been washed. (For its details, see the Chapter on the Ritual Bath for Touching the Dead).

Ghusl: A ritual bath.

Ghusli-i Tartibi: A sequential ritual bath; a ritual bath performed by cleaning different parts of one's body in a prescribed order or sequence. (For its details, see Chapter on Essentials of a Ritual Bath, # 3).

Hadath - i Kabir: Pollution caused by defecation or excretion of feces (For its details, see Chapter on *Istinja'*, Problem #1).

Hadath - i Saghir: Pollution caused by urination (For its details, see Chapter on *Istinja* Problem #1).

Hadath: Pollution.

Hadd (Pl. *Hudud*): Punishment by lash, cutting of hands or feet and death prescribed by Islamic law for special offences, as opposed to *Ta'zir*, q.v.

Hady: Sacrifice of animal, a compulsory rite of Hajj.

Hajar al-Aswad: The Black Stone that the Hajis are bound to kiss at the time of *Tawaf* as a compulsory rite of Hajj.

Hajj - al-Ifsadi: An unsound or impaired Hajj

Hajj - al-Mudayyiq: A Hajj whose time of performance is tight or short.

Hajj - al-Mufradah (= al-Ifrad, q.v.)

Hajj - al-Muwassa': A Hajj for which there is still vast or ample time to perform.

Hajj - al-Nadhari: A votive Hajj

Hajj - al-Qiran: A Hajj similar to Hajj al-Ifrad.

Hajj - al-Tamattu': A Hajj to be performed by those who live beyond the limits of Mecca, i.e. beyond 48 miles from Mecca from all sides.

Hajj: Pilgrimage to Mecca prescribed as compulsory for every capable Muslim once in life.

Hajj-al-Ifrad: (= *al-Mufradah*): A Hajj to be performed by those who do not live way from Mecca, i.e. they live within a distance of 48 miles from Mecca from all sides.

Hajr: Interdiction.

Hal: A Prompt (payment, as opposed to *Mu'ajjal*, or a deferred one)

Hayd: Menstrual discharge; menses or (menstrual) periods of a woman. (For its details and relevant rules, see Chapter on *Hayd* or Menstruation)

Hijjat al-Islam: An Islamic Hajj; an obligatory Hajj.

Hiqqah: A she-camel that has entered her fourth year

Hiyazah: Acquisition of title

Hunut: Anointing the dead with camphor; camphorating; rubbing camphor on some parts of body of the dead after washing before burial.

Ibadat (Pl. *Ibadaat*): Religious observance ; ritual worship; devotion.

Ibadat (Pl. of *Ibadat*): Matters of purely religious nature, as prayers, fasting, *Zakat*, *Khums* and *Hajj*, (as opposed to *Mu'amalaat*, q.v.).

Ibn al-Sabil: A person who becomes helpless while away from his home-town , even if he were rich in his home - town, provided that the purpose of his journey has been lawful.

Ibra': Remission of debt

Iddah: The prescribed period after which a divorced woman or a widow is allowed to contract another marriage.

Idhkhir: A kind of (aromatic) grass

Ifrat: Immoderation; commission of an offence or an unlawful act

Ihram: A piece of cloth wrapped round the body by a male while performing *Hajj*; the attire of a person during the performance of *Hajj*.

Ijarah: Rent; lease; hire. (For detailed rules, see Section Thirteen)

Ijtihad: Exercising independent and individual judgment in legal and theological matters, based on the interpretation and application of the four sources of Islamic law, namely, the Qur'an, *Hadith*, *Ijma'* (Consensus of the Learned), and *Aql* (Reason or Human Insight); competence to issue verdict in legal and theological issues.

Ikhtiyar: Authority; control

Ikhtiyarah: Of one's own accord; by one's choice or free will; voluntarily.

Iltizam: Obligation; commitment

Iman: Belief, (particularly applied to the Shi'ah faith, and hence a Shi'ah believer is called a *Mu'min*)

Imtizaj: Mixing together

Insiraf: Implication.

Iqa': Unilateral obligation.

Iqalah: Revocation of a contract by both the parties. (For its detailed rules, see Section Thirteen).

Iqamat: The short call just before the beginning of the prayer.

'Iqar: Real estates

Iqtida': Following (the Imam or one leading the prayer in a *Jama'at* or congregational prayer).

I'rab: Symbol (s) of pronunciation or inflexion of letters.

Irtimas: Dipping in the water. (For *Ghusl-i Irtimasi*, see *Ghusl*).

Isha' (Prayer): The night prayer, to be offered after the *Maghrib* (or sunset or evening) prayer.

Isha': The period after the night fall when the *Isha'* prayer is to be offered.

Ish'ar: Marking a sacrificial animal with a cut or wound.

Isti'adhah: Asking (Allah's) refuge; reciting (in Arabic): “*A 'udhu bilLahi minash Shaytanir rajim*” (I ask Allah's refuge against the damned Devil).

Istibra': Purification of something unclean; part of the process of ritual cleaning after urination by rubbing thrice with force, between the anus and the root of male organ and then placing index finger under the male organ and the thumb over it, and drawing them with force from the root of the male organ to its tip thrice, and squeeze its tip thrice; cleaning of a filth-eating animal; process of cleanliness. (For details, see the relevant rules of *Istibra'* in the Section of *Taharat* or Cleanliness, as well as under Problem #18, Chapter on *Hayd* or Menstruation).

Istighfar: Seeking Allah's Pardon (by reciting "*Astaghfirullah rabbi wa atubu ilayh*", (i.e., I seek forgiveness of Allah, my Sustainer, and offer repentance to Him).

Istihadah: Undue Menstruation. - Its Kinds: Minor, Medium and Abundant. (See the relevant rules under "*Istihadah*")

Istihalah: Transformation; change of a thing into another form.

Istihbab: Approval; approbation; being *Mustahab* or approved.

Istikharah: Seeking Allah's Willingness before starting a work; a procedure adopted by counting a number of beads, or finding out a verse after opening the Qur'an by a special process, signifying Allah's willingness or otherwise.

Istinja': A process or purification or cleanness after urination or defecation (or evacuation of bowels). (For its details, see "*Instinja*" in the Section on *Taharat* or Cleanness).

Istizhar: Giving up worship (for ten days) by way of *Istihbab* by a menstruating woman. (See Problem #18, Chapter on *Hayd* or Menstruation).

Isyan: Insubordination; disobedience; insurrection.

Ithna 'Ashari: The Twelvers ; the majority group of Shi'ahs who are the followers of twelve Imams, and hence their name, mainly found in Lebanon, Iraq, Iran, Pakistan and India, as opposed to Zaydis, followers of first four Imams and the Isma'ilis who are the followers of first six Imams (from among the twelve Imams of the Twelvers). The majority of Yemenese Shi'ahs and a number of the Shi'ahs in Iraq belong to the Zaidi sect of Shi'ahs, while the Khojas and Bohras in the Indian sub-continent and the majority of the people in Hunza in Northern Pakistan are the main adherents of the Isma'ili sect.

I'tikaf: A ritual retirement, initially a recommended act in Islamic *Shari'ah*, except in case of a vow or oath, when it becomes obligatory. (For its relevant rules, see the Chapter on Ritual Retirement at the end of the section dealing with Fasting).

Itq: Manumission of a slave; emancipation of a slave.

Jadha'ah: A she-camel that has entered her fifth year

Ja'l: Prescribed consideration for a lawfully intended job.

Ja'liyah (=Ja'l,q.v.).

Jallal (Fem. - ah): An animal eating filth

Jama'at (*Jama'ah*): Prayers offered collectively as against individual prayers; congregational prayers.

Jamarat al-'Aqabah: The Bigger Satan, on whom the Haji's throw pebbles as a compulsory rite of Hajj.

Janabat: Pollution due to ejaculation of semen, entailing the obligation for performance of ritual bath. (For its details and relevant rules, see Chapter on *Janabat*).

Janazah: The bier or funeral procession.

Jarib: A measure of land = 144 yds.

Jidal: Saying "No, by Allah", or "Yes, by Allah", or whatever carries the same meanings in any language, when it is used to assert or deny anything.

Ju'alah: The commitment for a lawfully intended job against a prescribed consideration. (For detailed rules, see Section Fourteen).

Jubran: Recompense; recoup; restoration

Kaba'ir: Atrocious sins (Ant *Sagha'ir*, qv)

Kaffarah: Expiation; atonement. (Various expiations for different omissions or commissions are described under the relevant Chapters).

Karahat: Disapproval; disapprobation; repugnance; abomination. (Also see *Makruh*)

Kasb: Occupation; profession; business, trade.

Khobar: Report; tradition.

Khobar-i Sahih: An authentic or genuine report or tradition

Khariji (Pl. *Khawarij*): A member of the extremist group of Imam Ali's opponents after the cease-fire treaty between him and Amir Mu'awiyah at the Battle of Siffin. Imam Ali had to fight the Battle of Nahriwan against the Kharijis. A large number of Kharijis were killed in the battle, and the rest dispersed in Kufa and Baghdad. Imam Ali was later fatally wounded on 19th *Ramadan*, 40 AH, while offering morning prayers, by 'Abdur Rahman b. Muljim, a Khariji. (Imam Ali died of the wound two days later on 21 *Ramadan*, 40 AH.)

Khatavi: A variety of dates

Khawarij (pl. of Khariji): (See Khariji above).

Khubth: Refuse, or pollution caused by it.

Khums: One fifth of the annual savings of one's income, mines, hidden treasure and booty is payable as the Share of the Prophet and his Progeny as prescribed by Allah in lieu of *Zakat* which

He has banned for them. (For its details and relevant rules, see the Section on *Khums* in *Tahrir al-Vasilah*, Vol. II).

Kinayah: An indirect declaration.

Kitab (fem Kitabiyyah): (See Ahl-i Kitab above).

Kitabiyyah (fem of Kitabi): (See Ahl-i Kitab above).

Kufic script: A type of old script of Arabic language used before the present *Naskh* script. The Qur'an was originally written in the Kufic script before it was transcribed in the current script., generally called *Naskh*.

Kulli: Unspecified; whole; entire.

Kur: A quantity of (clean) water which has the quality of cleaning other polluted things; 1200 Iraqi Ratls, or 85 *Huqqahs* of Karbala or Najaf (1 *Huqqah* = 33 1/3 Mithqals or 43 7/8 spans of hand).

Laylat al-Barat: 15th of Sha'ban. (Also the Birth-day of Imam Mahdi, the last and 12th Imam of the Ithna ' Ash'ari Shi'ahs. Also called *Shab-e Barat* in Persian and Urdu)

Laylat al-Qadr: The night of the revelation of the Qur'an, considered better than a thousand nights by Allah, vide *Surat al-Qadr* (Chapter 97 of the Qur'an).

Ihtidar: (At) the point of death.

Ihtilam: (Nocturnal) pollution due to ejaculation of sperm, entailing obligation to perform ritual bath or *Tayammum* in order to be clean of the pollution enabling a person to offer prayers or indulge in other religious and other practices.

Luqatah: A foundling; an ownerless thing found lying on the way

Ma': Water.

Ma'sum: Infallible; impeccable; unblemished. According to the Ithna Ashari Shi'ah belief, besides all the prophets before Prophet Muhammad, there are Fourteen Ma'sums, namely, the Holy Prophet, his daughter, Fatimah and the twelve Imams.

Mab'ath: The day on which Prophet Muhammad, (PBUH), proclaimed his Mission of Prophethood. Also see *Eid-i Mab'ath* above.

Mabi': Object of sale.

Madd: Lengthening the sound of a letter.

Madhy: A moisture that sometimes exits after urination or *Istibra'*.

Madyun: A debtor

Mafdul: A religious scholar (*Alim*) or a jurist (*Faqih*) who is excelled by another in knowledge, etc.

Maghrib: The period after sunset when *Maghrib* prayer is offered.

Mahram: A person within the prohibited degrees of marriage

Mahsur (v. Hasr): One who is prevented by ailment from performing Hajj or 'Umrah

Mahzur (or *Haram*): Prohibited or forbidden.

Ma'-i Muqaf: Mixed or impure water, which does not clean the polluted things

Ma'-i Mutlaq: Pure water, which cleans the polluted things

Mal (Pl. Amwal): An asset; a property; chattel; money; stock

Malabbad: One who has stuck his hair with something sticking like honey or gum in order to remove lice etc.

Malikat al-Rasikhah: A permanent trait of character.

Mandub: Recommended.

Manfa'at: Usufruct; benefit; profit

Masakin: (Pl. of Miskin): The indigent

Masdud (v. Sadd): One who is prevented by an enemy or the like from performing Hajj or 'Umrah

Mash: Rubbing of the head and the back of both feet from the tips of the fingers to the ankles with three closed wet fingers.

Mash'ar al- Haram: One of the stations where the Hajjis have to stay as a compulsory rite of Hajj.

Masjid - i Haram: The Holy Mosque in Mecca

Masjid - i Nabi (-i Nabavi): The Holy Mosque in Madinah.

Masjid: The mosque; the place or thing on which prostration is performed.

Masnun (fem. - *ah*): Approved; recommended; (lit. confirmed by the tradition or practice of the Holy Prophet or Imam, Peace be upon them).

Mauqif - ayn: The two stations where the Hajjis have to stay as a compulsory rite of Hajj, namely the plain of 'Arafat and Mash'ar al-Haram

Mauqif: A station where the Hajjis have to stay as a compulsory rite of Hajj

Mazalim: The ransom or money paid in compensation for an oppression or tyranny perpetrated; unjustly and forcibly extorted taxes.

Mihrab: Prayer niche in a mosque, where the Imam or the person leading the prayer stands.

Miqat: The prescribed place (s) for tying *Ihram* for Hajj.

Mithl: Equivalent; substitute

Mizan: Weighing of the good and bad deeds of all men and women to take place on the Day of Judgement (*Yowm al-Hisab*).

Mu'adhdhin: The person who calls to prayers.

Mu'ajjal: A Deferred (payment).

Mu'allal: A tradition whose text or line of transmission contains some confusion or latent hesitation that may cause some harm, although apparently it is quite sound and free from any confusion or hesitation

Mu'amalat: Matters relating to public dealings and mundane life, as Marriage, Divorce, Inheritance, Wills, and various types of contracts like Lease, Sale, Partnership, etc., as opposed to Ibadat, q. v.

Mu'atat: Mutual surrender, where the seller gives the article sold to the purchaser, and the purchaser in return gives the price to the seller, without the interposition of speech.

Muba'adah: A partially emancipated female slave.

Mubah Ard-i - : An ownerless land.

Mubah: Permissible by law or lawful.

Mubahat: Permissible acts; things which a believer is allowed to do.

Mudaf (Ma'-i): See under *Ma'* above.

Mudarabah: A contract entered into by two persons on the condition that the stock or *Ras al-Mal* in trade shall belong to one of them, and the labour to another (For its detailed rules, see Section Seventeen)

Mudarib: The proprietor of the stock or *Ras al-Mal* in a *Mudarabah*.

Mudd: A measurement equal to 1/4th sa', A sa' is equal to 214 ¼ Mithqals.

Mudi: The owner of property in a *Wadi'ah* contract.

Mudtaibah: A woman having disorderly menses.

Mufawaqah: A contract entered into by two persons on the condition that whatever each of them gets by way of profit in trade, gain in agriculture, or earning (by labour) inheritance, legacy, etc. shall be shared by the other, and, similarly, whatever penalty or loss is sustained by one of them shall be shared by the other

Mufti: One giving a *Fatwa*, or a formal legal opinion.

Mugharasah: Lending land to another so that he must plant trees in it on the condition that whatever is planted shall belong to both the parties, regardless whether it has been stipulated that the land must also be provided by the landlord or the agent. In such case, the plants shall belong to their owner. Such contract is valid. (For details see Section Twenty on *Musaqat*)

Muhaqalah: Selling the spikes of grains after the formation of the grain, regardless whether their grain is apparent like that of barley or hidden like that of wheat, separately or along with their plant, standing on the ground or after having been harvested.

Muharram (or *haram*): Something prohibited or forbidden; also, the first month of the Hijrah calendar.

Muharramat: Forbidden or prohibited acts or things.

Muhdath: A ritually unclean person.

Muhtat: One who is well versed in religious matters and is not a *Muqallid*, but not being a

Mujtahid does not issue decrees or verdicts, and also exercises caution in his own acts and pursuits.

Mujtahid - al - Mutlaq: A *Mujtahid* who is allowed to exercise *Ijtihad* in all, religious matters

Mujtahid - al-Mutajazzi: A *Mujtahid* who is allowed to exercise *Ijtihad* in some religious matters, but not in all of them.

Mujtahid: A religious scholar (*Alim*) who is competent to exercise his individual judgement on theological and other issues, without following other *Mujtahids*.

Mukallaf: A sane and adult person bound to fulfill religious duties; a religiously accountable person.

Mukatibah: A female slave about whose manumission against payment of ransom her master has entered into an agreement with her.

Mukatibun (Pl. of *Mukatib*): Slaves who have entered into an agreement with their master that he shall free them against payment of a ransom agreed upon within a prescribed period of time.

Mukhalif: An opponent; one opposed to the *Ithna 'Ashari* faith, particularly applied to the Sunni Muslims.

Munkar va Nakir: The two angels assigned the job of interrogating the dead about their beliefs and deeds after their burial.

Muqallid: A follower of a Mujtahid.

Muqtarid (= *Mustaqrid*): A Borrower; a person receiving a *Qard* or Loan.

Murabahah: Sale of the capital with a profit.

Murafiq: Appurtenances

Murahiqa: An adolescent person.

Murdi'ah: A nursing woman.

Murith: Propositus.

Musaqat: Share cropling of gardens or orchards; a transaction made in respect of fixed (or immovable) roots or trees with a person on the condition that he shall water them for a specified period against a prescribed share in their fruits. (For its detailed rules, see Section Twenty)

Musawamah: A transaction with mutual conversation, fixation of the price and the thing for which price is paid without any consideration of the capital or profit or loss for the seller. So sale is executed for a specified thing and price

Musha': Joint or collective ownership; joint property.

Mushaf: The Holy Qur'an.

Mushahadah: Inspection

Musnah: A cow that has entered her third year

Musta'arah: A thing donated by *'Ariyah*.

Mustad'af: One rendered weak or poor.

Mustahabb - i Muwakkad: Emphatically approved or recommended.

Mustahabb: Approved; commendable; recommended.

Mustahabbat: Approved or commendable acts; things which if done carry their reward for their doer, but if omitted do not entail disapproval or any punishment.

Mustahad'ah: A woman having *Istihad'ah*, or undue menses.

Musta'ir: One who has donated a thing by 'Ariyah

Mustaqrid: (= Muqtarid, q.v.).

Mustawdi': (= Wad'i q.v.)

Mutahhir (fem.Mutahhirah): A thing which cleans another unclean thing.

Mutahhirat (Pl. of *Mutahhirah*): Things that clean other unclean things.

Mutanajjis: Anything which is not inherently or initially unclean but has become unclean as a result of coming into contact with an unclean object, directly or indirectly.

Mutlaq (*Ma'-i*): See under *Ma'* above.

Muwada'ah: Sale of capital with a loss

Muwalat: Uninterrupted sequence.

Muzara'ah: Metayage; a sharecropping contract in agriculture in which the farmer pays a fixed proportion of crop instead of money rent. (For its detailed rules, see Section Nineteen)

Muzari': Metayer; the farmer in a *Muzara 'ah* contract.

Muzayanah: Selling the fruits on palm-trees or other trees for anything that can lawfully be made a price from different types of cash money, commodities, etc., rather even benefits, acts and the like.

Nadhr: A vow.

Nafil or Nafilah (*Salat al-*): Supererogatory (prayer).

Nahr: Slaughter by piercing a spear into the neck of an animal, (like a camel).

Najasat (Pl. *Najasat*): An unclean or polluting substance.

Najasat (Pl. of *Najasat*): Unclean or polluting objects.

Najis: Unclean; soiled.

Nasab: Descent; parentage; a relation through consanguinity, as opposed to a relation through

Sabab, q.v.

Nasiyah: A woman who forgets about (the exact dates of) her periods.

Nawafil (Pl. of *Nafilah*): Supererogatory prayers.

Nawasib (Pl. of *Nasib*): Persons openly casting aspersions on *Ahl-i Bayt* (or Members of the Prophet's family).

Nawruz: Iranian New Year Day.

Nif: A number from one to nine.

Nifas: Puerperal blood.

Nisab: Rates of payment of Zakat; minimum amount of property liable to payment of Zakat; the limit when a property falls under the liability for Zakat criterion for payment of Zakat

Nisyan: Amnesia; forgetfulness.

Niyyat: Intention or its expression at the time of performing Ablution, *Tayammum*, offering prayer, or keeping fast, etc.

Nujum (Pl. of Najm): Payment of a debt in installments prescribed by a judge

Nushuz: Resurrection; Restoration to life of all the dead; Contumacy or disobedience (by wife).

Nuzul: Changing a deferred debt into a prompt one with a decrease by mutual consent. It is legally allowed {See problem No.8, Chapter One, Section Twenty .One on Debt & Loan}.

PBUH: Peace be upon him.

Qada' (*Salat al-*): A compensatory prayer offered after the due time, as against *Salat al-Ada'*, a prayer offered within its due time.

Qadi: A magistrate or a judge.

Qaftazin: A cotton stuffed object into which Arab women put their hands to keep them warm against cold.

Qard: A Loan; making another owner of one's property against a guarantee to the effect that the latter shall pay it, its equivalent or its price.(For its detailed rules see Section Twenty-one).

Qasir: An incapable person; a minor or insane person.

Qasr: Reducing two *Rak'ats* from *Zuhr*, *Asr* and '*Isha*' prayers, or renunciation of keeping fast (of *Ramadan*), during a lawful journey subject to special conditions explained in the relevant Chapters on Traveler's Prayers and Rules Concerning a Traveler.

Qatt: A grain eaten by desert people after pounding it

Qiblah: The direction towards which all the Muslims turn their faces while offering prayers in order to face *Ka'bah* (the central building located in the *Masjid-i Haram*) in Mecca.

Qimi (Pl - yat, q.v.)

Qimiyat (Pl. of *Qimi*): Non-fungible things; non-fungibles.

Qintar: A variety of dates

Qira'at (Pl. of *Qira'at*): Seven different Readings of the Qur'an allowed by the experts of Arabic language while reading the Qur'an.

Qira'at: Recitation; recitation of a *Surah* (Chapter) from the Qur'an along with the *Surah Al-Hamd* (Chapter 1 of the Qur'an) in the first two *Rak'ats*, particularly in the daily obligatory prayers. (For its details see the Chapter on Recitation and *Dhikr* in the Section on Prayers).

Qirad: (= *Mudarabah*, q.v.)

Qirat: A weight = 0. 195 grams

Qisas: Retaliation for murder allowed in Islamic Penal Laws and sanctioned by the Qur'an, (vide Chapter # II, verse # 178 and Chapter # 5, verse # 45).

Qismat (= *Qismah*): Partition or division of shares (in a Partnership or other contract).

Qismat - al-Taraq: Division by mutual consent

Qu'ud: Sitting after every *Sajdah* (Prostration), a compulsory part of the prayers (*Salat*).

Raj'i Talaqi:- A revocable *Talaq* (Divorce) in which the husband is allowed to recall his wife before the expiry of her *Iddah* without entering into a fresh contract of marriage with her.

Rajih: Preferable; a preferable opinion while there are several opinions on an issue.

Rajm: Stoning to death, a punishment awarded to a perpetrator of adultery, according to the Islamic Penal Law.

Rak'at: A unit in a prayer (*Salat*) consisting of a *Qiyam* (or Standing erect), or *Qu'ud* (or Sitting) in case a person is unable to stand, *Ruku'* (or Kneeling), two *Sajdahs* (or Prostrations) with *Qu'ud* in between. Each of these pillars have certain special formulas to be recited before, after or during their performance. (For their details, see the Section on Prayers or *Salat*).

Ramad'an: The ninth month of the Hijrah calendar during which the Muslims are directed to keep fast every day. (For its details, see the Section on Fasting).

Ram'y: Throwing pebbles on the Shaitan, a compulsory rite of Hajj

Rasa 'il-i Amaliyyah: Booklets issued by all great *Mujtahids* (*Ayatullahs*) containing religious instructions for the guidance of their followers (*Muqallids*).

Riba': Usurious profit; usury

Risalah (Pl. *Rasa'il*): A booklet issued by a great *Mujtahid* (*Ayatullah*) containing *religious* instructions for the guidance of his followers (*Muqallids*).

Ruju': Right of recourse against

Ruku': Act of Kneeling, a compulsory part of prayers, except in funeral prayers.

Sa': A cubic measure of varying magnitude = about 3 kilos.

Sabab: A relation through marriage, affinity or special connection, as opposed to a relation through *Nasab*, or consanguinity or parentage, q.v.

Sabil: A public watering place on the roadsides.

Sadaqah (Pl. *Sadaqat*): Charity; alms.

Sadaqat: (Pl. of *Sadaqah*, q.v.).

Sadat (Pl. of *Sayyid*): Descendants of Prophet's daughter, Fatimah and Imam 'Ali

Sagha'ir (Pl. of *Saghirah*) Venial sins; minor sins (Ant. *Kaba'ir*, q.v.)

Sahwan: Inadvertently; erroneously; out of forgetfulness.

Sajdah - i Sahw: Prostration for an error, required to be offered due to some omission during prayers. (For its details, see the Chapter on Prostration for an Error).

Sajdah: Prostration.

Salam (Sale): Forward buying.

Salat al-Ayat: A prayer offered for eclipse or any Frightening Acts of God. (For its details and rules, see Chapter on '*salat al-Ayat*').

Salat al-Istisqa': Prayer asking for rain. (For its details, see the Chapter on '*Salat al- Istisqa'*').

Salawat: Reciting: "*Allahumma Salli 'ala Muhammadin va Al-i Muhammad*" (O Allah send blessings on Muhammad and Muhammad's Progeny", a compulsory part of *Tashahhud* to be recited during prayers.

Sarurah: Performance of Hajj for the first time

Sa'y: Running between Safa and Marvah, one of the compulsory rites (*Manasik*) performed during *Hajj*.

Shadirvan: A water driven gadget.

Shaf': A supererogatory prayer having two *Rak'ats*. .

Shahadatayn (Two *Shahadats*, or Testimonies): Reciting: "*Ashhadu an la Ilaha Illallahu Vahdahu la Sharika lahu va Ashhadu anna Muhammadan 'abduhu va rasuluh*" (I bear testimony to that there is no god but Allah, He is One. He has no partner. And I bear testimony to that Muhammad is His Servant and His Messenger), a compulsory part of *Tashahhud* in prayer.

Shar' (or *Shari'at*): The Islamic Revealed or Canonical Law, having four sources: The Qur'an, the *Sunnah* (Prophet's words or practice), *Ijma'* (Consensus of the Learned), *Aql* (or Deduction or Judgement by Reason, among the Shi'ahs) or *Qiyas* (or Analogical Deduction among the Sunnis).

Shari': The Legislator (of Islamic Law, i.e. Allah, the Exalted).

Shari'at: See *Shar'* above.

Shirkah (or *Shirkat*): Belonging of a single thing to two or more persons consisting of a capital asset / debt, usufruct or right, its cause being either inheritance or a transfer contract, as when two persons purchase a property, or hire a capital asset, or enter into a conveyance of right. (For its detailed rules, see Section Eighteen).

Shuf'ah: Pre-emption. (For its detailed rules, see Section Eleven).

Sirat: The Bridge between Hell and Paradise, which only the righteous shall cross on their way to Paradise.

Subh i Sadiq: The actual dawn.

Sulh: Conveyance; the act of transferring property or the writing which transfers the property.

Sult: A grain, soft like wheat and having the property of barley

Surah (or *Surat*): A Chapter of the Qur'an.

Ta 'at: Obedience to Divine Commands.

Ta'addi: Transgression; violation; overstepping; encroachment; infringement of the law

Tabi': A bull that has entered his second year.

Tabi'ah: (Feminine. of *Tabi'*): A cow that has entered her second year.

Ta'dil: Equalization or balancing (of shares at the time of their division).

Tafkhidh: Rubbing the male organ on or between the thighs (of a woman).

Tafkhim: Pronounce emphatically.

Tafriq: Early morning.

Tafrit: Negligence; neglect; omission (of a duty or necessary act).

Tahajjud: A prayer offered after mid-night. (For its details, see the Chapter on Preliminaries of Prayers, Problem #1).

Tahallul: Untying the Ihram.

Tahjir: (= Hajr, q.v.)

Tajwid: The art of reciting the Qur'an with correct pronunciation of the letters and signs according to the rules framed by the scholars of Arabic language.

Takbir: Reciting: "Allahu Akbar" (Allah is the Greatest).

Takbirat al-Ihram: The *Takbir* recited just after the *Niyyat* at the start of the prayer.

Takfir: Putting one hand over the other while standing in prayer (as done by the Sunnis) which is forbidden for the Shi'ahs, except by way of *Taqiyyah*.

Talaq - i Ba'in: See "Bain" above

Talaq - i Raj'i: See "Raj'i" above

Talaq: A divorce; dissolution of marriage.

Talbiyah: (During Hajj) saying: "Labbaik. Allahumma Labbaik."

Talfiq: Piecing up; patching up.

Taqiyyah: Act of dissimulation (concealing one's belief, or acting contrary to one's belief allowed by the Shi'ahs in special emergency cases of fear to one's life or property).

Taqlid: *Also "Hanging footwear in the neck of a sacrificial animal".

Taqlid: Following a *Mujtahid*, compulsory for every *Mukallaf* who has not reached the status of *Ijtihad* or who is not a *Muhtat*, q. v. (For its detailed rules, see Section One: Rules Regarding *Taqlid*).

Taqsir: Shaving the head, etc. by men (required during the performance of 'umrah and Hajj); exercising Qasr.

Taqwim: Assessment; evaluation.

Tartib: Regular Sequence or Succession which is compulsory while offering prayer (*Salat*).

Tasbih: Reciting: "Subhanallah" (Allah is Glorified).

Tashahhud: Reciting the *Shahadatayn* (q.v.) and *Salawat* (q.v.) in the second *Rak'at* and the last *Rak'at* in prayer.

Tashdid: Repeating the sound of a letter.

Tashriq (Fast on the Day of.) Fast on 11th, 12th and 13th *Dhul Hijjah* (the last month of Hijrah calendar) in Mina, which is prohibited by the Shi'ahs, regardless whether the person is performing *Hajj* or not.

Taslim: Reciting "*Salam*" or Salutation at the end of the prayer. (For its details, see the Chapter on *Taslim*).

Tawaf al-Nisa': A type of compulsory circumambulation performed during Hajj.

Tawaf: Circumambulation of the *Ka'bah*, one of the compulsory rites (*Manasik*) of 'umrah and Hajj.

Tawashshuh: Covering one shoulder and leaving the other bare (or uncovered).

Tawbah: Penitence; repentance.

Tayammum: A process allowed to be adopted in place of *Wudu*" (Ablution) in case of unavailability of water or tightness of the due time of prayer, or when use of water is harmful. (For its details, see the Chapter on *Tayammum* in the Section on *T aharat*).

Ta'zir: A punishment left to the discretion of a Magistrate or Judge, as against *Hada* (q.v.).
them.

Towliyah: Sale of capital without profit or loss

Tulu': Rise (of a celestial body)

Tulu'ayn (D. of Tulu'): The dawn and the sunrise.

Ujrat: Wages; recompense

Ujrat-al - Mithl: Proper wages.

Ujrat-al - Mufradah: 'Umrah to be performed by those living within the limits of Mecca

Ujrat-al - Musamma: Specified wages

Ujrat-al- Tamattu': 'Umrah to be performed by those living beyond the limits of Mecca.

'*Umrah*: A mini *Hajj*, or a brief process of pilgrimage to Mecca.

'*Uqud* (Pl. of 'Aqd): Groups of ten; contracts.

'Ushr: One-tenth of the (agricultural) produce; a type of Zakat.

Vara': Pious or God-fearing.

Vatirah: A kind of supererogatory (*Nafil*) prayer consisting of two *Rak'ats* offered after Isha' prayers, while sitting, and so counted as one *Rak'at*. (For its details, see Chapter on Preliminaries of Prayer, Problem #1).

Vitr: A supererogatory prayer consisting of one *Rak'at*. (For its details, see Chapter on the Preliminaries of Prayer, Problem #1).

Wad'i: The deputy or representative of the owner in a *Wadi'ah* contract.

Wadi'ah: A contract effective in appointing another as one's deputy or representative for protection (of some thing handed over to him); or the appointment as deputy for the said purpose, or placing some property with another so that he may protect it on behalf of the owner. Mostly it is applied to the property deposited.

Wajib: Obligatory or compulsory; an act which if left unfulfilled entails the liability for compensation or expiation.

Wajibat: Obligatory acts; things which are to be performed compulsorily.

Wali: Administrator or guardian of a deceased person; the eldest son of the deceased.

Wali: - *al-Amr*: The man at the helm of affairs; the ruler.

Wali: An executor of the will of a deceased person generally mentioned in his or her will.

Waqiyyah: A weight = $\frac{1}{2}$. *Rati*, (*Rati* being a weight of varying magnitude, in Eng = 449,28 gr. in Syria = 3.202 kg, in Beirut and Aleppo = 2.566 kg).

Wudu: Ablution; a process of washing one's hands and face before offering prayer. (For its details, see the Chapter on Wudu or Ablution).

Ya's: The past child-bearing age; menopause.

Yasar: Affluence; luxury; prosperity

Yowm (Pl. *Ayyam*): A day.

Yowm - al- Tarwih: 8th of Dhu'l Hijjah

Yowm al-Hashr: The Day of Resurrection, when all the dead shall rise from their graves and shall be restored to life.

Yowm al-Hisab: The Day of Judgement.

Yowm al-Mab'ath: See Eid-i Mab'ath above.

Yowm al-Maulud (al-Nabi): See Eid-i Maulud (al-Nabi) above.

Yowm: A day.

Yowm-i Arafat: Ninth of *Dhu'l Hijjah* (the last month of the Hijrah calendar) when the *Haji*'s (those offering *Hajj*) assemble at the plain of *Arafat* around noon, and stay there upto the legal period of *Maghrib*. It is here that all the Hajjis offer the prayers of *Zuhr* and *Asr* at one and the same time and not at their respective, separate times.

Yowm-i Dahw al-Arz': See Eid-i Dahw al- Arz' above.

Yowm-i Ghadir: See Eid-i Ghadir above.

Yowm-i Mubahalalah: See Eid-i Mubahalalah above.

Yowm-i Tarwih: 8th of *Dhu'l Hijjah* (the last month of the Hijrah calendar).

Zahidi: A variety of dates.

Zakat: A prescribed portion of one's income or agricultural produce after it has been in one's ownership throughout one full year, payable to the poor according to definite rules. (For its relevant rules, see Section on *Zakat*, in *Tahrir al-Vasilah*, Vol. II).

Zakat-al- Abdan (=Fitrah, q.v.)

Zan: Certitude; presumption.

Zihar: Likening the back of one's wife to the back of his mother, an act that entails a prescribed expiation in *Shari'ah*.

Zina' - bi al-Maharim: Incest.

Zina': Fornication; adultery.

Zuhr - Prayers: Obligatory prayers required to be offered daily at noon. (For its details and rules, see the Section on Prayers).

Zuhr: The mid-day or the noon.