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CURRENT LEGAL ISSUES

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CURRENT LEGAL ISSUES



ابن عبد الله العظي السيد علي الحسيني السيستاني

Introduction

Praise be to Allah, Lord of the worlds, and peace and benediction be with our master, Mohammed and his Pure Progeny.

This is a selection of the answers to questions, from different parts of the world, put to His Eminence Grand Ayatullah as-Sayyid Ali al-Hussaini as-Seestani (May Allah grant him long life). The answers, which bore his seal, cover current issues facing contemporary Muslims. They revolve around general themes, such as prayer, Hajj (pilgrimage), food, commodities, woman issues, reproduction, medical issues, ethical matters, modern science and technology, entertainment and leisure, work, transactions, religious dues and other topics.

We were inundated with encouraging responses from the faithful, when the first Arabic edition appeared in the West. This has emboldened us to issue the second edition with additions: Current Issues, a supplement to Minhajus Saliheen (The Path of the Good). Volume 1, second edition, 1414 H., from pages 427 to 468 [of the Arabic version] which includes are-as such as banking, insurance, selling and buying, shares, bonds, import and export, premiums, post-mortem, artificial insemination, birth control, lottery tickets, prayers and fasting.

Another addition has been the addendum of Ma-nasikul Hajj (pilgrimage rites). It contains important areas such as: Affordability, paying khums (a type of religious levy equivalent to one fifth), rules of performing hajj by proxy, appointing an agent, types of umrah (lesser pilgrimage), forbidden acts concerning Ihram (pilgrimage special attire), shading, kaffarah (atonement), tawaf (circumambulation of the Ka'ba) and its prayer, sa'y (brisk walking between Safa and Marwah), wuquf (devotional stay) at Arafat, staying over-night at Mina, hady (sacrificial offering), and pelting pebbles at Jimar or Jamarat (place where the three slabs of stone representing the devil are erected).

A third addition is some important issues that are frequently enquired about; they come under the title of Miscellany.

This translation contains all the above subject matter and some recent questions received after the book was published together with His Eminence as-Seestani's answers. We spared no effort to cluster all related

issues together, especially in the first section of the book, containing questions and answers on current issues, for the benefit of the reader.

We pray to the Almighty to bestow success upon us to be able to publish the second series of Fiqhul Mughtaribeen (Jurisprudence for the Immigrants) in the near future, Allah willing. May He preserve for us our Religious Authority, as-Sayyid as-Seestani so that we would benefit from his knowledge. Allah is the Most Merciful.

Murtadha al-Kashmiri
London, Rajab, 1414 H.
(December, 1996)

REF:- <http://www.sistani.org>

Translator's Note

In accepting the task of translating the book, I was faced with a challenging hurdle. Namely, I should do my utmost to convey the meaning to the English reader in standard English from a language that is highly technical, i.e. juridical one. I hope I have succeeded in that. However, I decided to use the same Arabic terminology - in italic letters - that is common in the main, such as *halal* and *haraam* (licit and illicit) with their equivalent in English, as a first reference. I have done this to ensure consistency, for the majority of these terms denote specific meanings on which the *mukallaf* (the person obligated to observe the precepts of religion) rely in acting upon the *fatwa* (religious edict). Thereafter, I have confined the use to the Arabic term. For the benefit of those who wish to know the English definitions of the Arabic terms, I have listed them alphabetically in a Glossary.

It is noteworthy that the glossary is solely my contribution and does not constitute a section of the book, Current Legal Issues. At occasions, I found it necessary to put the Arabic words between brackets after the English, such as "The right of disposal (*haqut tasarruf*) over..". This has been done to reinforce the translated word or phrase and remove any ambiguity; you may not find these in the Glossary.

Where I thought the meaning of the text would be enhanced or rendered more understandable, I put the additional words, which do not constitute part of the original text, between these [] brackets.

The use of masculine pronouns, such as he, his, him, and himself, refers to both the sexes.

For the translation of Qur'anic verses, I used "Holy Qur'an", translated by M.H. Shakir, published by Tahrike Tarsile Qur'an Inc. P.O. Box 1115, Elmhurst, New York 11373, U.S.A, though I have made some modifications as I deemed fit. I have, also, made use of the translation of *Al-Masaa'il Al-Muntakhabah* (Articles of Islamic Acts) of Imam Abul Qassim al-Khoei, published by al-Khoei Foundation, Chevening Road, London NW 6, UK

In the end, whatever effort and knowledge one could muster and put in such work, it remains far from perfect, for perfection is Allah's. I, therefore, invite the readers to write in should they find it necessary to

raise any point, ask for clarification of certain matters, or provide any remarks insofar as the translation goes.

I beseech Allah, The Exalted, to forgive me any inadvertent mistake or error of judgement I made during this translation. Amen.

Najim al-Khafaji, B.A.
London - December 1996 / Rajab 1417 AH

Glossary

Adda':

On time: when prayer is performed on its prescribed time. (See qadhaa').

Adhan:

The call for prayer.

Al-Adhhar:

Most evident - a level of certainty in reaching a ruling by a Mujtahid.

Al waladu lilfirash:

The born baby belongs to the bed where it was conceived.

Asr:

Afternoon prayer.

Ba'adaz zawaal:

After the disc of the sun descends towards the West. (See zawaal).

Batil:

Invalid and unlawful, e.g. A contract becomes batil when it does not satisfy the divine, practical laws of Islam.

Dhuhr:

Noon or lunch-time prayer.

Eid:

Festivities marking the end of the fasting season, or festivities of sacrifice after hajj.

Farsakh:

A unit of distance, equivalent to eleven kilometres.

Fatwa:

Religious edict.

Fidya:

Redemption (from certain religious obligations by a material donation or ritual act).

Ghusl:

Obligatory bathing that is required after certain acts or occurrences.

Hady:

Sacrificial offering.

Hajj:

The pilgrimage to Mekka undertaken according to the prescribed ritual during the month of Thil Hijja.

Hajjatul Islam:

A Muslim's maiden pilgrimage to Mekka, that is obligatory when you can afford the journey.

Halal:

Lawful for use, consumption, or to act upon.

Haqqul ikhtisas:

Prerogative.

Haraam:

Unlawful or forbidden for use, consumption, or to act upon.

Haram:

The Holy Precinct of Mekka.

Haraj rafie' littakleef:

An untenable situation that could waive the fulfilment of certain religious obligations.

Hawlayn:

Two years.

Haydh:

Menstruation.

Ibadaat:

Acts of worship.

Ijarah:
Hire.

Ihram:
The special two-garment seamless attire worn by pilgrims. Also, the state of ritual consecration during which the pilgrim abstains from certain acts, such as not combing, not shaving, and observing sexual continence.

Ihtiyat luzumi:
Obligatory precaution that must be followed.

Ijtihad:
(lit. exertion) - the process of arriving at judgements on points of religious law using reason and the principles of jurisprudence (usul al-fiqh).

Isha:
Evening prayer.

Ishkal:
Problematic or grey area: Difficult to approve of or consent to.

Istihadha:
Undue menses.

Istihalah:
Transformation.

Istinqath:
Recovery of money from the unbelievers.

Jamarat:
Places of the three stone slabs representing the devil, at Mina. (See rami)

Ji'aala:
Fee, charge, reward.

Kaffarah:
Atonement or expiation: making repayment for some failure to act, harm done to another, etc.

Khums:

A type of religious levy, equivalent to one fifth of taxable income.

Ma fith thimmah:

Repayment of a debt: When prayer is performed to compensate for un-said ones.

Maghrib:

Sunset prayer.

Maghsoub:

Usurped.

Mahaarim:

One's immediate relatives - according to a certain classification detailed in Shari'a law.

Majhoulil Malik:

That whose owner is unknown.

Makrooh:

Makrooh (undesirable) act.

Manasikul Hajj:

Pilgrimage rites.

Marji' pl. Maraji':

(lit. reference point for emulation, or religious authority) - A cleric who, through his knowledge and probity, is qualified to be followed in all points of religious practice and law by the generality of shiah Muslims.

Mujtahid:

A clergyman who has studied sufficiently and achieved the level of competence necessary to interpret shari'a law (see Ijtihad).

Mukallaf:

Comopos mentis (The person obligated to observe the precepts of religion).

Musafir:

Traveller.

Musalaha:

Mutual agreement between the Marji' or his agent and the follower on matters of religious dues.

Mustahab:

A voluntary, and meritorious, act of worship. (See wajib - obligatory).

Mutlaqan:

Absolutely, or under any circumstances.

Najis:

Ceremonially unclean: some things are inherently najis, others can become najis through contact with an inherently najis substances.

Nifas:

Bleeding that occurs after childbirth, miscarriage, or abortion.

Niyyah:

Intention, i.e. to designate which prayer, or other act of worship one is about to perform and that its sole purpose is to seek nearness to Allah.

Niyyah of qurbal mutlaqah:

(The intention of prayer done with a view to seeking nearness to Allah, i.e. without designating whether it is adaa' or qadhaa').

Nushouz:

Recalcitrance (dislike, abhorrence) of a wife towards her husband.

Qadhaa':

In lieu : when a prayer is performed at a later time.

Qasr:

A shortened form of prayer: A concession for a musafir (traveller) to perform a two raka'a prayer instead of the full four raka'a one (see tamam).

Qiblah:

The direction, of the Ka'ba, one must face while praying.

Raka'a:
The bowing act in a prayer.

Rami:
Throwing seven pebbles or small stones at Jamarat on Eid day, the 11th and the 12th of Thil Hijjah. (See Jamarat).

Risalah Amaliyah:
Manual of articles of Islamic acts, usually published by a Marji'.

Sadaqa:
Legally prescribed alms tax.

Sa'y:
Seven laps of brisk walking between the mounts of Safa and Marwah - an obligatory part of hajj.

Shari'a:
Religious law.

Shari'i:
Islamic or legal.

Subh:
Dawn prayer.

Tahir:
The state of being ceremonially clean, the opposite of najis.

Tamam:
A full four-raka'a prayer. (See qasr).

Tanazul:
Foregoing one's right.

Taqleed:
The following, by a lay person, of a learned cleric (Mujtahid) in matters of religious practice.

Taqseer:

Cutting one's hair, clipping one's moustache or beard, or cutting off the nails - an act that heralds the exit from the state of ihram.

Tarakhus:

The point at the periphery of a town where, for example, adhan could be heard.

Tawaf:

Circumambulation - Turning seven times around the Ka'ba.

Tawafun Nisa':

(lit., women's circumambulation) - an integral part of hajj devotion, the performance of which and that of its prayer heralds the return of sexual relations between man and wife.

Thil Hijjah:

The month of the Arabic lunar calendar during which hajj is performed.

Ulema:

Scholars or doctors of religion.

Umrah:

Lesser hajj, or visitation that can be performed at any time, except the days of hajj in the month of Thil Hijjah.

Umrah Mufradah:

A type of lesser hajj.

Umrah Tamattu':

A visitation ritual that is obligatory before performing hajj.

Urf:

Generally accepted practice, custom, or usage.

Wajib:

An obligatory act of worship. (See mustahab - a voluntary act).

Wudhu:

An act of ablution that is required before the performance of certain actions.

Wuquf:

Devotional stay at Arafat, Mash'ar and Mina as part of hajj rituals.

Zawaal:

The zenith of the sun, just before it declines towards the West.

Part 1
Your Questions Answered..

Ques Ans » Prayer & Hajj

(Q.1) The *ulema* (scholars, or doctors of religion) seem to disagree as to the *qibla* (the direction, of the *Ka'ba*, one must face while praying) in New York, USA and other places in North America. Is it possible that you explain to us in some detail as to which direction we should set our faces to be in line with the *qibla*?

Determining the *qibla* in those far flung places, in which the curve of the earth constitutes an obstruction, could be achieved by drawing parallel lines from the foothold of the person who is praying. These lines follow the curve of the earth to the direction where *Ka'ba* is situated until these lines go over its position, albeit on the premise of probability. That is the direction of these notional lines can be seen aiming correctly, if you extend a string from the position of the praying person and the position of *Ka'ba* on the globe. It is important, though, to making sure that it is straight and tilting neither to the right nor the left. The experiment will prove that the direction of this string in New York, North America, is to the East North by a measure indicated by the string itself.

There are those who may say that Holy Mekka is located under the 22 Parallel and New York is above the 40 Parallel, requiring those setting their face in the direction of the Holy *Ka'ba* to tilt towards the South not the North.

We have this to say to them. This may be true if you were looking at a flat map not a global one. The skewness of the string, used in the global map, has resulted from the difference between the two points when it is observed about the North and South Poles. To prove this experiment, ignore the four static corners of the globe and turn it around; assume that the position of Holy Mekka is at the top, where the North Pole is; you

will have noticed that the direction of the string is the same. Thus, he who is standing in New York has to stand facing the direction of the string without leaning to the right.

Furthermore, Having more in favour of this argument is that you have to adhere to the notional straight line that runs through the earth between the station of the person and the holy Ka'ba. For, since it is impossible stick to this notional line, you have to resort to the direction taken by the curved string between the two points, i.e. from New York to East North.

Nevertheless, he, who faces the East South in his prayer, is bound by the legal proof he is satisfied with. Allah is All Knowing.

(Q.2) We have pointed out in the previous question as to the differences regarding the correct direction of *qibla*. What is the ruling on the dead who were buried in a direction that was prevalent then and, afterwards, a new direction was found to be the correct one, noting that exhuming the bodies or remains poses untold embarrassment?

As is apparent from the question, there is no need for change.

(Q.3) Does performing *Jumuah* [Friday Congregational] Prayer make up for *Dhuhr* (Noon) prayer on Friday? Which one is preferable to perform?

Performing *Jumuah* prayer, according to the conditions stipulated in *Shari'a* law, is preferable than saying *Dhuhr* prayer. In so doing it makes up for the latter.

(Q.4) Has any one the right to object to holding *Jumuah* prayer under the pretext that *Maraj'ul Muslimeen* (Muslims Religious Authorities) in Holy Najaf and Holy Qum do not hold it. However, residents of the country where the *Mukkallaf* (compos mentis, or the person obligated to observe the precepts of religion) lives hold it in compliance with their juridical school of thought?

No one has the right. The non-holding of *Jumuah* prayer by some *Maraji'*, who maintain that holding it is preferable than saying *Dhuhr* prayer and that it makes up for the latter, might be attributed to personal judgement or excuses of that sort. It does not, therefore, follow that others can not

hold it.

(Q.5) As a result of expansion some cities, which used to comprise a number of townships, have become very big ones. Do you consider such cities as one [physically] or the old demarcations between its different neighbourhoods should be observed? Say, you set out on a journey heading to some other destination, from the eastern most point. The time for prayer was due, while you were still within its boundaries, that is in the westernmost point. Do you perform your prayer *tamam* (in its entirety) or *qasr* (shortened form). Also, when you return to such a big city and the time for prayer was due, while you were in its outskirts, do you say your prayer *qasr* or *tamam*? And what is the ruling on fasting in such a situation?

As explained in the question, such a city is considered one, i.e. the rule of different towns is not applicable. Of course, the yardstick in calculating the distance is the definition of *Musafir* (traveller). If such a city is very big and it fulfils the definition, when the person embarks on his journey from his neighbourhood, though it be inside the city, the rule of *Musafir* applies here. Thus, the distance is calculated from the approaches of the neighbourhood of the *Mukkallaf*. If the definition does not apply unless he gets out of the city, the end of the city should be the start of calculating the distance from the edge of *tarakhus* (the point at the parameter of a town, when, for instance, *adhan* "call for prayer" can be heard).

(Q.6) Someone brought with him a garment from another country. He did not pay duty on it because he did not declare it. Is it considered as *maghsoub* (usurped) and can he say his prayer wearing such a garment?

It is not considered as *maghsoub* and there is no harm in saying prayer wearing it.

(Q.7) Is it permissible for a person to delay saying his prayer to attend Hussaini commemoration gatherings held during *Muharram*?

It is permissible. However, it is preferable to say prayers at their prescribed times. It is, therefore, incumbent on the people organising such gatherings to hold them in such manner that they do not coincide with prayer times.

(Q.8) A young person, who has the means to perform *hajj*, had to sit his exams at the time of *hajj*. If he were to go for *hajj*, this would have affected his results and consequently his study. What should he do?

If he was sure of his financial ability to perform *hajj* at a later year, it is permissible for him to delay it. Otherwise - as it happens - performing *hajj* becomes obligatory in the year in question. Of course, if in so doing he may fail the exams, for example, and that this eventuality would pose him with a great embarrassment, so much so that his position would become untenable, it would not become obligatory.

(Q.9) A financially able person did not perform *hajj* yet. Is it permissible for him to perform *umrah* (lesser pilgrimage) during the month of *Rajab*? What if he became able during the month of *Ramadhan*? Could he do *umrah*?

Umrah Mufradah (a type of lesser pilgrimage that can be performed at any time, except the days of *hajj* "greater pilgrimage" during *Thil Hijja*) would be in order. However, if his travel for *umrah* could result in him being unable to perform *hajj* later on, it is not permissible for him to do that.

(Q.10) A single young man has, rather belatedly, contemplated getting married. If he were to delay arrangements for his marriage and embark on the *hajj* journey, his marriage could be postponed for a while. Which one takes precedence over the other?

He should go to *hajj* and delay the marriage, unless forbearance with being bachelor would make his position untenable. Allah is All Knowing. **(Q.1) The *ulema* (scholars, or doctors of religion) seem to disagree as to the *qibla***

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Ques Ans » Earning a Living

(Q.11) Is it permissible for a Muslim to cook unslaughtered meat, noting that he has nothing to do with selling or serving it? What is the ruling on serving *najis* (un-slaughtered) food or delivering it to non-Muslims? Is there a difference between pig meat and other kinds of meat?

There is no objection to cooking unslaughtered meat or serving it to those who believe that consuming it be lawful (according to their doctrines). Selling it is problematic; however, there is no objection to receiving money in exchange for *tanazul* (forgoing one's right) or by way of *Istinqath* (recovery of money from the unbelievers).

(Q.12) Is it permissible for a Muslim to work in restaurants that serve pig meat or alcoholic drink? If it is not permissible does the ruling extend to washing cutlery and the like?

Serving alcoholic drink to the others is *haraam*, even though it might be all right for them to consume it. The same goes for washing cutlery, if it was used for drinking alcoholic drink.

As for serving pig meat to those who have no problem in consuming it (for no apparent objection of their faith), it could be permissible; selling it, though, is not permissible, without any shadow of a doubt.

It is *batil* (unlawful) for a Muslim to pay himself for work that is forbidden to him; receiving wages for such work is *haraam*. Of course, there is no harm in assuming ownership of the money by way of *Istinqath*.

(Q.13) [This is a complementary question to the preceding one]. Is it permissible out of necessity? If necessity is paramount, what are the

limits of it?

Committing a forbidden act driven by necessity, over which you have no control or through no choice of yours, renders *haraam* injunctions void and no sin shall be upon you. However, such an act must be confined to the minimum that might remove the necessity, for necessities are governed by their magnitude. Nevertheless, for a person to be driven by a pressing need to serve alcoholic drink in return for money is a mere assumption, whose realisation is hard to come by, considering that it can hardly happen, if not only by wilful choice. Allah says, "**..and whoever is careful of (his duty to) Allah, He will make for him an outlet, and give him sustenance whence he thinks not..**" (65/2, 3). He also says, "**Surely (as for) those whom the angels cause to die while they are unjust to their souls, they shall say: In what state were you? hey shall say: We were deemed weak in the earth. They shall say: Was not Allah's earth spacious, so that you should have migrated therein? So these it is wose abode is hell, and it is an evil resort, except those who were deemed weak from amongst the men and the children who have not in their power the means nor can they find a way (to escape)**" (4/97,98).

(Q.14) Is it permissible for a Muslim to work in a restaurant that serves unslaughtered meat?

It could be permissible only when it is served to those who think it lawful [according to the precepts of their faith]. Rather, without making it known to the consumer, in case it might affect their choice, which could lead to them abstaining from consuming it. Otherwise it is not obligatory.

(Q.15) What is the ruling on wages earned for work in such restaurants? Are they considered as earnings tainted with illicit money? Could they be licit for the worker in return for his work that is halal?.

Wages received by a Muslim from non-Muslims for work, that is lawful to them, is considered licit earnings, albeit they may have earned such money by means that are not lawful according to our religion, such as the sale of pig meat and alcoholic drink. Such wages are not considered tainted money, on which Khums is due.

(Q.16) Some times a person, who works in a restaurant, serves non-

Muslims with unslaughtered meat and pig meat. You have ruled on the first part of the question before. What is the ruling on serving pig meat, noting that if he refuses to do the work, he might, as well, lose his job?

There is *ishkal* in serving pig meat even to those who deem it licit, abandoning it by way of *ihtiyat* is advisable.

(Q.17) Is it all right for a Muslim to own [or run] a restaurant, where unslaughtered meat is served, noting that he is not personally involved in the work and that his role is confined to supervising and administering the place? On the assumption that it is not permissible, how can one make good the money earned? What is the position of his dependants, such as his wife and children insofar as maintenance goes?

There is no harm in owning such a restaurant, only when serving unslaughtered meat is done for those who deem it lawful. In the event of serving it to a Muslim, one must inform him that it is not halal meat. In so doing he might [positively] affect the consumer's decision; otherwise it is not obligatory. As for the earnings, making them good is by way of *Istinqath* or *tanazul*. Once it is thus legitimised, it can be so for the dependants. In case he did not do so, they should assume ownership of what he pays them in kind [i.e. material things, be they money, provisions and goods]; only then it will be *halal* for them. Allah is All Knowing.

(Q.18) Is it permissible for a Muslim to work in places where alcoholic drinks are sold or at entertainment places, without being involved in serving alcoholic drinks or other sinful acts, such as washing dishes and preparing tables, etc.?

It is not permissible in the places where alcoholic drink is sold. Work in entertainment places is not recommended on the premise of *ihtiyat luzumi* (obligatory precaution)..

(Q.19) There are many grocery stores where, besides groceries, sandwiches of pork and other unslaughtered meat are sold. On top of that they also sell lottery tickets. People working in these stores are required to handle the sandwiches and lottery tickets. All types of

customers come, Muslims as well as non-Muslims, where it is difficult to distinguish one from the other. Is it permissible to work in such stores?

It is not permissible to sell pig meat even to non-Muslims. It is not permissible too, by way of *ihhtiyat*, to sell unslaughtered meat, even to those who deem it licit. The same ruling goes for the sale of lottery tickets - it is not permissible.

(Q.20) Lottery is a well-known chance game in the States. Is it permissible for a Muslim to sell its tickets through a machine? Could the transaction be based on the principle of *istinqath*?

If he was authorised by the company concerned with its offer and distribution among non-Muslims, it is permissible. Receipt of the money could be justified on the principle of *istinqath*, not by way of vending. He could, also, receive it by way of *tanazul*, if he had *haqul ikhtisas* (prerogative) over it.

(Q.21) Is it permissible for a Muslim, who owns a hotel, the majority of whose customers are unbelievers, to serve them with alcoholic drink or unslaughtered meat?

As explained in an answer to a similar question, it is not permissible insofar as alcoholic drink is concerned. As regards unslaughtered meat, it is permissible.

(Q.22) Is it permissible for a Muslim to work in a grocery shop where alcoholic drink is sold, noting that he is not involved in handling it; he works as a cashier?

It is permissible for him to receive the money for the other goods, and the money for alcoholic drink only when the vendor and the buyer are non-Muslims.

(Q.23) What is the ruling on work in the places where unslaughtered meat is prepared, where the involvement is in the latter and has nothing to do with selling it?

It is permissible. There is no harm in receiving wages for such work.

(Q.24) An electrical engineer, working in Europe, is sometimes called out to repair loudspeakers and similar instruments. Sometimes he has to go to places where entertainment takes place. Is it permissible for him to carry out repairs to such equipment and install new ones? It is noteworthy that if he refused such work it might adversely affect his work, for customers shall leave him.

It is permissible.

(Q.25) Is moving (*tanaqul*) [commodities], the sale of which is unlawful to Muslims, in order if it was done through relinquishing (*isqat*) one's *haqul ikhtisas* (prerogative) over it ?

Yes, Allah is all knowing.

(Q.26) Is it permissible for a Muslim to buy from shops [or other businesses] owned by Hindus, if one knew that they help their co-religionists there [in India] against Muslims ?

It is not permissible if it contributes to making them transgress against Muslims. Allah is All Knowing

(Q.27) Is it permissible to buy from [non-Muslim] owners of business, in the knowledge that they help their co-religionists against Muslims?

It is not permissible if it leads to bolstering them against Muslims.

Chapter 3

Ques Ans » Food & Related Matters

(Q.28) If it was known that cheeses imported from non-Muslim countries contain animal rennet (calf or goat) or animal enzyme, is it permissible to consume?

There is no harm in consuming the first two categories; and the third too, unless it is known that it was taken from an unslaughtered animal. Allah is All Knowing.

(Q.29) Some imported soap contains lard. Eventually, only 5% [of the lard] remains in it. Can the rule of *Istihalah* (transformation) be applied here, so that it could be considered *tahir* (ceremonially clean), or does it remain *najis*?

It remains najis. Allah is All Knowing.

(Q.30) Is jelly, that is manufactured from cow bones not slaughtered according to Islamic law, *tahir* for external use?

Yes, because bone is not amongst parts of the body that have life in them. So, it is *tahir* even when it belongs to a dead carcass. Allah is All Knowing.

(Q.31) To fatten them up before sale, some chicken are fed a mixture that contains 30% of pig bones. What is the ruling in this respect? Is there any *ishkal*?

There is no objection to eating such chicken meat. For it becomes *tahir* when it is slaughtered [according to Islamic *shari'a*]. It is preferable, though, to avoid the birds eating such feed. Allah is All Knowing.

(Q.32) Muslims in Europe buy [and wear] shoes, belts and other garments that are made of leather. It is possible that the hide used in manufacturing such goods come from unslaughtered animals; the other possibility is that it could have been imported from Islamic countries, or it could belong to animals that were Islamically slaughtered here, in Britain for example. Do we consider such leather products *tahir* on the assumption that they could have been imported from Islamic countries or slaughtered here by Muslims, though such possibility is somewhat remote?

If the possibility is so slim, constituting 2% for example, that certainty is derived from the opposite, it must not be relied on. Otherwise, there is no objection to assuming that it is *tahir*. Allah is All Knowing.

(Q.33) Is eating carp, prawns, and shell fish permissible?

No marine animal is halal, except fish that has scales, amongst which are prawns. As for other animals, other than fish, like carp as well as other kinds of fish that have no scales, it is not permissible to consume.

(Q.34) Importation of Beetle-Nuts (Sopari) is banned in Canada. If a person brings in beetle-nut from another country and hides it from customs, is it *halal* or *haraam*?

One thing is to be considered; it is that customs officials usually ask: Do you have anything to declare? However, if lying is involved, is it permissible to eat, knowing that they are illegal to bring into Canada?

It is not *haraam* to eat.

(Q.35) Does the sun, as a purifying agent, render tiles, marble and other similar building material *tahir*?

Yes, provided adherence to conditions of purifying [*najis* objects] is observed. Allah is All Knowing.

(Q.36) What is the ruling on the blood trapped under the nail, which is difficult to remove. Is it *najis* or *tahir*? If it was *najis* how should one go about it?

If it is not transformed, it is *najis* and should be removed, provided this does not entail any danger (*haraj*). If it remains, *tayamum* instead of *wudhu* and *ghusl* must be applied. Allah is All Knowing.

(Q.37) A person performed an obligatory *ghusl*. After a few hours, he noticed an object that [apparently] constituted a barrier [to water reaching the area of the skin] on his left finger or foot. Should such a person re-wash the entire left part of the body? Or is it sufficient to wash that particular area only, with the *niyyah* of *ghusl*?

Washing the affected area should do. By way of *ihyat luzumi*, however, you do *wudhu*, in case one breaks one's *wudhu* during the intervening period.

(Q.38) Is it permissible to backbite an opposing Muslim?

It is preferable not to do so.

Ques Ans » Ethical Matters

(Q.39) Is it permissible to steal from the unbelievers in their countries, or defraud them as they themselves do?

It is not permissible to steal from their private and public property, neither cause any damage to such property, since the said acts could tarnish the reputation of Islam and Muslims in general. Notwithstanding the above, it is not permissible, for it amounts to treachery and breach of implicit trust, when applying for entry visa or residence. Treachery and breach of trust directed against anybody is *haraam*.

(Q.40) Is it permissible for a Muslim to give false information to government departments in Europe to gain some financial or abstract benefits, through proper channels?

It is not permissible because it is lying; what has been mentioned in the question does not fall within its justifications.

(Q.41) A person has entered a country as a visitor and his passport was stamped that he was not allowed to work. If he works illegally and gets the money 'under the table', is it *halal*?

If the visa was granted against an undertaking that the person should not engage in any sort of employment during the period of his stay in the country, his infringement of the undertaking is *haraam*. However, this should not deny him the wages for the work; it is permissible that he has the right of disposal over it as he deems fit.

(Q.42) Is it permissible to have sexual intercourse with a woman, from amongst the unbelievers or the People of the Book, without a marriage contract, noting that their respective country is in a state of war,

directly or indirectly, against Muslims?

It is not permissible.

(Q.43) What is the ruling on saying *assalaamu [alaikum]* (Islamic salutation, meaning peace be with you) to the People of the Book or unbelievers? Also, is it permissible to send them seasonal greetings, such as on Christmas?

There is no harm in initiating the salutation, albeit *makrooh* (undesirable act) except out of necessity, under whose remit comes *urf*. Responding to their salutation should be by uttering [the word] *alaik* (with you). There is no harm in greeting them on their occasions.

Ques Ans » Medical, Women & Reproduction

(Q.44) A physician examines a lady to determine whether or not she is infertile. He does not see any part of her body, apart from the position of inserting the instrument of examination, without touching her. Is this permissible, and is there a difference between the situation of "difficulty and necessity", on the part of the patient? Is it all right for the doctor to open a surgery for such purposes? And is the ruling different for examining a Muslim woman or an unbeliever?

The permissibility is the woman's prerogative. For instance, incapability of bearing children could lead to her facing *haraj rafie' littakleef* (an untenable situation that could waive the fulfilment of certain religious obligations). There may be a good reason forcing her to bear children. Should this be the case, it is permissible for the man-doctor and woman-doctor to gaze, only when the situation permits, though, it must be kept to the minimum. This is concerning Muslim women. As for the unbelievers, it is advisable to observe such detail in their case as a matter of *Ihtiyat luzumi*. Allah is All Knowing.

(Q.45) You mentioned in your *risalah amaliyah* (Articles of Islamic Acts - Manual) what could be summed up thus: it is not permissible for an alien man to look at the private parts of a woman and vice versa, even in situations of medical treatment, except when it is necessary. Does "necessity" cover the person, such as medical student who is on training?

It is not sufficient to lift [non-permissibility], unless, due to an emergency, even in the future, he could be required to save a Muslim from a grave danger.

(Q.46) Also, is the applicability of the definition of "necessity"

sufficient to treat a psychological case? For example, a woman whose repeated pregnancy causes her to be psychologically unwell. The only way for her not to be pregnant is to install a coil in her womb. This sort of practice may require her to uncover her private parts to an alien man or woman.

It is not possible, unless pregnancy causes her psychological trauma which could lead to her experiencing *haraj rafie' littakleef*. It is, therefore permissible for her to uncover her private parts for the doctor (man or woman). That is, should there not be any other means of contraception that could do away with exposing the genitals.

(Q.47) Is it all right for an infertile woman [seeking medical treatment] to expose her genitals for treatment out of necessity?

A. It is all right if there was a necessity forcing her to beget children, or being infertile may lead her to fall into *haraj rafie' littakleef*.

(Q.48) In certain cases doctors advise that the foetus is so deformed that it could be very difficult to treat the born baby and, perhaps, it (the child) would live a very short time suffering pain and agony with his parents, then dies. Is it permissible for the would be mother to abort the foetus? Also, is there any difference between the foetus with a spirit and that which the spirit has not yet entered it? Assuming it is permissible, should compensation [or blood money] be payable? Who should pay it?

Abortion in this case is not permissible, even though the spirit has not entered the foetus, [let alone a foetus with a spirit].

(Q.49) Is it permissible for a woman or a husband to carry out an operation of birth control so much so that they will never be able to reproduce, after they have felt that the number of children they have had is enough? If it is not possible, will the ruling be different when both man and wife live in an Islamic state that encourages birth control for the public good?

It is not free from *Ishkal*;
it might, however, be permissible should it not constitute any danger, leading, for instance, to removing some organs like the ovaries of the

woman. Allah is All Knowing.

(Q.50) For an infertile man, the doctor requires a specimen of his sperm to be tested to determine the cause of infertility. To obtain sperm, a special instrument is placed on the male organ. As a result of vibration, ejaculation is achieved. Does this constitute masturbation, which is not permissible, or is it permissible so that the test could be done? Also, is there a difference between the two situations of "difficulty and necessity" insofar as the patient is concerned?

Yes, it is akin to masturbation. Thus, it is not permissible, if the test can be carried out without it. The same goes for the test being contingent upon the specimen, except for the situations of (difficulty and necessity), as the question may suggest. Allah is All Knowing.

(Q.51) Sperm was taken from a husband to be implanted in his wife's womb. Afterwards the husband died. The sperm was implanted in the womb of his widow. A male baby was born to the widow. What is the ruling on the born child and inheritance?

The born child is the offspring of the husband, from whom the sperm was taken. As for the inheritance, the child shall not inherit the father.

(Q.52) Some women use certain pills to delay the onset of their monthly period so that they be able to perform their religious obligations, such as fasting and *hajj* rituals. These pills upset the equilibrium of hormones in the body, which in turn affect the period, rendering it irregular, so much so that the duration, when the woman is *tahir*, is some ten days or more or slightly less. It is worth noting that the type of blood, of menstruation during this time, is identical to that which the woman witnesses during her regular period. What is the ruling on this matter?

If the number of days of her being *tahir* is ten days or more, the blood that appears before this duration and that which follows it should be treated as two separate *haydh* (menstruation). Should the duration of being *tahir* be less than ten days, and the total of the two bloods and the intervening *tahir* duration are more than ten days, the blood that coincides with the days of the period, not the other one, is considered *haydh*, the other *istihadha* (undue menses), as a matter of course, except when that

which is in the period is ahead, and the second blood bears the characteristics of *haydh*. In this case the part which is not exceeding ten days is allotted to the first *haydh*, even if it does not coincide with the days of period and the woman not being of an irregular period. If any one of them fulfils the conditions of period, she must consider the one that does as *haydh* and the other, that does not, *istihadha*. If both are equal, the inclination is to make the first *haydh*, irrespective whether or not the two demonstrate the signs of *haydh*. Allah is All Knowing.

(Q.53) Some women take certain medication to delay their monthly period, especially during *Ramadhan* and *hajj*. However, in some cases intermittent blood appears during their period time. This blood does not have the same characteristics of *haydh*. It is noteworthy that if they abandon taking such medication, *haydh* will ensure some three days after its usual time; what is the ruling in this case?

As the question goes, *haydh* rules do not cover such intermittent blood. Allah is All Knowing.

(Q.54) If a woman has a slight or medium *istihadha*, would it be necessary that she renews her (*wudhu*) ablution between the two prayers, even though blood did not appear during the said period? Also what is the ruling on *tawaf* and its prayer?

Wudhu is not compulsory, assuming the discharge has stopped, so much so that it does not soil the towel.

(Q.55) A woman has an irregular monthly period. Intermittent blood appeared, that had no resemblance to *haydh* blood for two or three days at the time of her period. Then she saw blood, that has the characteristics of *haydh*, for five days, making a total of seven days. What is the ruling in her case?

The intermittent blood should not count as *haydh*, for the minimum period of *haydh* is three days. As for the blood, she had, in the five days, it is *haydh*.

(Q.56) A woman has regular monthly period and the menstrual discharge had ended and she became *tahir* in the seventh day. Her husband went to bed with her. Afterwards discharge reappeared and

continued until the tenth day. Is she sinful? If so, is *kaffarah* due?

No sin shall be upon her and no *kaffarah* is required. Allah is All Knowing.

(Q.57) Is it permissible for the husband to go to bed with his wife after the expiration of her *nifas* (bleeding that occurs after childbirth, miscarriage, or abortion), which is ten days, and the continuation of discharge of an *istihadha* type, noting that bleeding continued for some eighteen days?

It is permissible. It is advisable, though, to observe *ihtiyat* for the period in excess of ten days to eighteen days.

(Q.58) Is the definition of *nifas* applicable to the woman going into labour and eventually giving birth to her full blown baby? Does it cover other kinds of childbirth, such as premature babies and foetal (including clot and lump of flesh) miscarriage, irrespective of whether or not the spirit has entered the foetus?

There is no difference in applying *nifas* rules between giving birth to mature or immature baby, provided that it can be said that the woman went into labour and eventually gave birth to the baby. As for blood accompanying the embryo or lump of flesh, there is *ishkal* in applying the rules of *nifas* to it, rather objection.

(Q.59) Does any secretion of a woman resulting from sexual arousal require *ghusl* (obligatory ceremonial bathing that is required after certain acts or occurrences)? Does it have certain qualities as described by some *ulema*. If so, would her *ghusl* make up for *wudhu*?

Ghusl is obligatory when secretion is produced as a result of sexual arousal only, and not for any other reasons. Such *ghusl* would compensate for *wudhu*. Allah is All Knowing.

Ques Ans » Modern Science & Technology

(Q.60) Modern science and technology have developed a way of blood test [DNA] to determine [for example] if the child is legitimate. A husband suspected his wife of having an affair with another man and bore him a child. The result of the test showed that the child was the other man's. It is worth nothing that this test cannot go wrong. Can the result of blood be relied on, or the principle of *al waladu lilfirash* (the born child belongs to the bed where it was conceived) should be paramount?

Al waladu Lilfirash is a principle devised for the husband who suspects the loyalty of his wife. However, whomsoever shall attain certainty through other means, be it through blood test or any other means, should feel free to act upon it. Of course, such a proof is not a means to determining adultery, and the Islamic penal code shall not apply, except with one of the means stipulated in the *Shari'a*. Allah is All Knowing.

(Q.61 Modern science and technology have developed a method by which a killer could be nailed down, using blood test [DNA.]. It is so accurate and reliable that the crime weapon could also be identified. Is such a proof valid in a criminal jurisdiction and meting punishment out to the perpetrator of a crime, or should common Islamic penal code be applied?

The charge of murder is proven through *Shari'a* means, or by scientific means that is not swayed by personal judgement. If the description in the question falls within these parameters, it is permissible for the *Marji'* to pass judgement in the light of such a proof. Allah is All Knowing.

(Q.62) A doctor who works in a hospital in Chicago, USA might, as a matter of standing procedure, not resort to giving a patient, who is

suffering from terminal illness, life saving help like CPR. This procedure is adopted when, for instance, the patient's heart had stopped or blood pressure are dropping. In so doing the hospital and doctors will let the patient pass away peacefully. Should the doctor recommend DNR (Do Not Resuscitate) following hospital orders?

If the patient is non-Muslim, there is no objection to not giving the him life saving help like CPR. If the patient is Muslim, you have to exhaust all means to rescuing his life. The patient's request and/or that of his relatives not to save his life must be rendered ineffective.

(Q.63) What is the ruling on patients, who are brain dead, i.e. they do not have any senses and are only kept alive through some life supporting devices? Should the doctor, following hospital orders, remove such devices and let the patient die peacefully?

If the patient is non-Muslim, there is no objection to removing such medical devices, that help the patient continue life. If the patient is Muslim, it is not permissible to do so. The request of his relatives to switch off the life supporting machine must be rendered ineffective.

(Q.64) In the field of organ transplant surgery, it has recently been discovered that a pig's liver can be used for a human being to cure their liver disease. If a person's life can be saved by using a pig liver (or any other animal's organ), can this be allowed, even though pig is considered *haram* animal in Islam?

It is permissible to transplant a pig's liver into the human body. Allah is All Knowing.

Ques Ans » Entertainment, Music & Leisure

(Q.65) An artificial female organ when used by some men, they derive some enjoyment from it. If it is used without the intent of ejaculation, is it permissible? Is there a difference in the ruling between a married man and a bachelor?

Avoiding its use is recommended as a matter of *ihhtiyat luzumi*, irrespective of whether ejaculation was intended. There is no difference in the ruling between a married man and a bachelor. Allah is All Knowing.

(Q.66) Is it permissible for a Muslim to attend gatherings where alcoholic drink is served?

Eating and drinking in such gatherings is *haraam*. As for attending per se, its being *haraam* is based on *ihhtiyat luzumi*. However, there is no harm in attending with the aim of forbidding evil, if it is possible.

(Q.67) Is it permissible for a male Muslim to use public swimming pools where men and women mix, without malice? It is to be noted, however, that women who frequent these places have shrugged off the attire of virtue and are not likely to give up the habit if they were given a word of advice?

Looking without malice and pursuit of enjoyment at women, who wear revealing clothes and who do not heed the advice on wearing proper clothes, is permissible. However, going to such places is not at all permissible, as a matter of *ihhtiyat*.

(Q.68) Is it permissible for a Muslim woman to uncover her head before a non-Muslim woman?

It is permissible, though *makrooh*, (undesirable) for there could be a strong possibility that the non-Muslim woman would describe the Muslim woman to her husband.

(Q.69) Is it permissible for a Muslim to send his son to a music institute to learn music as an art, provided that he does not use his artistic skills in *haraam* matters?

There is no harm in children learning halal music as such. However, when sending children to music schools, there must be the guarantee that this would not adversely affect their upbringing. Allah is All Knowing.

(Q.70) Some schools in Western countries compel pupils to learn dancing. Such dancing is not accompanied by singing and it is not for pastime, rather a component of the curriculum. Is it *haraam* for the parents to permit their children to attend such classes?

Yes, if it contravenes religious upbringing, rather in general, as a matter of *ihhtiyat*. That is, with the assumption that the student be adult. The exception to this is that the *mukallaf* has a valid reason permitting his learning, such as following in *taqleed* (The following, by a lay person, of a learned scholar "*mujtahid*" in matters of religious practice). Such a *mujtahid* may have ruled on the permissibility of this act; there will, therefore, be no objection to him attending such a study.

(Q.71) If the yardstick is the amusement or delectation, it is a grey area, for tastes and opinions vary and differ. So, when can one draw the line between *halal* and *haraam* music?

The crucial line is in it [music] being commensurate with the gatherings of entertainment and moral depravity.

(Q.72) Insofar as the melody is concerned, what is the standard of it being *haraam*?

Is it because it is used in singing perpetrated by the people of moral depravity, indeed? also, is it sufficient to judge it by the circumstance and the occasion? Is there any difference between, for example, using music in *Hussaini* commemoration gatherings or processions, Islamic

songs, and other occasions?

The crucial factor, too, is the occasion of such gatherings. However, its use in a commemoration or other occasion does not lift its being *haraam mutlaqan* (absolutely or under any circumstances), as a matter of *ihhtiyat*.

(Q.73) What is the ruling on playing chess using the commonly known equipment? Is the ruling different if the play is conducted on a computer, using symbols?

Playing chess is *haraam mutlaqan* (absolutely or under any circumstances), even though betting is not used. There is no difference between the two methods of play.

(Q.74) What is the criterion of [chess] being *haraam* as a gambling tool? Is it the preparation with the intent of gambling or through use of *urf* (generally accepted practice, custom, or usage)? Also, is there any difference between an *urf* of a particular society and an international one?

The criterion is that it be set up for gambling and used for it, in such a manner that it is readily known as a gambling tool. It suffices to describe it accordingly in a particular society.

Ques Ans » Divorce & Related Matters

(Q.75) A civil divorce, according to the law of a western country, took place. The husband is adamant not to grant his wife a *shari'i* divorce, does not provide maintenance for her and not accept mediation. What should the woman do, noting that her patience would certainly wear thin and, eventually, put her in an untenable situation (*haraj*)?

She should seek redress with the *Marji'* or his deputy. He would advise the husband to choose one of two courses of action: Either pay his wife maintenance money or grant her Islamic divorce, albeit by proxy. Should he choose neither, and that it was not possible to pay maintenance money, the *Marji'* or his deputy should carry out the divorce.

(Q.76) A woman, who is not obedient to her husband and does not carry out her matrimonial obligations, had, without his consent, left her matrimonial home and stayed with her parents for seven months. She, then went to a non-Islamic court, filed a divorce application, and demand maintenance and custody of the children. Has such a woman, who has violated her marital duties, any right in anything from her husband?

The said woman is not entitled to *shari'i* maintenance. As for her dowry and her right in nursing her offspring for the *hawlayn* (the two years), it should not be forfeited by virtue of *nushouz* (recalcitrance of the woman toward her husband).

Ques Ans » Transactions, Including Banks

(Q.77) Is it permissible to take usury from the unbelievers, especially when one live in their countries?

Yes, *al-adhhar*, taking usury from the unbelievers is permissible.

(Q.78) Some publications have this sentence printed on them, "All rights reserved for the writer or publisher". Should one observe such prohibition? With the assumption of heeding the warning, is it permissible to print such material [without taking the publishers' permission] when social or religious good is at stake?

Compliance is not obligatory, yet it is most befitting if permission is sought, especially that of the author. Allah is All Knowing.

(Q.79a) For a certain amount of money some people allow you to use their name and a photo copy of their identity card, so that you can buy company shares and the like. Some consider this as a buying and selling transaction of the name. Is it permissible to enter into such a transaction? Assuming it is not permissible, is there any legal justification to rectify it?

This is not a sale of the name. It is an authorisation from the bearer of the name to another to make use of it and that of the ID card in buying shares in exchange for some money. There is no harm in such a transaction.

(Q.79b) On the assumption of permissibility, could the parent of a minor or his guardian have the discretion to use their name for the same purpose? Also, to whom should the benefit be-the child or his guardian?

If no damage shall ensue, it is permissible; it is likely that the benefit be the child.

(Q.80) If you consider the assets of state owned banks or those of joint ownership as *majhoulil malik* (that whose owner is anonymous), is there any justification to enter into dealings with these banks in such a manner that it be free from the taint of usury?

Answers to similar questions were provided in (*Mustahdathatil Masaa'il* - Current Issues), an addendum to our (*Minhajus Saliheen* - the Path of the Good), a Manual of Articles of Islamic Acts, *Ibadaat* (acts of worship). [The section in question will follow this one].

(Q.81) Some banks provide card either free or for a fee. Those holding such cards can: (a) Withdraw money from the bank's cash dispensing machines without interest; there will, though, be a charge for using the machine. (b) Should the borrower delay repayment of the money for a month [or over] interest shall be taken from him by way of service charge or the like. What is the ruling on the delay in repaying the money and otherwise?

There is no harm in withdrawing money with the intent of procuring it on the basis of *majhoulil malik*, not a loan. As for making the money good, it should be in consultation with the *Marji'*. One should not pay attention to the fact that the bank shall collect the original amount plus the increase thereupon. If the bank asks the person to pay back the amount withdrawn plus the increase he should pay both the amounts.

(Q.82) A privately owned bank invited its customers to deposit money with the bank, say one thousand Dirhams that they can withdraw at any time. After some time the bank shall give a specific gift to the depositors. Is it permissible to enter into such a deal to get the gift?

Depositing money with the condition of [getting] the gift is *haraam*. The condition here means you make the [transaction] of depositing contingent on an undertaking given by the bank to give the gift. If it was just for the knowledge that the bank shall give the gift, it is not going to dent the permissibility of depositing and that of receiving the granted gift as *halal*. Allah is All Knowing.**(Q.77) Is it permissible to take usury from**

the unbelievers, especially when one live in their countries?

Yes, *al-adhhar*, taking usury from the unbelievers is permissible.

(Q.78) Some publications have this sentence printed on them, "All rights reserved for the writer or publisher". Should one observe such prohibition? With the assumption of heeding the warning, is it permissible to print such material [without taking the publishers' permission] when social or religious good is at stake?

Compliance is not obligatory, yet it is most befitting if permission is sought, especially that of the author. Allah is All Knowing.

(Q.79a) For a certain amount of money some people allow you to use their name and a photo copy of their identity card, so that you can buy company shares and the like. Some consider this as a buying and selling transaction of the name. Is it permissible to enter into such a transaction? Assuming it is not permissible, is there any legal justification to rectify it?

This is not a sale of the name. It is an authorisation from the bearer of the name to another to make use of it and that of the ID card in buying shares in exchange for some money. There is no harm in such a transaction.

(Q.79b) On the assumption of permissibility, could the parent of a minor or his guardian have the discretion to use their name for the same purpose? Also, to whom should the benefit be-the child or his guardian?

If no damage shall ensue, it is permissible; it is likely that the benefit be the child.

(Q.80) If you consider the assets of state owned banks or those of joint ownership as *majhoulil malik* (that whose owner is anonymous), is there any justification to enter into dealings with these banks in such a manner that it be free from the taint of usury?

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Ques Ans » Religious Dues (Huquq Shari'a)

(Q.83) Is it permissible to set aside *sadaqa* (legally prescribed alms tax) money with the intent of giving it to the poor and could the said money be exchanged for another?

Setting the money aside per se would not render it as a *mustahab* (voluntary, and meritorious, act of worship) *sadaqa*.

(Q.84) Could you grant your followers unrestricted right of receipt of, and disposal over the money of *majhoulil malik* and all resultant fluctuations, when dealing with banks either owned by the state or those of joint ownership? That is, without resorting to the *Marji'* or his deputy to making it good. This will make it easy for the believers. May Allah grant you support and glory.

Yes, permission is hereby given to the believers, may Allah grant them success for that which pleases Him, in what they receive, through lawful means, from state-owned institutions or those of joint ownership. They may take ownership of such money on behalf of our clients, from the poor, with the intent of paying it to them [the poor] as *sadaqa*; then they could take ownership of it. This is insofar as salaries and wages are concerned.

As for bank interest and similar revenue, they could take ownership of half of it as outlined in the preceding paragraph, provided the other half is spent, as *sadaqa*, on devout Muslims, from the poor.

(Q.85) Does dealing with privately owned banks need a permission from the *Marji'*?

Dealing with privately-banks does not require a permission. Its assets are not considered as *majhoulil malik*. It is important, though, that one should

guard against usury dealings.

(Q.86) If one year elapsed on bank shares, is *khums* payable? If so, would the *khums* be levied on the actual value of the shares or on their purchase price?

Khums is payable on the actual value.

(Q.87) A person bought a dress for an occasion. It was left unworn until one year passed. Should *khums* be payable? Also, what is the ruling on jewellery, when more one than year elapses and it is not used?

If it is generally accepted that the dress is commonly known to be used in identical occasions in years to come, no *khums* is levied. Otherwise, *khums* should be payable as a matter of *ihtiyat wujubi* [*luzumi*]. Apparently, jewellery is judged by the same standard. Allah is All Knowing.

(Q.88) Is it obligatory to pay *khums* on household effects bought by the mother for her daughter, on the occasion of the latter's pending marriage, if years pass by until it is used again.

It is not obligatory, if abandoning the gradual building up of such household effects would undermine her social standing, although she might not be able to get it ready in time for her marriage. Allah is All Knowing.

(Q.89) The state gives plots of land free of charge to its citizens to build houses for themselves. Owning the land by the citizens could be achieved only with the provision that they have no right to sell or rent it, and any other right of disposal over it. Once the recipient started building the house to a level of completion estimated at 25%, the state gives a grant to help in completing the building work. One year elapsed after having received the plot of land and the grant from the state, I could not finish the building work. As a result, I could not move in to live there. My questions are as follows: (a) Is it obligatory to set aside *khums* on the plot of land granted by the state, with the latter withholding the title deed [for the conditions it stipulated]? It is worth adding that it is difficult to evaluate the land, for there is no precedent to dealing with it.

(a) Withholding the title deed by the state and other conditions attached

to the deal are bound to depreciate the price of the land, though, not forcing it out of being valuable at all. It is, therefore, incumbent on you to set aside *khums* on the land, taking into consideration what has been spent from the grant on it, and acting on the advice of the experts in determining its value.

(b) Is it obligatory to set aside *khums* on the grant given by the state?

(b) Yes, the *khums* should be due on what is left of the amount of the grant.

(c) Is it obligatory to set aside *khums* on the total expenditure of building work, in excess of the grant money?

(c) If the amount spent, more than the grant, warrants the *khums* by lapse of the year before dispensing with it, payment of its fifth is obligatory. If it was of the profits of the year, payment of *khums* is obligatory from the same house, by a ratio. Allah is All Knowing.

(Q.90) A person built a house on a plot of land that had already been taxed with *khums*. The date of his financial year [start of tax year for religious dues] elapsed once or twice. He spent whatever profits he earned on building expenses, noting he does not own any other house. Is paying *khums* obligatory? If so, should he add up all building expenses and pay *khums* on the total amount? Also, should they evaluate the property and pay fifth of the value? Should he consider it sufficient to *musalaha* (mutual agreement between the *Marji'* or his agent and the follower on matters of religious dues)?

They should evaluate the property and set aside fifth of the value, except for the portion spent during the year they lived in the house, since no *khums* should be due.

(Q.91) Is there a limit for *musalaha*? Is it a matter that should be left to the discretion of the *Marji'*?

[The bottom line is] upholding fairness concerning [the two parties]. That is, he who has the right [of a share in religious dues] and him who is charged with the duty [of paying religious dues] makes it necessary that *musalaha* is conducted on a ratio of probability (*ihtimal*).

(Q.92) A person has an appointed date for his [religious] tax year and is accountable before the Agent. The latter makes *musalaha* with them whereby the Agent receives some specified amount and treats the outstanding amount as debt. What is the approved way of settling such dues? Also, what are the boundaries within which the *mukallaf* take their time in settling the religious dues, especially, when it is common knowledge that the *mukallaf* is well off insofar as his business goes and the way with which he spends on himself and his family?

It is not permissible for the *mukallaf* to delay payment of *khums*, when they are financially sound and able to pay [religious dues] immediately and without difficulty. The rationale behind carrying the *khums* [whose payment is due] forward so that it might be paid back, albeit by instalments, is that when the *mukallif* is unable to pay immediately and the payment constitutes a burden on them. Thus, the amount due be recorded as a debt repayable on a prescribed date. If the *mukallif* can afford to pay, say in two months' time, this can not be extended to three months, and so on. Allah is All Knowing.

(Q.93) What are the *shari'i* avenues of expenditure of money received by you agents on the basis of explanation for acts of injustice (*madhalim*) and *majhoulil malik*?

The avenues of expenditure of religious dues are stated in *Rasaa'il Amaliyah*. Our agents and those licensed by us to have the right of disposal over such religious dues, as a whole or in part, do so according to our licence and in compliance with the avenues stipulated in the *shari'a* law, noting that attention is drawn to this matter when the licence is granted.

(Q.94) A person built a house with a government loan, did a *musalaha* on the fifth [value] of the property and repaid instalments to the bank, noting that the property is not among the family's living expenditure [i.e. apart from the property they live in]. Should he pay *khums* on the instalments?

As suggested by the question, the *khums* is related to the property itself. *Khums* is due on the total value of the property at the end of the tax year

[i.e. the religious one], when the whole loan was repaid, or the ratio of the portion thereof.

Part 2

Banking and Financial Service

Banking and Financial Service » Loans and Deposit

Banks are of three kinds:

1. National bank, whose capital is owned by one or more persons.
2. State owned bank, whose capital is raised by government funds.
3. Company bank, whose capital comprises government stake and public money in the form of share holdings.

(1) It is not permissible to take loan from a national bank on a condition of earning interest, because it is usury that is haraam. If one took loan as such, the loan is in order, but the condition is batil. Payment of interest [by the bank] and receipt [by the customer] thereof in fulfilment of the condition is haraam.

- However, to avoid involvement in usury transactions, you may resort to one or more of the following ways:

1. Purchase something from the owner of the bank, or its agents, at the rate of, say 10% or 20% higher than the market value, so that the bank may give you some money by way of a loan for a specified period. It may, then, be said that this loan is permissible and is free from usury.

However, it is not free from ishkal. Avoiding it is, therefore, recommended as a matter of ihtiyat luzumi. The same goes for the gift, hiring, and mutual agreement of loans concluded with strings attached.

The same rule, of making the loan conditional on preferential treatment, applies to making delay in repayment conditional thereupon.

2. Exchange the loan for sale. Suppose the bank sold a sum of money, say a hundred Dinars for a hundred and twenty, that you

must pay back in two months' time.

However, though this is not a usury loan per se, yet its validity is a question of *ishkal*.

Of course, there is no objection to the bank selling an amount of money, say a hundred Dinars, to be paid back in two months' time. The deferred sum would then be made into a different currency, the value of which is larger than the hundred Dinars according to the exchange rates in a measure commensurate with that portion constituting the difference between the hundred and the hundred and twenty Dinars. At the end of the stipulated period, the bank may take from the customer the specified currency or its equivalent in Dinars, so that the debt could be settled not in kind.

3. The bank may sell goods to the customer for a certain amount, say a hundred and twenty Dinars, to be paid back in two months' time. The bank will then buy it back from the customer for a cash price that is lower, say a hundred Dinars. This, too, is not in order if a provision is made in the first transaction of sale that the bank shall buy back the goods for a cash price that is lower than the credit price, even with the contract implicitly taking into consideration such an understanding. Yet, there is no harm in entering into such a transaction, if the contract does not contain such a provision.

It is noteworthy that even though these ways are in order, they do not materialise for the bank its fundamental objective, i.e. having the right to demand from the debtor an increase over and above the original extra amount payable at the end of the specified period. Such an increase be spiral in proportion to the period of excess delay in repaying the original debt. Taking interest for the delay or repayment is usury and is, therefore, *haraam*, albeit in a form of making it a condition in the sale agreement, for example.

(2) It is not permissible to obtain loan from a state owned bank subject to a condition of payment of interest, irrespective of whether or not it is obtained by mortgaging some property. If such a loan was obtained, however, it is invalid and so is the condition, because the bank does not own the money under its disposal to give it to the debtor.

- To avoid such a problem, it is permissible for the customer to receive the money on the basis of majhoulil malik, not with the intent of taking loan. As a matter of ihtiyat, obtaining such a loan must be with the permission of the Marji', who can authorise the recipient as how to go about spending it. However, the person obtaining the loan should not pay attention to the fact that, whether he likes it or not, the bank will charge some additional amount from him, and even though he will have to pay the additional amount when the bank demands it.

(3) It is permissible to deposit money with national banks, in other words loaning the banks.

- This, however, must be done without making a provision for charging interest on the money deposited, meaning not stipulating that the banks should give an undertaking to pay the interest on the loan. The opposite of this is that the depositor reaches a conclusion that if the bank was not going to pay the interest, he would not demand it. The intent to demand the interest does not contradict the non-stipulation. Similarly, the intent not to demand the interest does not contradict stipulation. That is because each of which is alien to the other.

(4) It is not permissible to deposit money with national banks, that is to say lending it, with the condition of obtaining interest.

- If the transaction has been concluded, depositing the money per se is in order, but not fulfilling the condition. If the bank paid the interest, the depositor should not assume ownership of the interest money. However, it is permissible for him to have the right of disposal over it, if he was sure of the acceptance of the owners [of the bank], even with the assumption that they know of the invalidity of the condition, and that he was not entitled to the interest from a shari'a viewpoint, as it happens.

(5) It is not permissible to deposit money with state owned banks, that is to say by way of loan, with the proviso of obtaining interest. It is

usury that is haraam.

- From an Islamic shari'a law standpoint, depositing the money in the bank, albeit without attaching conditions to receiving interest, amounts to wasting it. The justification for this ruling is that whatever money could be retrieved from the bank is not the bank's money per se. Rather it is from that which is majhoulil malik. Accordingly, profits and interest yielded by the depositor during his [religious] tax year, before setting aside the khums, is a matter of ishkāl. This is because he has the right of disposal over it for his living expenditure, and is not permitted to waste it. If he caused it to be wasted, he should compensate its owners.

(6) The rulings contained in the preceding five paragraphs apply to both kinds of accounts.

- These are deposit [or saving] accounts with a specified time lag, i.e. the bank is not bound to give the customer access to his money immediately [only when notice is given by the customer and after the stipulated duration has elapsed, otherwise penalty is due]. Current account is the second type of such accounts where the bank is bound to put the deposited money at the disposal of the customer whenever he requires it.

(7) National and state owned banks are also covered by the rulings outlined in the preceding paras (1-5).

- This is because the money deposited with such banks should be treated as majhoulil malik. Thus, it is not permissible to have the right of disposal over it, except after consulting the Marji'.

(8) The rulings just discussed pertain to banks in Islamic countries. As for the banks that are financed by the unbelievers, whether national [private] or otherwise, it is permissible to deposit money with them with the condition of earning interest.

- This is because, alal adhhar, obtaining usury from them is permissible.

As regards obtaining loan from these banks, subject to payment of interest, it is haraam. Avoiding such a usury transaction could be achieved by receiving the money not with intent of obtaining a loan, rather by way of istinqath. Only then, one should have the right of disposal over it without consulting the Marji'.

Banking and Financial Service » Letter of Credit

1. Import

When someone intends to import foreign merchandise, he approaches the bank to open a letter of credit (L/C). The bank gives an undertaking to handle the papers of the imported goods, deliver it to the L/C holder and pay the exporter the cost thereof. Of course, this could be done after the completion of the transaction between the importer and the exporter, be it through exchange of communications or through the agent in the country of origin. Dispatch of documentation containing specifications and quantity of the goods, and conditions agreed should also have been concluded between the two parties. Also, the importer should have paid, in part, the cost of the goods to the bank. Only then would the bank receive the whole gamut of documentation and pay the cost to the exporter.

2. Export

Export L/C differs from the Import L/C in name. That is, the foreign importer goes through the whole process as explained above in the country that imports the goods.

In essence the two L/Cs do not differ. The crux of the matter is the undertaking given, by the bank, to the seller [exporter] to (a) settle the debt of the buyer [importer], which is the price of the goods bought, and (b) receive the documentation from the seller and deliver them to the buyer. However, there is another type of L/C, where the exporter sends the documentation to the bank or its branch in the [country of origin] without prior correspondence with the party intending to import the goods. The bank, [acting as a middle man], approaches the importer with the documentation. If there is acceptance of such documentation, the importer will ask the bank to open the L/C for them. The bank will then see

the whole process through until the importer takes delivery of the goods and the exporter receives the price thereof.

(9) Apparently, it is permissible to open L/C with the banks in all the above departments. It is also permissible for the banks to carry out such services.

(10) The bank shall receive from the L/C holder two kinds of charges:

1. The first is for its services stemming from the undertaking given by it to the exporter, and for the paperwork and the like.

This sort of charge is in order on the understanding that it constitutes part of the contract [between the bank and the customer]. That is, the L/C holder agrees to pay the bank such a charge in return for carrying out such services on behalf of the customer. It could, however, be included in the ijarah agreement, provided it fulfils the conditions mentioned therein.

2. The second type of charge takes the form of interest on the sum of money the bank paid to the exporter from its own money, i.e. not from the L/C holder's own account. This proportional interest is charged on the advance made to the L/C holder for a specified period.

Charging such interest may be justified on the premise that the bank is not embarking on a lending process that involves the L/C holder.

Neither the price of the goods forms a part of its property according to the loan agreement. Thus, it is not considered usury.

Indeed, the bank pays the debt of the L/C holder at his request.

However, from a standpoint of the law of waste, the security of the L/C holder would be a sort of penalty, and not a loan surety for the payment of interest to be haraam.

However, evidently the L/C holder cannot secure for the bank the repayment of the debt per se. Charging interest, therefore, for the delay in repaying the debt is usury that is haraam.

Of course, if the L/C holder undertakes to pay back to the bank the original amount of debt plus the prescribed amount of interest as credit for, say, two months, this should fall under the terms of ijarah agreement. Its being in order is one strand of opinion.

There is, however, another way to avoid usury involved in charging such interest. That is, it could be stipulated in the terms of sale, in that the bank settles the price of the goods in foreign currency. The bank could, then, sell an amount of foreign currency, that is lent to the

importer, equivalent to the currency of his country plus the interest. Since the price and the goods are two different things, there is no harm in it.

The rulings discussed above concern national banks. As for banks solely owned by the state and those of joint ownership, where the bank settles the debt of L/C holder from the money of majhoulil malik, the customer is not legally [from the viewpoint of Islamic law] considered a debtor to the bank. The undertaking, therefore, to pay the interest to the bank does not amount to an undertaking of paying usury that is haraam.

Banking and Financial Service » Storage of Goods

The bank may act as an intermediary to deliver the goods from the exporter to the importer. In the process, it may need to store the goods at the importer's expense. This is so, if an agreement was concluded with the exporter and after the bank had paid the price of the goods and sent the papers to the importer on the arrival of the goods. Should the importer delay taking delivery of the goods, the bank stores them in a safe place at the expense of the importer. The bank may carry out the storage at the expense of the exporter, if the goods were sent through the bank without prior contract and agreement with an importer. In this case, the bank approaches an importer with the documentation. If a buyer is not found within the country that is importing the goods, the storage expenses shall be debited to the account of the exporter.

(11) It is permissible for the bank to charge a fee for storing the goods in the two cases discussed above. This is so when it is done at the request of either the exporter or the importer of the goods. This is also true if the bank has included such a condition in the contract, such as a sale contract, albeit it is implicit. Otherwise, no compensation shall be due.

Banking and Financial Service » Sale of Goods Whose Owners do not Come Forward to Take Delivery of them

It may happen that the importer neither take delivery of the goods nor pay the bank the price thereof, after the bank exhausts all means of notifying and warning the buyer to do so. In this case the bank can sell the goods to retrieve the amount it owes from the sale proceeds.

(12) It is permissible for the bank, in this case, to sell the goods; it is also permissible for the others to buy the goods.

This is because the bank is acting as an agent for the owners of the goods in selling it when they defaulted in repaying whatever cost the bank incurred in the process. This is done in implementation of either the explicit or implicit condition stipulated in such deals. If it was lawful to sell, it is [by the same standard] lawful to buy.

Banking and Financial Service » Bank Guarantee

A person enters into contract to carry out a project, such as building a school, hospital, bridge and the like, for a government or non-government organisation. The party contracting out the project may stipulate a condition requiring the contractor to pay a certain amount of money as a penalty, should the work not be completed on schedule. This is in compensation of damage that may be sustained by the first party. For the party contracting out the work to be sure of the ability of the contractor to pay such damages, they will require the contractor to bring in the bank to stand as guarantor. The bank then issues such surety whereby it pledges to pay the amount agreed should the contractor default.

(13) The guarantee given by the bank to the party contracting the work to pay the amount agreed should the contractor default is a form of financial surety, which is [in a way] similar to a personal pledge. That is, a third party stands guarantor between two contracting parties to summon the party who is owed the right, at the request of the party who owes the right.

However, a financial guarantee differs from a personal one in one aspect. The personal guarantor is responsible for paying to the party, who is owed the debt, the same amount of the debt. Should he die before honouring the guarantee, the amount due be set aside from his estate before any other shares. As for the financial guarantor, his responsibility is to pay the amount of the actual debt, rather by paying it to the party who is owed the debt. If he dies before that, no amount should be set aside from his estate, except where his will stipulates that.

The guarantee contract is made sound by the guarantor consenting to all that which proves his honouring his undertaking and obligations, be it in a written form, utterance, or action, and the acceptance of the party

commissioning the guarantee.

(14) It is permissible for the bank to receive commission from the contractor in return for standing guarantor for the contractor.

Such commission could be justified as a sort of ji'aala (fee, charge, reward). That is, the contractor determines the commission as a fee for the bank in return for the guarantee. It will then be halal for the bank to receive it.

(15) Sometimes the contractor fails to complete the project on the agreed time. He then refuses to pay the agreed amount to the owner of the project. If the bank pays the money to the owner, does the bank have the right to claim it back from the contractor? Apparently, the bank has such a right, for the guarantee is made out at the request of the contractor. He, therefore, stands to make up for the loss sustained by the bank as a result of putting forward the surety.

Chapter 16

Banking and Financial Service » Sale of Shares

Some companies could appoint the bank to sell shares for them. The bank acts as an intermediary to carry out the transaction for a fee agreed between the company and the bank.

(16) Such a transaction with the bank is permissible.

For, in reality, this could be treated as a form of ijarah. In the sense that the company hires the bank to do the work for them for an agreed fee. It could also be treated as a form of ji'aala. In either case, the transaction is in order, and the bank has the right to charge a fee in return for carrying out such work.

(17) Selling and buying such shares is in order.

Of course, the nature of business of some companies is such that dealing with them is haraam, such as companies of alcoholic drink or companies dealing with usury. Thus, it is not permissible to buy their shares or enter into transactions with them.

Chapter 17

Banking and Financial Service » Sale of Bonds

Bonds are certificates issued by legally competent authorities with a specified nominal value and an appointed maturity date. These bonds could be sold, for cash, for less than their real value. For example, a bond bearing the value of one hundred Dinars could be sold for ninety five Dinars. The buyer of the bond shall receive the full amount specified in the bond on its maturity date, say after a year. Banks may be involved in the selling process for a commission.

(18) This transaction is of two types:

1. The party issuing the bond borrows from the buyer the sum of ninety Dinars, mentioned in the previous example. The bank then pays him back the sum of one hundred Dinars at the appointed date in settlement of the debt. In the process, the five Dinars in excess of the original amount borrowed was accounted for.

This is usury that is haraam.

2. The party issuing the bond sells a hundred Dinars, payable back, say in one year's time, for the cash price of ninety five Dinars.

Although, this is not a usury loan in reality, yet its validity on the basis of sale is within the domain of ishkal, as is previously mentioned.

To sum up, it is not possible to justify the sale of bonds by official parties and others.

(19) It is not permissible for the banks to act as intermediaries in buying and selling bonds. It is also not permissible for them to charge commission for such transactions.

Banking and Financial Service » Internal and External Drafts

(20) As a juridical term, a draft requires the transfer of the debt from the transferor to the transferee. However, here it is used in a wider sense.

Hereunder are specimens of bankers drafts:

1. If a bank issues a draft because of which a person who has deposited money in the bank receives his money at another place, the bank may charge commission in return for assuming such a role. Apparently, it is permissible for the bank to charge such a commission. This is because the bank has a right to refrain from accepting a settlement of its debit if it was not at the place of the loan.

It is, therefore, permissible for the bank to charge commission for forgoing its right and accepting the settlement of the debt at another place.

2. The bank issues a draft in favour of a person that entitles him to cash a particular sum from another internal or external bank. This amounts to loan because the person has no account with the bank.

The bank can charge a certain sum of money by way of commission in return for the service.

Apparently, it is permissible for the bank to charge such commission for issuing the draft. This being so on the assumption that taking the *ji'aala* is for acting as agent for the other bank in lending the bearer of the draft the sum of money specified in it; the money paid shall be debited to the account of the first bank held with it. It is not considered as taking the *ji'aala* in return for being agent in lending, to be *haraam*. That is, the obligation to pay the *ji'aala* is not linked to the lending process *per se*, rather for acting as agent in it.

There is, therefor, no harm in that.

Moreover, if the amount specified in the draft was in foreign currency,

this entitles the bank to a right. That is, since the debtor owes the bank the amount in foreign currency, it has the right to make him pay back the debt in kind.

If the bank foregoes this right and accepted settlement of the debt in national currency, it is permissible for it to charge some of it in exchange for choosing to forfeit its right. It also can exchange it for the local currency plus the charge.

3. A person pays a bank a certain amount of money, say in Najaf and orders a draft for an equivalent amount drawn on another bank in Baghdad or abroad, say Lebanon or Syria. The bank charges commission in return for the service rendered.

This could take two forms:

1. The person can sell a certain amount of national currency to the bank for an amount of foreign currency equivalent to the original amount plus the commission.

There is no harm in it as has been discussed in similar case earlier on.

2. The bank lends the customer a certain amount of money, then makes it conditional that the borrower pays the bank commission for accepting to transfer the loan [debt] to another person to become the [new] debtor, and settling it in another country.

This is usury.

This being so because it amounts to making the extra payment part of the loan [when repaying it], though it was for the transaction of transfer and settlement of the debt..

Of course, such a transaction could be entered into without prior condition attached. One could take a loan from the bank, then request it be transferred to another bank to cash it there.

If the bank asks for a charge for accepting to do the service, it is permissible.

This is because the bank has the right to refuse the borrower's request to transfer the debt to another person to become the [new] debtor and settle it in another country.

This, however, does not fall under what the lender charges for handling the loan and allowing the borrower to delay repayment of the debt, which is usury. Rather, the bank's charges are for the bank accepting to transfer the debt to another person to become the [new] debtor, and

settling it in another place.
There is no harm in this.

(21) The bank draft may become two drafts.

The debtor may refer the creditor to the bank to issue a cheque in his favour. The bank then transfers the amount to one of its branches or to another bank in the country of the creditor so that he may receive it there. This being so because:

- (i) The draft of the debtor is a credit on the bank. Thus, the bank becomes indebted to the creditor.
- (ii) The draft of the bank is a credit on its branch or another bank in the country of the creditor.

The role of the bank in the draft in (i) and (ii) is accepting the draft and issuing it respectively.
Both the drafts are in order from an Islamic shari'a law standpoint.

However, if the draft of a bank issued to a branch representing the same entity, it cannot be said that it be a draft in a juridical sense. This is because [the process of] transfer of the debt from one person to another is absent. It is merely entertaining the request of the bank by its agent [branch] in another place to settle its debt in that place.

Nevertheless, the bank can charge commission for rendering such a service, including its accepting a draft of any of its account-holders who have a credit balance with the bank. This being so because it is considered as a draft on the debtor.

The preferred answer (*walmukhtar*) is that it cannot be activated without the acceptance of the party it is transferred to .It may charge commission for the service.

(22) Besides the banks, the above-mentioned rules, procedures and their juridical implications could also be followed by common people.

That is, if a person gives some money to another person and asks him to make a pay order in favour of another person, either in the same country or some other country, there is no harm if the person accepting the pay

order charges some fee for this service. Similarly, if a person takes some money from another person and gives him a pay order on a third person to realise the amount from him, the person in whose name the pay order was given can claim a fee from the person who gave the pay order.

(23) In considering the discussion mentioned above, it makes no difference as to whether or not the person, on whom the pay order is given, is a debtor as long as there is a balance in the case of the first one, and no balance in the case of the second.

Chapter 19

Banking and Financial Service » Bank Prizes

Banks may give prizes to their customers by a draw to encourage them to deposit money with them. Is it permissible for the bank to do so? Here are the details.

If the bank embarks on such a process without imposing a condition on its customer when they deposit their money with it, rather encouraging them to increase their deposit and attract others to join in, it is permissible. It is also permissible for the person who wins a prize to accept it - as majhoulil malik - after getting the permission of the Marji', as a matter of ihtiyat. That is, if the bank was state owned or of joint ownership, he has the right of disposal over it after consulting the Marji'. If the bank, however, is owned by a private party, it is not necessary to obtain the permission of the Marji' to accept the prize and have the right of disposal over its money.

However, if the bank carries out such a free draw and gives the prize in fulfilment of a condition imposed by its customers in the loan contract or the like, it is not permissible to do so. It is not permissible, too, for the winner of the prize to accept it in fulfilment of the condition. It is permissible to accept it without the condition.

Banking and Financial Service » Bill of Exchange

Among bank services is the realisation of the amount of a bill of exchange for its customers. This is done by informing the signatory of the bill before the expiration of the prescribed period so that he be ready to pay. When the money is realised, the amount is credited to the customer's account or be paid to him in cash. The bank charges commission for this service. Similarly, the bank could cash a cheque for its bearer from his country or another country, in the event the bearer does not wish to do it himself. The bank may charge commission for rendering such service.

(25) Realisation of the amount of a bill of exchange and charging commission may take different forms:

1. The beneficiary may approach the bank to realise the amount of the bill, that is not written out in its favour, for a certain amount of commission.

Apparently, this type of service and charging commission for it is permissible, provided that the job of the bank is confined to the realisation of the amount of the bill. As for the collection of its usury interest, it is not permissible. From jurisprudence viewpoint, the commission could be treated as *ji'aala* from the creditor to the bank for collecting its debt.

2. The beneficiary may submit to the bank a bill of exchange and instruct it to pay it, but the latter is not a debtor to the person who signed the bill, albeit the bank is a debtor to the signatory for a currency other than the one made out in the bill.

In such a case, it is permissible for the bank to charge commission for accepting the bill of exchange - according to the condition discussed earlier on.

This being so because non-acceptance is the prerogative of the party who is not a debtor. The same goes for the debtor with a currency that is

different from that which the bill was issued in.

There is no harm in charging some money in return for forgoing one's right.

3. The beneficiary submits to the bank a bill of exchange for payment and debits the account of its customer. That is, after notifying the bank of the due date of payment so that the bank would debit its value to the current account of the customer and credit the account of the beneficiary (the creditor) or pay its amount in cash to him. This is because the person signing the bill of exchange has referred his creditor to the bank that is indebted to him. Thus, this could be treated as money order on the debtor. What matters, as has already been explained, is the acceptance of the party who is going to settle the amount in the money order, which is the bank in this case, as the bill would not be effective without this acceptance.

Accordingly, it is permissible for the bank to charge commission for accepting the money order and settling the debt.

Chapter 21

Banking and Financial Service » Trading in Foreign Currency

Among the activities of banks is buying and selling foreign currency to make it available in sufficient quantities to satisfy the needs of their customers, especially businessmen involved in importing goods. Another reason why banks embark on such activity is profit arising from the difference between buying and selling rates.

(26) Buying and selling foreign currency, at market price and for more or for less, is in order. There is also no difference whether selling or buying is done instantly [on the spot] or in the future. For, since the bank deals with instant transactions, it can deal with deferred ones.

Banking and Financial Service » Overdraft

A holder of a current account with any bank is entitled to withdraw any money from his account, provided there are sufficient funds in the account.

Of course, the bank may allow the account-holder to withdraw a certain amount, though, there is no credit balance in the account. This is done for the confidence the bank has in its customer. The bank charges interest on the amount withdrawn. This is called overdraft.

(27) Overdraft is a form of loan taken from the bank, with the proviso of paying the interest due. It is, therefore, a usury loan that is haraam. What the bank charges in interest on the amount withdrawn is treated as usury that is haraam.

Of course, if the bank was state owned or a national one, there is no harm in withdrawing money from it, not with the intent to taking loan, rather to obtain money that is majhoulil malik, as was explained in article (2).

Banking and Financial Service » Discounting of Bill of Exchange

Foreword

- 1. Sale differs from loan in that a person becomes the owner of a property against the payment of a particular price. In the case of loan, the property is given into the ownership of a person on his responsibility, i.e. the debtor becomes responsible for the payment of the particular quantity of the commodity or if the transfer takes place against price, he becomes responsible to pay its price. Also, what sets sale apart from the loan is that usury sale is invalid to start with, unlike the usury loan, in that the latter is invalid because of interest, i.e. the loan itself is valid.
 - 1. It may be said that sale and loan are different in some other aspect. That is, if there is sale, there must be difference between the thing sold and its price, but it is not necessary in the case of loan. For example, if a hundred Dinars were sold against a hundred and ten Dinars by way of credit, there must be a difference between these amounts, e.g. one of which could be an Iraqi Dinar and the other a Jordanian Dinar; otherwise, if they were all Iraqi Dinars of the same denomination and print, this, in reality, is loan taking the form of sale, because the exchange is of the same kind plus the increase [interest]. It is, therefore, haraam for it is an interest-bearing loan.
 - 2. However, this is not quite clear, in that it suffices to realise the concept of sale where there is a difference in the exchange, i.e. between the thing sold and the price. That is, the former is a real property and the second is entirely a debt. Moreover, what needs to complement this contention to

make such a transaction sound is to say: [For example] the sale of twenty kilograms of wheat for a cash price for the same quantity on credit, under the pretext that, in reality, it is not a usury loan, albeit in the form of sale. Although, as the contender admits, the exchange has been made by selling one thing in return for another plus the increase. That is why it is usury that is haraam

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- 3. There is a third difference, in that, in the case of loan if the condition of excess payment is imposed, the transaction becomes usury that is haraam because of interest. Unlike sale where the excess becomes absolutely haraam, irrespective of whether the thing given on loan is one of those things that are sold by weighing or measuring. However, it is not so in the case of sale. If the price of the transaction is settled in cash, the excess, is not usury. But if the deal is done on account of credit, e.g. A hundred eggs are sold for a hundred and ten eggs to be paid back in a month's time, or twenty kilograms of rice for forty kilograms of wheat, to be paid back in a month's time. To say such a transaction does not come under the umbrella of usury, is not devoid of ishkal. So, as a matter of ihtiyat luzumi, one must avoid such transactions.
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- 2. As the currency notes are of that which can be counted, you can sell one kind for another preferentially, though they are different in kind, whether for cash or on credit. However, if the currency was of the same kind, cash preferential sale is permissible. As for credit, it is not devoid of ishkal, as is explained earlier on. Accordingly, it is permissible, for example, for a person who owes ten Iraqi Dinars to sell it for less than the real amount, say for the cash price of nine Dinars. It is, also, permissible for such a creditor to sell what he owes for less, in exchange of, say nine Jordanian Dinars in cash and on credit.
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- 3. The bill of exchange, which is current among businessmen, does not carry any value, as is the case of bank notes, rather it is used as a sort of evidence, stating that the signatory of the bill of exchange stands debtor to the one in whose favour it was made. That is

because the price of goods is not treated to be paid on furnishing a bill of exchange, and if it is lost or damaged by the seller, the goods belong to the buyer and he is responsible to pay the price. Unlike, if the price of goods is paid in the shape of currency notes and those notes were lost or damaged by the seller, the buyer is not responsible to pay the price of goods again.

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(28) Bills of exchange are of two kinds:

1. A bill of exchange that is a proof of a real loan, such as the signatory stands debtor to the person in whose favour the bill of exchange was made, stating the amount of debt.
2. A bill of exchange that is a proof of an unreal loan.

In the first case the creditor can sell a loan payable on demand for a less amount of cash. For example, he can sell a loan of a hundred Dinars for ninety eight in cash.

Of course, it is not permissible to sell it on credit, because it falls under selling debt for debt. Then the bank or some other person may demand the amount from the debtor (the one signing the bill of exchange) on the date the payment of the debt becomes due.

As for the second case, [when the bill of exchange is a proof of unreal loan], the creditor cannot sell it for cash because, in this case, the person giving the bill of exchange does not actually owe (the beneficiary) anything, and it is just written to enable the beneficiary to realise its value. Hence the name (a courtesy bill of exchange).

Nevertheless, realising the value of a bill of exchange could be done in another way, i.e. by way of sale. For example, the person giving the bill of exchange may make the person obtaining it his agent. He can then authorise him to sell it at a lower price, taking into consideration the difference between the things to be exchanged, i.e. the price of the bill should not be in the currency mentioned in it. For example, the value is fifty Iraqi Dinars and the price one thousand Iranian Tumans. In so doing, the signatory of the bill of exchange will become debtor for fifty Dinars vis-a-vis one thousand Tumans. The signatory authorises the beneficiary to

sell the price, which is one thousand Tumans, for an equivalent value, which is fifty Dinars. Accordingly, the beneficiary shall stand debtor to the signatory for an amount equivalent to the debt the signatory owes to the bank.

However, this venue is of little benefit, for it is of consequence when the realisation is done in a foreign currency. When it is done in a national currency, it has no consequence, because you cannot treat it as preferential sale on credit, the forms of which has already been discussed, of that which could be counted.

As for the realisation of the value of unreal bill of exchange in the bank by way of loan, it could be done when the beneficiary borrows an amount which is less than that mentioned in the nominal bill of exchange. Then the bank refers the creditor to the person who signed it [the debtor] for the realisation of its full value. As such this is a non-debtor money order, i.e. usury that is haraam. This is because the condition stipulated by the bank in the transaction i.e. the realisation of the value of the bill of exchange, to deduct an amount from the value of the bill, is a condition to charge an extra amount. From a jurisprudence standpoint, this is haraam, albeit the excess payment is not for the remaining period, rather for the service rendered by the bank. This is because the lender has no right to tie the borrower down with some sort of financial benefit.

This is applicable to private banks. However, if the bank was state owned or a national one, it is possible to avoid that [usury interest] thus: The beneficiary should not intend, from the transaction, to do anything that may be described as sale or loan. Rather, his objective should be to obtain money that is majhoulil malik, which he can assume ownership of after securing the permission of the Marji' as a matter of ihtiyat. It would then be lawful to have the right of disposal over it after consulting the Marji' as to the ways of making it lawful. At the end of the appointed period, the bank might approach the person who signed the bill of exchange and impose on him the payment of the value thereof. He can, then, have recourse to the beneficiary for the payment he made, if he had signed the bill of exchange at his request.

Banking and Financial Service » Working for Banks

There are two kinds of bank business:

1. The first is haraam. This may cover the type that relates to transactions leading to usury, such as acting as an agent in handling, registering, acting as witness, receiving excess money [interest] on behalf of the owner and the like. Of the same nature are transactions pertaining to companies involved in usury or the merchandise of alcoholic drink, be it sale of their shares, the opening of letter of credit or similar work.

All this sort of work is haraam. It is not permissible to be involved in it and those working in it are not entitled to wages in return for the work they do.

2. The second kind is that which does not involve interest. It is permissible to take part in it and receive wages thereof.

(29) If, in the usury transaction, the party paying the interest is an unbeliever, be it a foreign bank or other, it is, as explained earlier on, permissible for a Muslim to take. Accordingly, it is permissible to deal in such work, which is linked to carrying out such usury transactions within the banks and outside them.

(30) In some cases, some of the money, deposited with either state owned or national bank in Muslim countries is considered among money of majhoulil malik, needs consultation with the Marji' to having the right of disposal over it. There is, therefore, ishkal in working for the bank and getting involved in either receiving from or delivering such money to bank customers, from those who might have the right of disposal over it without a license from the Marji' to make it good.

(31) The validity of ji'aala, ijarah, and money order and similar dealings with state banks in Muslim countries is dependant on the license of the Marji'. It is not in order without his permission.

Banking and Financial Service » Insurance Agreement

Insurance is a contract in which the Insured undertakes to pay the Insurer a specified sum of money [premium]. Such premium could be spread out on a monthly basis or paid for the whole year. In return the Insurer undertakes to pay the Insured or the beneficiary, in whose favour the insurance policy was made, a sum of money, regular income, or any other financial benefit, in the event of accident or loss mentioned in the contract [policy].

(32) Hereunder are some types of insurance:

Life assurance: against death and some other dangers, such as illness and the like.

Insurance for property, cars, aeroplanes, ships, etc. against fire, theft, and sinking, etc..

There are other types of insurance also but it is not necessary to mention them here because the ruling of the shari'a law that applies to the afore-said kinds of insurance also apply to them.

(33) Insurance contract comprises the following components:

1. Offer by the Insurance Company
2. Acceptance by the Insured.
3. Agreeing the period of the cover - commencement and termination.

(34) It is necessary that the danger leading to the damage be specified, e.g. sinking, fire, theft, illness, death, etc. The amount of instalments [premiums] payable by the policy holder (insured), whether monthly or yearly.

(35) It is conditional that the two parties of the insurance contract be adults, sane, have free choice and intent, and must not be under guardianship for being in-competent or bankrupt. The contract would, therefore, not be in order if one of the parties is either minor, insane, weak, one under duress, or one under guardianship.

(36) Insurance contract is a binding one and it cannot be annulled except with the consent of the parties.

Of course, if the contract stipulates the right of cancellation to either party (the Insured and the Insurer) or both of them, the annulment is in order according to the conditions.

(37) If the Insurer defaults, the Insured has the right to force him to fulfil the contract, even with having recourse to the Marji' or any other [authority]. He also has the right to annul the contract and retrieve the insurance premium.

(38) When it is decided that the insurance premium be paid by instalments, and the Insured fails to pay it, whether in quantity or manner, it is not obligatory on the Insurer to pay compensation for the loss or damage, as is undertaken. Similarly, the Insured has no right to claim back any instalments paid.

(39) The validity of insurance contract is not dependant on a specified period. Rather, any duration mutually agreed between the two parties - the Insured and the Insurer - is in order.

(40) A group of people agreed to establish a company, that was jointly financed by them. In the agreement that set up the company, each one of them made it conditional on the others, that in the event of anyone of them sustaining a loss to his person or property, such as car, house, the company will compensate him for it out of its capital or profits obligatory to act upon the condition as long as the agreement is in force.

Banking and Financial Service » Key Premium (Sarqufliyah)

Among common transactions between businessmen and traders what is called (Key Premium). It is where a lessee forgoes his right in the shop, place of trading or business for another in return for a mutually agreed amount of money [premium].

Also a transaction where the lessor forgoes his right in ejecting the lessee from the property or increase the rent [or lease] at the end of the period of rent for a mutually agreed sum of money.

(41) Renting property for carrying out business activity does not constitute a right for the lessee so as to obligate the lessor not to evict him from the property and renew the rent contract without increase at the end of the rent cycle.

The same applies to the length of stay in the property and appreciation of the location, i.e. they do not warrant a right of stay. Rather, if the period of the rent comes to a close, the lessee should vacate the place and hand it back to the landlord.

If the lessee makes use of governmental laws [designed to protect lessees], preventing the landlord from forcing the lessee to vacate the property or not increasing the rent, such an act is haraam. The lessee's having a free hand in the property without the consent of the owner is considered usurpation; any money the lessee takes in order to vacate the property [for use of another one] is haraam.

(42) A landlord rented out his premises to a person for one year for a rent of, say, a hundred Dinars. According to the terms of agreement,

the landlord undertook to renew the rent for the lessee on each anniversary, or to another lessee by way of transfer, without increasing the rent at a premium of, say, five hundred Dinars. The second lessee decided to transfer the lease to a third person, subject to securing parity of treatment. In this case, the [first] lessee can take an amount of money equivalent to that paid to the landlord in cash, or less or more as may be the case, according to what they mutually agreed to.

(43) A landlord rented his property to a person for a specified period. Among the terms of contract, he undertook to renew the rent for subsequent years, at a premium or without it, in the form the contract concluded the first time or according to what is generally accepted. It so happened that another person paid a certain amount of money to the original lessee in return for forgoing his right in renting the premises and, therefore, vacating it. This deal was struck subject to the condition that the new lessee will have no right of disposal over the property, apart from taking possession of it [to trade]. On the other hand, the landlord has the right of renting the property to whomsoever he wished, after he takes vacant possession of it [from the second lessee]. In such a case, the [first] lessor can take the agreed amount; the premium here is for vacating the property per se, and not for the transfer of the right of disposal from him to the one who paid the premium.

(44) The landlord should honour his undertaking in the rent agreement. Pursuant to article (42), he should rent the property to the lessee or that to whom he forwent his right without increasing the rent. Pursuant to article (43), he should, also, renew the rent for the lessee as long as he wants to stay in the property for the same amount of rent, or the amount generally accepted according to what the agreement stipulates.

If the landlord fails to honour the condition and declines to renew the rent, the obligee can force him, albeit by having recourse to the Marji' or any other [competent authority]. However, if forcing the landlord can bear no fruit, for whatever reason, the lessee can not have a free hand in the property without the landlord's consent.

(45) According to articles (42 and 43), the condition in the rent agreement could be made a condition of consequence rather than a condition of action. That is, making the renewal, as suggested, subject to the

condition that the lessee, or his direct or indirect agent, has the right of occupying the property and making use of it for a specified yearly rent, or for the amount of rent generally accepted. In such a case, the lessee or any person appointed by him has the right of occupying the property and making use of it, even without the consent of the landlord. The latter has no right, other than claiming the amount mutually agreed between him and the lessee for the said right [of occupying the property].

Banking and Financial Service » Rules of Post-mortem

(46) It is not permissible to dissect the dead body of a Muslim, i.e. to carry out a post-mortem. If such an act is carried out, it is obligatory on the person conducting the operation to pay compensation according to the rules detailed in (the Book of Compensations).

(47) It is permissible to dissect the dead body of an unbeliever, provided his blood was spared during his life-time. Otherwise, as in the case of a covenanted 'dhimmi' person, avoiding carrying out post-mortem becomes a matter of ihtiyat luzumi.

Of course, if post-mortem is permissible according to his faith, in general, with his permission during his lifetime, or with the permission of his next of kin after his death, its permissibility is not in doubt.

As for the one whose nature of blood is suspect, i.e. whether or not his blood was spared during his lifetime, it is permissible to carry out post-mortem on his body, if there be no proof to suggest otherwise.

(48) The life of a Muslim may depend upon dissecting a dead body. Since it is not viable to dissect the dead body of an unbeliever, other than the dead body of the one whose blood was spared or the one whose state of faith is unknown, it is permissible to dissect some other body belonging to a non-Muslim. If it is not available, it is permissible to resort to dissecting a body of a Muslim. It is not permissible to dissect a dead body of a Muslim for training purposes and the like, unless a life of another Muslim is at stake.

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Banking and Financial Service » Rules of Transplantation

(49) It is not permissible to remove any organ from a dead body of a Muslim, such as an eye or the like to transplant it in another's live body. If such an act was carried out the person who did it must bear the responsibility of paying compensation.

Is it permissible to transplant the part or organ that has been removed, or is it obligatory to bury it ?

The second is more likely. Of course, it is not obligatory to remove it after it has been transplanted where the spirit has entered it.

(50) Sometimes, the preservation of life of a Muslim is dependant on removing an organ from a dead body of a Muslim and transplanting it in his body. The compensation should be made obligatory on the person who carried out the operation of removal as a matter of ihtiyat. If, however, the organ was transplanted in the live body, the rules concerning the living are, therefore, applicable, because it has become part of it [the body].

(51) Is it permissible to remove an organ from the dead body of a Muslim and transplant it in a live body, if the life of the [counterpart] organ was dependent on the former?

Apparently, it is not permissible.

(52) Someone stated in his will that, after his death, some of his organs be removed by way of donation for use as necessary. If the life of a person is not threatened, [i.e. it is not dependant on receiving the donated organ], there is ishkal in implementing the will, so as in the

permissibility of removing the organs. However, alal adhhar, compensation is not obligatory on the person who carried out the operation of removing the organs.

(53) Is it permissible to remove an organ of a living person to transplant it in another body if he consented to that?

There is some detail in this matter.

If the removal of the particular part or organ would inflict serious harm [on the donor], as in the case of removing an eye or amputating a hand or a foot, it is not permissible. Otherwise, it is permissible, as in the case of skin graft and bone marrow.

Is it permissible to charge money for this?

Apparently, it is permissible.

(54) It is permissible to donate blood for needy patients for a fee.

(55) It is permissible to remove organs from the dead body of an unbeliever, whose blood had been spared, or him whose state of faith is not known, to transplant them in the body of a Muslim. In this case, the rules regarding the body of a Muslim apply, for the new organ or part has become part of his body. There is, also, no harm in using organs of an inherently najis (ceremonially unclean) animal, such as dog. In this case, too, the rules concerning the recipient body apply. It is, therefore, permissible to perform prayer, on the assumption that it has become tahir through being part of the body as a result of the spirit entering it.

Banking and Financial Service » Artificial Insemination

(56) It is not permissible to inseminate a woman with the sperm of a man, other than her husband, irrespective of whether or not she was married. It makes no difference whether husband and wife consented to the act or not. Likewise, if insemination is done by the husband or another man.

(57) A woman was inseminated with the sperm of a stranger; she conceived and gave birth to a baby. If this happened accidentally, in that she was inadvertently inseminated by another man's sperm, there is no *ishkal* that such a child be treated as the offspring of the man whose sperm was used in the process. In a way it is akin to sexual intercourse by error (*bishubha*).

If, however, this was deliberately done and with intent, it is likely that the child be treated as the offspring of the owner of sperm. Thus, all rules regarding pedigree and inheritance apply. This is being so, for he who is exempt from inheritance is the offspring of an adulterous relationship. The child, the subject of this article, is not the same, albeit the act that led to conceiving his seed was *haraam*.

Most likely, the same rules apply to treating him as the offspring of the mother, even in the second case. As such, there will be no difference between him and his half brothers [from his mother].

Similarly, a woman placed the semen of her husband into the vagina of another woman by some means, such as *clitorism* (*musahaqah*). The woman became pregnant and gave birth to a child. In this case, the father of the child will be the one, whose semen was used, and the woman, who bore and gave birth to it, albeit the act that led to this situation was

haraam.

(58) A female's egg was taken and placed in an artificial womb [tube] together with a man's sperm to be fertilised. The foetus [was transferred and implanted into the womb of the woman until it became] a fully grown baby. [The mother gave birth to it]. It is evident the child belongs to the man and woman whose semen and egg was used respectively. In such a case, all rules regarding pedigree and inheritance apply.

Of course, the child does not inherit any parent who died before the insemination took place.

(59) An inseminated egg of a woman was implanted in another woman's womb. The foetus was carried and nurtured by the second woman until she gave birth to the baby. Does the child belong to the first woman or the second?

Although the answer could go either way, The one that carries more weight, though, is that the baby belongs to the first woman. As a matter of ihtiyat, though, the second opinion could also be acted upon.

(60) It is permissible to inseminate the egg of a woman with her husband's sperm.

Of course, it is not permissible for a stranger, other than the husband, to handle the process, if it required looking into or touching what is forbidden [of the woman's body]. The rules regarding the newly born bay by such means are the same as those that apply to the parent's other children.

Chapter 30

Banking and Financial Service » Rules of Birth Control

Banking and Financial Service » Rules of Roads Constructed by Government

(66) It is permissible to use the roads and pavements constructed on previous sites of private property bought by the government, who demolished them, to build such roads.

Of course, whomsoever knew of a private property that was forcibly owned by the government, without having the landlords' consent by way of compensation or the like, the rules regarding usurped land apply. In this case, it is not permissible to use such a site, even walk in it, without prior consent of the original owners or their guardian, from their immediate relatives - e.g. father, grandfather - or anyone appointed by them. If the owner is unknown, it should be treated as majhoulil malik, where the advice of the Marji' should be sought. The same ruling applies to the remnants of property, in that it is not permissible to have free hand in them, except with the permission of their owners.

(67) It is permissible to cross or go through lands belonging to mosques that are situated on roads. Similarly, it is permissible to sit in them or do any other [lawful] acts. The same goes for the lands of Hussainiyyas, cemeteries and similar public endowment places.

As for lands belonging to schools and the like, there is ishkal in the permissibility of having the same access [as in mosques, cemeteries and Hussainiyyas discussed above], except for those purposes and persons stipulated in the endowment deed.

(68) The land of mosques falling within the site of a road under construction will still be considered endowment (waqf). It is to be noted, however, that rules concerning mosques, be they in use or not, should be upheld. These are non-permissibility of defiling them, obligation to

removing uncleanness (najasah) from within their precincts, non-permissibility for a woman who is in haydh or nifas to stay there, non-permissibility of a man who is najis to stay in them, etc.

As for the remnants [ruins] thereof, if they are not outside the pale of what is generally accepted as a mosque, the rules governing the mosques should still carry weight. In case it is no longer what you can term as mosque, for example they were turned into shops, houses, etc. by the oppressor (adh-Dhalim), the rules in question do not apply to them. It is, therefore, permissible to use them, in any manner lawful, except that which perpetuates the state of them being maghsoub; it is not permissible.

(69) If what was left of the mosque's furniture, equipment, tools and appliances, building material, etc. after its demolition, had originally been confined to its sole use, by way of endowment deed, it is obligatory to make use of them in another mosque. Should this not be possible, they must be donated to other public places. In case the latter cannot possibly be done, they should be sold and the proceeds be spent on other mosques.

If what was left of the mosque's fixtures were originally of its own property, since they (in kind) were bought for the sole use of the mosque by way of endowment deed, it is not obligatory to use them (in kind) in another mosque. Rather, it is permissible for the guardian or any authorised person, as they deem fit, to sell them and spend the proceeds on another mosque.

The rules that have been discussed here should apply to the fixtures of schools, Hussainiyyas and other public places, previously occupying sites that were later used to build roads on.

(70) The rules pertaining to Muslim cemeteries, previously occupying sites that were later used to build roads on, be they private property or public endowments, have already been discussed. This is the case, if crossing or going through their territory does not amount to desecrating the dead. Otherwise, it is not permissible.

If they were neither private property nor public endowment, there is no harm in making use of them, provided the act does not constitute

desecration.

The same goes for the remnants of land thereof. That is, on the first assumption, it is not permissible to dispose of it or sell it, except with the permission of their owner. On the second assumption, it is not permissible, except with the permission of the guardian or whoever in his capacity. The proceeds of sale should be spent on other Muslim cemeteries, taking into account the intimate closeness of relatives as first priority, as a matter of ihtiyat.

On the third assumption, it is permissible without the permission of anyone, except where it does not amount to having free hand in other people's property, such as the sites of demolished graves.

Banking and Financial Service » Issues Relating to Prayer and Fasting

(71) During Ramadhan, a fasting person travelled by air to a destination in the West. He did not break his fast in his place of residence. He then arrived at a place where the sun has not yet set. Is it obligatory on him to abstain from eating and drinking till the time of sun set?

Apparently, it is not obligatory, although abstaining is advisable as a matter of ihtiyat.

(72) A mukallaf said Subh(dawn) prayer in his home town, he then travelled to a Western destination. He arrived at a town before dawn. Then dawn broke.

On a second assumption, he said Dhuhr (noon) prayer in his home town, then travelled by air. He arrived at a town where the sun was yet to enter into decline [to the West]. Then it entered into decline.

Is it obligatory on him to repeat his prayers in all these assumptions?

There are two options. As a matter of ihtiyat, it is obligatory [that he repeats his prayers]. The second is that, alal adhhar, it is not obligatory.

(73) A mukallaf did not perform his prayer on time, such as in the case of sunrise or sunset without him being able to perform Subh, Dhuhr and Asr (afternoon) prayers. He travelled and arrived at a town where neither sunrise nor sunset has taken place. Should he perform his prayers adaa' (as if they were performed at their prescribed times), qadhaa' (in lieu), or ma fith thimmah (as if he was repaying a debt)?

There is more than one course of action. However, as a matter of ihtiyat,

they should be performed with the niyyah of ma fith thimmah, meaning in a more general sense than performing them adaa' or qadhaa'.

(74) A mukallaf, travelling by air, wanted to perform his prayer aboard the plane. If it was possible, i.e. fulfilling the conditions of facing the [direction] of qibla, stability of position, and others, his prayer is in order. Conversely, it will not be in order, as a matter of ihtiyat, especially if he still has such ample time that he would be able to perform it fulfilling all conditions, after he disembarks the plane.

In case, however, time was pressing, he should perform his prayer aboard the plane. If he was able to locate the direction of qibla, he should face that direction. His prayer would not be in order if he breaks the condition of direction, unless for a necessity. In this case, he should move towards the direction of the qibla whenever the aeroplane moves [in the opposite direction]; he should abstain from recitation during the time of moving. If it was not possible to set his face to the qibla, he should take account of the fact that it should be between right and left. If it was not possible to ascertain the direction of qibla, he should do his best to try to identify it and act according to what he has reached of guess work. If this was not feasible, he should perform his prayer facing any direction that might contain the qibla. As a matter of ihtiyat, however, he should perform his prayers once in each of [the] four directions..

This is being so if he was able to face the qibla, otherwise saying (takbiratul ihraam) - Allah is Great [one of the main parts of prayer, after niyyah] would do. If neither is possible, the condition regarding facing qibla ceases to be operative.

However, as a matter of strong possibility (al aqwa), it is permissible to board an aeroplane and the like as a matter of choice before the onset [of prayer], albeit with the knowledge that he would be obliged to perform prayer on board, not fulfilling the two conditions of facing the qibla and maintaining a stable position.

(75) A person travelled aboard an aeroplane [craft], whose speed is equal to that of the earth, heading towards the West from the East. The craft went into orbit around the earth for some time. In such a case, the five prayers should be performed in every twenty-four hour period with the niyyah of alqurbal mutlaqah (The intention for prayer done

with a view to seeking nearness to Allah, i.e. without designating whether it is adaa' or qadhaa'). As for fasting, it should later be performed qadhaa'.

If the speed of the [space craft] was double that of the earth, the cycle is, naturally, completed in periods of twelve hours. Is it obligatory on the traveller to perform Subh prayer at every dawn, Dhuhur and Asr prayers at every noon time, and Maghrib and Isha at every sunset?

As a matter of ihtiyat luzumi, [one should perform prayers in the manner suggested by the question, i.e. five prayers every twelve hours].

If, for example, the space craft orbited the earth at three-hour intervals or less, evidently it is not obligatory to perform prayers at every dawn, noon, and sunset. As a matter of ihtiyat, one should perform prayers at twenty-four hour cycles with the niyyah of alqurbal mutlaqah. To do so, one should take into consideration the occurrence of Subh prayer between two dawns, Dhuhur and Asr between a noon and a sunset that follows it, and Maghrib and Isha between a sunset and a midnight that follows it.

To sum up, if the movement of the craft was from the West to East and its speed was equivalent to that of the earth, evidently prayers should be performed at their prescribed times. Similarly, if its speed was less than that of the earth, or it was much more than that of the earth, such as the cycle is completed every three hours, the rules that should be applied are as discussed in the preceding paragraph.

(76) The nature of business or job of a mukallaf is such that he should fast during travelling time. Dawn broke while he is still in his home town. He decided to travel by air with the intention of fasting. If he arrives at an other town while the dawn has not yet broken, is it permissible for him to eat and drink and do similar acts?

Evidently, it is permissible.

(77) During the month of Ramadhan, a traveller set on a journey from his home town ba'daz zawaal (after the sun disc has declined toward the West). He arrived at another town where the sun was still in a position before zawaal. Is it obligatory on him to abstain from eating and

drinking, and thus complete his fasting?

As a matter of ihtiyat, it is the case.

(78) The nature of business or job of a mukallaf is such that he should fast during travelling time. He travelled from his home town where he sighted the new moon of Ramadhan, and arrived at another destination where no sighting has taken place. This is because the two destinations are located in two different horizons. It is not obligatory on him to fast for that day.

The new moon of Shawwal was sighted in a town and Eid (festivities marking the end of the fasting season) was celebrated. Then the mukallaf made a journey to another town, where the moon has not yet been sighted for difference of their horizons. As a matter of ihtiyat, abstaining from eating and drinking should be maintained for the rest of that day. Fasting could be performed at later date.

(79) If the mukallaf was in a place where day light goes for six months on end and so as night, he should, as a matter of ihtiyat, observe the changing of day and night in a twenty-four hour cycle in the nearest town to where he lives. He could then perform the five prayers according to the time table of that town with the niyyah of al qurbal mutlaqah. As for fasting, he could move to a town where he could be able to perform fasting, either during Ramadhan or later. If neither is possible fidya (redemption) for not fasting should be in order.

The mukallaf is in a town that has day and night in a twenty-four hour cycle. The proportion, however, of day and night is such that day light is twenty-three hours and night time is one hour, or vice versa. The rules regarding prayer times should follow the sequence of day and night.

As for fasting Ramadhan, it should be performed as best as he could. Otherwise, it does not become obligatory. If it was possible to fast in lieu, it becomes obligatory. If not, fidya for not fasting becomes due.

Banking and Financial Service » Lottery Tickets

These are tickets sold by companies whereby they pledge to draw the winning numbers. Whomsoever happen to have such numbers on his ticket will be declared the winner and should get a prize. This could take different forms.

(i) The aim of the buyer of such a ticket could be the possibility of winning the prize.

This type of transaction is haraam and batil without ishkāl. If the haraam act had been committed and he won, and the company happened to be state owned, the amount of the prize taken should be treated as *majhoulil malik*. The permissibility of having the right of disposal over such money is dependant on consulting the *Marji'* to finding a legitimate way of making it good. If the company was private, the right of disposal over the prize money is in order. However, one should take account of securing the consent of the owners of the money, no matter whether they know the transaction is imperfect (*fasidah*).

(ii) Giving the money is done without expecting a return on it. That is donating it for a good cause, such as building a school or a bridge, etc., with no intention of winning a prize or making a profit. If this was the case, there is no harm in it.

However, if he won a prize, there is no objection that he received it, and could have the right of disposal over the its money, after consultation with the *Marji'* to finding a legitimate way of making it good. This should be the case if the company was owned by the government. Otherwise, there should be no need for obtaining the permission of the *Marji'*.

(iii) Payment of money is done by way of loan, provided that the money lent be returned in, say , six months time. However, repayment

is made subject to the condition of obtaining a lottery ticket, whose value the company will pay should the participant win.

This type of transaction is haraam as it constitutes a form of usury loan.

Part 3

Rules of Hajj

Rules of Hajj (Addendum) » Affordability

Q. A person performed umrah tamatu' (a visitation ritual that is obligatory before performing hajj) for another. Before embarking on hajj rituals, he realised that it was within his means, right from the time he set out from his home town, to perform [obligatory] hajj for himself. Should he carry on with completing what he was charged with, i.e. to perform hajj by proxy, or perform hajj for himself? On the assumption that it be obligatory on him to perform hajj for himself, where could he wear ihraam for umrah tamatu'? What will the ruling be if he became financially capable after the umrah that he performed as agent and before the onset of hajj rituals?

On the first assumption, if he was sure of his financial position that he would be able to perform hajj for himself the following year, he should fulfil what he was hired to do, i.e. complete hajj as a proxy. Otherwise, he should perform hajj for himself. Ihraam for umrah tamatu' should be worn from the miqat (appointed place/s where pilgrims are supposed to put their ihraam on as a first step to performing umrah and hajj rituals). The same applies when he becomes financially capable after performing umrah on behalf of others, provided such capability comes about from sources other than the wages of ijarah.

Chapter 35

Rules of Hajj (Addendum) » Paying Khums on Expenses Arising

Q. Suppose khums was due on the money set aside for making the journey for hajj, would paying khums on this money become obligatory, so that hajj is rendered valid, provided khums is paid on the rest of the wealth after performing hajj?

It is not permissible to delay payment of khums as it amounts to usurpation that is haraam. However, if did he set khums due on hajj money aside and performed hajj, it is in order. However, he be deemed sinful for delaying payment of khums on the rest of his wealth.

Rules of Hajj (Addendum) » Making a Will for Performing Hajj

Q. Is making a will, by appointing someone, who is physically disabled, to perform hajj, for the mukkalf after their death, in order?

[There are three assumptions]. Either the person who made the will did not know of the disability [of the agent]; or it (disability) could have happened after the will had been made and he did not know of it until his death; or it could have come about after the death of the person who made the will. There is no problem with all these assumptions, i.e. the will is in order. However, if the will was made with the knowledge that the agent was disabled, yet the mandatory did not pay attention to this fact, the will is batil, and thus unenforceable. If, however, the subject of the will was hajjatul Islam (A Muslim's maiden pilgrimage to Makkah, that is obligatory), combining the enforcement of the will and deputising an able-bodied person [to perform hajj] should be carried out. Expenses [for the hajj journey] should come of the estate of the deceased, as a matter of ihtiyat wujubi [luzumi]. If the hajj was mustahab (a voluntary, and meritorious, act of worship, as opposed to wajib - obligatory one), expenses arising from the enforcement of the will should come of the 'third' of [the estate].

Rules of Hajj (Addendum) » Rules of Hajj by Proxy

Q.1 What is the ruling on appointing a proxy, whose physical disability, that could prevent him from carrying out an optional act, is well known? However, the person who made the deputation did not know this fact. The case concerns hajjatul Islam.

His hajj does not suffice. Also, it shall not compensate [for the actual act of worship].

Q.2 What is the ruling on hiring a physically disabled person in the matter of the previous question and the two assumptions discussed in Article 113 of Manasikul Hajj, in the case of a mustahab hajj?

There is no objection to [performing such a hajj] in the three suggested manners, if the proxy was physically able to perform accurate hajj for himself.

Q.3 Is it obligatory on the proxy to carry out acts of worship pertaining to hajj according to his taqleed (the following, by a lay person, of a Mujtahid - Jurist - in matters of religious practice), or according to that of the person who made the deputation?

He should act according to his taqleed. Of course, the proxy should act according to the explicit instructions of the mandator. That is, the mandator could ask him to act according to what he believed correct. He also could leave it to what the proxy sees fit. The proxy, therefore, should, be within these bounds, unless he was sure of the imperfectness of acts of worship[according to the instructions of the mandator].

Q.4 A person wanted to perform hajj as a proxy on voluntary basis. Is it obligatory on him to uphold hajj rulings of his own ijtiḥad/taqleed,

or those of the person he represents?

If there were no constraints imposed, he should perform hajj in pursuant to his own taqleed. Of course, in a situation of a will, where it stipulates [which taqleed] to follow, he should comply with the condition. If it was at variance with his taqleed or his own ijtiḥad, he should act according to ihtiyat, in that he should act according to both.

Rules of Hajj (Addendum) » Rules of Appointing a Proxy

Q.1 Is it conditional for the validity of deputation that the proxy be known in person by the mandator?

If the would-be proxy was not known, the deputation is not in order. However, if he was known but the mandator does not know him in person, as in the case of appointing someone who is known by someone else, the deputation is in order.

Q.2 Is deputising organisations in order?

If the deputation is made for a certain title within the organisation, such as its head, it is in order, even though the holder of the title may change from time to time. The same ruling goes for any other title within the organisation. Otherwise, deputising the organisation per se is not in order.

Q.3 Is it permissible for one person to be the deputy of both the parties to a sales agreement?

There is no harm in it.

Q.4 A group of pilgrims co-opted a pilgrim to be their deputy to buy a sacrificial sheep for each one of them. Is it obligatory on him to appoint the sheep of each one of them when buying and slaughtering take place, or purchasing the number of sheep required and slaughtering them without appointing, would suffice?

It is necessary that the name of each pilgrim be pronounced when slaughtering the sheep that belongs to him takes place.

Q.5 During hajj pilgrims form committees to shoulder the responsibility of slaughtering sacrificial sheep. This is done to minimise the numbers going to the slaughterhouse, and thus lessening the chances of pilgrims getting separated from their fellow pilgrims. Since it is either impossible or difficult to take portions of the carcass for every pilgrim to eat some of it, where does this leave those who take it upon themselves to act as proxies for other pilgrims, [should they fail to carry back a share of the carcass]?

It is patently evident that it is not obligatory on the pilgrim to eat part of the carcass of the sheep he sacrificed.

Rules of Hajj (Addendum) » Types of Umrah and their Rules

Q. A pilgrim performed umrah Mufradah and headed for Arafat, which is outside the parameter of the haram (holy precinct of Makka), to attend to some matters concerning pilgrims, not for wuquf (devotional stay at Arafat, as part of hajj rituals). Is it obligatory on him to wear ihram for an other umrah mufradah, if he has already performed umrah mufradah in the same month. On the assumption of it being obligatory, where should he wear ihram?

Going to Arafat and other places [outside the parameter of the haram] is permissible as long as the month [Thil Hijja] has not come to an end. If it did, the pilgrim has to wear ihram for another umrah from the nearest point [miqat] outside Makka.

Chapter 40

Rules of Hajj (Addendum) » Forbidden Acts During Ihram

1. Covering the Head

Q. If covering the head was recurrent in each ihram, should kaffarah (atonement or expiation) be repeated [for every incident]?

It is likely that one kaffarah for each ihram would do.

2. Shading

Q.1 If someone else cast a shade over you while you are walking, is kaffarah obligatory?

If one cannot get out of the shade, there shall be no kaffarah. If you were able to get out, and you did not, even for forestalling a harm, kaffarah is obligatory.

Q.2 On the assumption that the pilgrim got under the shade of an umbrella [used by others] through no choice of his, is it permissible or not?

It is permissible, unless there are reasons, as in the case discussed in the preceding question, that may require the opposite.

Chapter 41

Rules of Hajj (Addendum) » Rules of Kaffarah

Q. Suppose a kaffarah was due on a pilgrim. He delayed it, either deliberately or inadvertently, until he went back to his home town. Is the delay permissible? If he carries out the kaffarah after his return, does he need to uphold conditions of slaughtering sacrificial sheep as if it was done in Mina, i.e. the sheep be sound and healthy?

The places where a sheep can be slaughtered by way of kaffarah are either Mekka or Mina. The details of this matter have been discussed in article (283) of Mainsail Hajj. It is, therefor, obligatory to carry out slaughtering there. However, if this was not done until one's return to his home town, slaughtering would be permissible wherever he liked. In this case, conditions of the sacrifice should not necessarily be adhered to.

Rules of Hajj (Addendum) » Rules of Tawaf and its Prayer

Q.1 If one was in doubt as to whether or not he has performed tawafun nisa' (Lit., women's circumambulation), hajj or umrah mufradah, after his return from Mekka, after his return from Mekka, what should he do?

He should return and perform tawafun nisa' by himself. If this was not possible or proved difficult, he should deputise someone else to perform it for him. [Approaching] women would not be halal, unless he carried it out either by himself or by proxy. Allah is All Knowing.

Q.2 Someone did not fulfil the conditions of carrying out any one of the laps of [the seven circumambulations around the Ka'ba] by, say, setting his face in the direction of the Ka'ba either on purpose or as a result of having been pushed around by the multitudes. Is it necessary that he retakes it and those laps that follow it?

If the mistake was done by entering the Stone, it is obligatory that he repeats the whole lap. If it was done as suggested by the question, he should carry on and rectify the mistake immediately, if he still was on the spot [where the incident took place]. As he starts a new lap, he should repeat the whole lap where the mistake happened. However, it is not obligatory to repeat the following laps.

Q.3 A pilgrim got mixed up as to the number of laps he has done either in tawaf or sa'y (seven laps of brisk walking between the mounts of Safa and Marwah - An obligatory part of hajj). Would that part of the lap where the doubt arose be sufficient [to be considered a complete one], or one should resume from wherever he remembered, or from the start of the lap?

There is no objection to continuing, albeit with the doubt lingering in the mind, if the doubt was removed after-wards.

Q.4 Would separating tawaf from its prayer to attend congregational prayer, which may last some half an hour, render tawaf batil?

Evidently, separating [tawaf and its prayer] by performing congregational prayer does not invalidate [tawaf]. There is no harm too in saying congregational prayer, even in between the laps of tawaf itself.

Q.5 A pilgrim realised, after taqseer (cutting one's hair, clipping one's moustache or beard, or cutting off nails) and ending the state of ihram that his tawaf was batil

If tawaf of umrah was rendered batil, this would not necessarily mean that one comes out from the state of ihram, albeit he has done taqseer. He should, therefore, take off all sewn clothes and abstain from all acts forbidden during ihram. Tawaf, its prayer sa'y and taqseer should also be performed. There is, however, no need for renewing ihram from the miqat.

Q.6 Does separating tawaf from its prayer render hajj or umrah batil?

Non-separation is common place, though this should be the case as a matter of ihtiyat luzumi. However, infringement thereof would not render hajj or umrah incorrect per se. If, however, the infringement was committed deliberately, there should be a renewing of tawaf and its prayer as a matter of ihtiyat. Should time elapse so much so that he could not do anything, his hajj is rendered batil as a matter of ihtiyat. Also, the infringement could occur due to ignorance, of the wilful kind, relying on a legal proof, or due to forgetfulness that caused him not to remember until after prayer. In such cases tawaf and its prayer are in order and no penalty shall be against him. The same ruling applies if he was forced to separate the two [for reasons beyond his control].

Chapter 43

Rules of Hajj (Addendum) » Rules of Sa'y

Q.1 Would sa'y on level two [of the track between Safa and Marwah] be in order?

Yes, if the pilgrim, who is performing sa'y, ends up on either side of mounts Marwah and Safa and can still see them.

Q.2 Someone appointed a proxy to perform sa'y for him. The mandator, himself, should have been in a state of ihram, if he were to perform sa'y. Should the deputy perform sa'y in a state of ihram? What is the ruling if the deputy has volunteered to do it [i.e. not a hired one]?

It is not obligatory.

Q.3 What is the ruling on an incident, during sa'y, where a pilgrim turned his back on some [object or direction] which he should have faced?

Provided it is not too late for adhering to the succession [of the laps], he should rectify the situation by repeating the part where the doubt crept. Should it be too late for realising the succession according to urf, the entire sa'y must be repeated as a matter of ihtiyat luzumi.

Q.4 If a lap was repeated, would the niyyah be as adaa' or qadhaa'?

The niyyah should be adaa' not qadhaa'.

Q.5 A mukallaf performed tawaf at the start of sunrise or sunset. Is it permissible for him to delay sa'y until before sunset of the next day? That is, is it permissible to delay sa'y for such a period?

Optionally, it is not permissible to delay [sa'y] until the following day. A delay of few hours is in order.

Rules of Hajj (Addendum) » Wuquf at Arafat and Muzdalifa

Q.1 If the mukallaf made niyyah for wuquf at Arafat or Muzdalifa, then slept the entire time, would his wuquf be in order?

If the niyyah was made at the start of time, then he slept till its end, it is in order. If the niyyah was made before the onset of time, then he slept the whole time, the [partial] wuquf shall not make up for the [prescribed] one, as a matter of ihtiyat .

Q.2 The opinion of the late Ayatullah al-Udhma as-Sayyid al-Khoei (May his soul rest in peace) was that it be sufficient for women to do wuquf at the holy Mash'ar [Muzdalifa], albeit nominal. What is your eminence's opinion on this case?

Yes, it is sufficient for women to do nominal wuquf at Muzdalifa on the eve of Eid (Festivities of Sacrifice).

Rules of Hajj (Addendum) » Staying Overnight at Mina

Q.1 A pilgrim in a state of ihram spent part of the twelfth night at Mina until morning. He then threw stones at Jamarat that morning. Is it possible for him to return home, to Makka, for the period from the same morning till before noon time to do nafr (hastening on) from there in the afternoon?

It is permissible for him to go to Mekka,, provided he leaves behind (at Mina some of his belongings, should he have any. It is obligatory on him, though, to return to Mina for nafr.

Q.2 A pilgrim, who is allowed to do rami (throwing stones at Jamarat) on the night of the twelfth [of Thil Hijja], did just that. He then went to Mekka. Is it obligatory on him to return to Mina the following day (12th of Thil Hijja before noon time to do nafr in the afternoon?

Yes, it is obligatory. If he wanted to go to Mina, where he has belongings, from Mekka, it is obligatory that he leaves some of it behind.

Q.3 A woman pilgrim did rami of the three Jamarat at the night of the 12th. She then returned to Mekka before dawn. Is it obligatory on her to return to Mina the following day (12th) for wuquf till noon?

The question assumes the permissibility of carrying out rami of Jamarat during night time. That is, for people who fear for themselves from the masses during day time, such as women, the feeble, and children. This is the opinion of Ustath (professor) as-Sayyid al-Khoei (May his soul rest in peace). However, the option to do rami during night time, barring Jamarah of Aqabah on the eve of the Eid, is confined to those who have reason not to stay at Mina for the rami during day time, such as the fearful,

the shepherd, and the slave. As for women, the feeble, and sick, etc. who cannot perform rami during day time because of the crowds, they should deputise some other people to do it for them. On a premise of preferential ihtiyat, combining both, the rami during night time and doing it by proxy during day time, should be the norm.

Returning to the first assumption, it is not permissible for him who did the rami at the night of the 12th to do nafr after rami. Suppose they left Mina for Mekka to do tawaf or any other business, it is obligatory that they return to Mina to do nafr ba'daz zawaal of the 12th day. They also have the choice to do nafr after performing rami on the day of the 13th. This is further explained in the answer to the following question.

Q.4 A man pilgrim did the rami in the morning of the 12th. He then returned to Mekka. Should he return to Mina before zawaal?

If the pilgrim left Mina after doing rami, that is before zawaal, and he had some business to attend to there, such as leaving his luggage, he has to return. Rather, as a matter of ihtiyat, returning is obligatory, even though not out of necessity. However, it is patently evident that it is permissible to leave Mina on the first assumption, and, as a matter of ihtiyat luzumi, abstaining from it on the second assumption. At any rate, it is not necessary that he returns to Mina before zawaal, rather it is permissible to do it after zawaal too. This is because that which is of consequence is for nafr not to be done before zawaal. So returning to Mina after zawaal is in order so that his nafr from there be before sunset of the same day, or after rami on the 13th day.

Rules of Hajj (Addendum) » Rules of Hady (offering) and Slaughtering

Q.1 Would prevention by law, of slaughtering at Mina be sufficient to realise the inability to carry out slaughtering there, especially, if there was reason to believe that a financial or physical harm could ensue, should the law be broken?

Fear of consequential harm for breaking the law should lift the obligation of slaughtering at Mina. It must not be understood, though, that slaughtering elsewhere would make up for slaughtering in it. However, what makes slaughtering elsewhere in order is [indeed] Mina's small capacity to host all pilgrims as discussed in Manisikul Hajj. Apparently, slaughtering was made impossible, for the reasons mentioned in the question, not for the smallness of Mina? Therefore, combining both slaughtering outside Mina and fasting in lieu of hady (sacrificial offering) should be in order, as a matter of ihtiyat luzumi.

Q.2 A pilgrim secured the value of the share of the poor and the believers (mu'mineen) in the hady. What is the basis of evaluation? Should it be before or after slaughtering?

What is of importance is securing the value after slaughtering.

Q.3 Nowadays, it is not feasible to divide hady into three shares. Even the authorities prevent the owner of hady to eat from it. Similarly, they prevent distributing hady on the poor and the believers. What should one do?

What is obligatory, that must not be fluted for reasons of ihtiyat, out of the said division is giving the third [of hady] to the poor. As for eating of one's own share and giving some of it out for present to others, they are

not obligatory. Giving the third party by way of sadaqah can cease to be operative, should it become impossible or difficult.

Rules of Hajj (Addendum) » Rules of Rami of Jamarat

Q.1 The presence of women and the feeble from men, when doing Rami of Jamarat, may result in putting them in harm's way. It may lead to death because of the multitudes. Can a husband or others do rami for them?

As suggested by the question, women and the feeble perform rami of Jamrah of Aqaba themselves on the eve of Eid. If it is not feasible, they could deputise someone to do it for them during daytime. As for rami on the 11th and after, they should ask someone to do it for them. Their own rami during night time would not be sufficient. It is preferable that the mandator be present to witness rami.

Q.2 Would using a suspect pebble [i.e. for fear of it having been used for rami] be in order?

Yes, it is in order.

Q.3 Would rami, that is carried out from level two, be in order?

On the premise of ihtiyat, rami of Jamarat should be done to those parts of them that were at the time of the Prophet (s.a.w.) and the Imams (a.s.), which are now way away from the level of ground because of the height of their bases. If one was unable to do rami at those parts, as a matter of ihtiyat, one should resort to combining both the deputation to do rami on one's behalf and doing rami at the exposed parts themselves.

Q.2 Is it permissible to do rami of Jamrah Aqaba from all sides?

It is obligatory to do rami of Jamrah Aqaba itself, i.e. it is not permissible to throw pebbles at the wall supporting it from the back.

Rules of Hajj (Addendum) » Shading for Men

(This section has been reproduced from Manasikul Hajj.)

269. Shading is of two types:

1. By using movable objects, such as umbrella, the roof of a coach or an aeroplane. This is not allowed for a man in a state of ihram, if the shade is above the head. However, it is allowed to remain under the shade of a moving cloud, or if the shade falls only on one side of his body. That is, pedestrians can walk beside a car producing a shade on one side or the like. As a matter of ihtiyat, passengers must avoid shade unless the shade from objects producing it from both sides is so short that it does not cover the head and chest of the pilgrim.

2. By being under fixed objects like the shade of walls, tunnels, trees, mountains, etc. It is allowed for a pilgrim in a state of ihram, whether riding or on foot, to be under such shades. There is no objection to protecting oneself from the sun with one's bare hands. However, as a matter of ihtiyat, it is better to avoid doing so.

270. Avoiding cover means no protection be used against the sun and rain; the latter is based on the premise of ihtiyat. However, there is no objection to protecting oneself from wind, heat, cold, etc., although avoiding protection is recommended as a matter of ihtiyat. It means that there is no harm in boarding a roofed bus during night, even if it is not raining, as a matter of ihtiyat. That is, even though the bus could provide protection from wind, for example.

271. What has been discussed of shading being not permissible is confined to walking to cover a distance. However, if the pilgrim, in a state of ihram, stops at a place, be it he has taken it for accommodation or not,

such as stopping en route to meet friends or for rest, etc., there is no ishkāl in his staying under the shade.

Q. Is it permissible for a pilgrim to seek cover under moving objects, once he settles in a place and goes about his business? To give an example, one could have settled in Mekka and went to the Grand Holy Mosque (al-Masjidil Haraam) to do tawaf or sa'y: or he could have settled in Mina and went to the abattoir or jamarat. Is it permissible for him to travel aboard a roofed bus, or use an umbrella?

To say it is permissible could be very problematic (mushkilun jiddan). Accordingly, ihtiyat should be adhered to, [i.e. One should avoid doing so].

273. If a pilgrim resorted to protecting himself against rain or sun, kaffarah is payable. Apparently, there is no difference whether the act was committed out of choice or due to an emergency. If the act [of protecting oneself] is committed more than once, kaffarah becomes payable for every day, as a matter of ihtiyat. However, apparently one kaffarah for every ihram will do. One sheep would suffice for a kaffarah.

Part 4

Miscellany

Chapter 49

Miscellany » The People of the Book

1. The ceremonial cleanliness of the People of the Book (Jews and Christians), and whether it is desirable to avoid [coming into contact with] them:

"As for the People of the Book, it is widely believed that they are najis. However, it is likely that they are tahir, though, ihtiyat should be adhered to". Masaa'il, article 82.

Chapter 50

Miscellany » Jumuah Prayer

2. Preference of attending Jumuah [congregational] prayer, provided that it is held according to the conditions [stipulated in canon law]:

Evidently, performing Jumuah prayer is obligatory as a matter of choice. This means that, on a Friday, the mukallaf has the option of either performing Jumuah prayer according to the detail that will follow, or holding Dhuhur prayer. However, performing Jumuah prayer is preferable. If it was performed according to stipulations, it would make up for Dhuhur prayer". Minhajus Saliheen, p. 307.

"The time for holding Jumuah prayer is the start of zawaal of a Friday as urf have it. If it is not held during this time, performing Dhuhur prayer becomes a must". Al-Masaa'il, article 193.

Chapter 51

Miscellany » Jumuah Ghusl

3. "Does Jumuah Ghusl make up for wudhu?"

"Jumuah ghusl and similar ones have been proved through reliable sources to be mustahab. It is evident that they make up for wudhu". Al-Masaa'il, p.341.

Chapter 52

Miscellany » Tamam Prayer

4. Performing tamam prayer.

"Distance should be calculated from the point where a person is considered, according to urf, a traveller; it is the end of the bounds of the town, which may be the borough or neighbourhood in some very big cities". Al-Minhaj, p.891.

Miscellany » Sighting of the New Moon

5. Sighting of the New Moon:

"Sighting of the new moon is ascertained by knowledge of the actual sighting or through solid news of such sighting, or some other means. Certainty can also be achieved through common knowledge. Amongst other sources of ascertaining the sighting of the new moon is the lapse of thirty days on Sha'ban's crescent for the start of Ramadhan to be confirmed, or thirty days on the crescent of Ramadhan for the new moon of Shawwal to be confirmed [and so on]. Sighting can also be confirmed by the evidence of two witnesses of impeccable character (adl).

However, sighting of the new moon is not recognised by the evidence of women, or by the evidence of one just witness, even with oath, or by the words of astrologers. Neither by its absence after dawn dusk, so that it could be said that it belongs to a previous night, nor by the evidence of two just witnesses, if the evidence is not confined to their own sighting of the newly born moon. Sighting is not recognised too when it is seen before zawaal so that the day of sighting be from the ensuing month. The impression of a ring it may give, proving that it could belong to a previous night, cannot be accepted as well.

There is *ishkal*, rather objection, in ascertaining the birth of a new moon by a ruling from a judge, whose error cannot be verified, neither the error of his source. Of course, if his ruling or his evidence leads to certainty of sighting in the town and the like, it could be relied on". *Al-Minhaj*, p.335.

The sighting of the new moon in a town could make up for its sighting in another.

"Should the new moon be sighted in a town, it would suffice the sighting in another town, provided the two fall on the same horizon. That is, if the new moon was sighted in the first town, there would be a distinct possibility of sighting it in the second, barring any obstacles, such as clouds and high mountains". Al-Minhaj, article 1044.

Miscellany » Zakat

6. Obligation to pay zakat on money [capital] used in trading:

"This money is that which is owned by a person, as a means of exchange [capital], intending to trade with it, earn a profit and, eventually, a living. It is obligatory, as a matter of ihtiyat, to pay zakat due on it, which is 2.5%, provided the following conditions are fulfilled:

1. The owner is adult and sound in mind.
2. The money should reach the bench mark of gold or silver. (For gold it is fifteen mithqal sairafi (of coins and bullion - a unit of weight, equivalent to 4.608 grams), then every three mithqals thereafter. As for silver, it is one hundred and five mithqals, then every twenty one mithqals thereafter - Al-Masaa'il, p.221.
3. The lapse of one year on the [actual amount] of money, i.e. from the time it was intended for making a profit.
4. The intention to make profit should be constant the whole year, in that if the person changed his mind and appropriated some or spent some of it [money] on living expenses, for example, zakat will not become obligatory.
5. The ability of the owner to have the right of disposal over it for the whole year.
6. The amount of capital should be intact or there was an increase [profit] in it during the whole year. If, however, there was a decrease during the year, zakat will not become obligatory". Al-Masaa'il, p.226.

Miscellany » Leather Products

7. Leather [products] acquired from non-Muslims that may be considered tahir due to the possibility of [the animal] being slaughtered according to Islamic law:

"It is permissible to sell [trade in] leather products, meat, and animal fat imported from non-Muslim countries [from a source] that is known to be unbeliever. The same goes for the ruling regarding its being tahir and performing prayer in it [wearing a leather belt for example]. This should be the case on the premise that the animal was slaughtered according to Islamic shari'a law. However, it is haraam to consume, unless it was ascertained that the animal had been slaughtered according to Islamic law. That is, unless such goods were produced Islamic land, or imported by an Islamic country, or handled by Muslims, [i.e. slaughtering is carried out in Islamic way]. The same goes for goods acquired through Muslims, if it was known that the source was unbelieving and without enquiring about the way of slaughtering.

Chapter 56

Miscellany » Painting in Three Dimensions

8. Painting in three dimensions, of living creatures, is haraam:

Painting living creatures, such as human beings and the like, in three dimensions is haraam, as a mater of ihtiyat. As for ordinary painting, evidently it is permissible. There is no harm in photographic imaging that is commonly used nowadays. There is no harm too in acquiring three dimensional portraits and selling [trading in] them, albeit the latter is makrooh. Al-Masaa'il, article 634.

Miscellany » Islamic Dress Code

9. [Islamic dress code] - the permissibility of exposing the face and hands [of a woman] to people, other than her mehaarim (immediate relatives -according to a certain classification detailed in shari'a law)

"It is obligatory on the woman to cover her hair and the rest of her body, apart from the face and hands from people, other than her husband and other mehaarim, among the adults in general. Rather, she should cover herself from those who have not yet attained adulthood, if they were discerning, and their looking at her could result in sexual arousal. As for the face and hands, it is evident that it is permissible to expose them, except for fear of falling into a haraam act, or for the purpose of ensnaring man to look at haraam [objects]. In this case, exposing such parts of the body is haraam, even to mehaarim". Al-Masaa'il article 1021.

Chapter 58

Miscellany » Prayer Performed Behind a Non-Believer

10. What is the ruling on prayer performed behind a non-believer (ghayeril mu'min), especially if he holds it before its prescribed time?

"[The prayer] is not in order, unless its prescribed time was already on". Al-Manasik, p366.

Chapter 59

Miscellany » Women's Standing Position while Praying at Makka

11. At Mekka, is it permissible for a woman to stand ahead of a man during prayer, which is not the case elsewhere?

Yes, it is permissible at times of crowdedness.

Miscellany » Tamam and Qasr Prayer (in and out of Makka)

12. A person stayed ten days at Mekka, having the intent to stay for the period. He then left for Arafat, assuming the distance between the two is less than four farsakh(a unit of distance equivalent to eleven kilometres). What is the ruling on the form of prayer, i.e. tamam or qasr, at Arafat, Mash'ar and Mina?

If the distance is as suggested by the question, prayer should be performed tamam.

13. What is the ruling on him who left Mekka for Arafat before completing ten days, for a valid reason that required him to abort his stay, and after he performed a fourruka'a (bowing) prayer at Mekka with the niyyah of being resident [for ten days or more]?

On the assumption that the distance between Mekka and Arafat is less than four farsakh, he should perform tamam prayer.

14. On the day of Eid, a pilgrim returned from Mina to Mekka, then went back to Mina. What form his prayer should take, tamam or qasr, noting that he had previously stayed in Mekka for ten days?

If the distance from the periphery of Mekka to Arafat, Muzdalifa, Mina, and back was forty four kilometres or more, qasr prayer should be performed at these locations, and at Mekka on return, should he decide not stay there for ten days. Conversely, prayer should be performed tamam at all the said locations.

From the same author on Feedbacks

ISLAMIC LAWS By Ayatullah Sistani (2011)

These are the Islamic Laws according to the Fatawa of Ayatullah al Uzama Syed Ali al-Husaini Seestani. This is the English Version of Taudhihul Masae'l.

Complete text of this ebook is taken from the Official website
www.sistani.org

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A Code of Practice For Muslims in the West (2012)

This book an attempt of writing Islamic laws For Muslims who have settled in non-Muslim Countries. Muslims who were compelled to leave their countries, and the places where they grew up, and had to migrate to non-Muslim countries in which they now live under different laws and systems, dissimilar values and rules, and unfamiliar customs and habits.

The modes of conduct and manners of the host societies are greatly at variance with what the guests were used to; there is a wide gulf between their own upbringing and the values of the host countries. Consequently, new problems have emerged and a number of questions arose that called for answers.

From this came the need for writing a book that would deal with the various practical problems of immigrant Muslims, and provide answers and present solutions for them.

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Contemporary Legal Rulings in Shia Law (2012)

This work contains the translation of a selection of question/answers about new legal rulings that are based on the opinion of the eminent jurist Ayatullah al-'Uzma al-Sayyid 'Ali al-Husayni al-Seestani, who resides in Najaf, Iraq, and is the point of reference, or marja', for a good part of the Shi'ah Ithna 'Ashari community of believers, who revert to him for guidance.

Three of his works, Al-Fatawa al-Muyassarrah (FM), al-Mustahdathat min al-Masa'il al-Shar'iyah (MMS) and Minhaj al-Salihin, vol. 1 (MS) were used in compiling the list of questions/answers

and organizing them under appropriate subjects. The source is clearly marked in regular brackets after the response to each question to facilitate easy reference to the original Arabic text.

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Jurisprudence made easy (2012)

This book, Al-Fatawa Al-Muyessarah (Jurisprudence Made Easy), has been written in accordance with our fatawa (edicts). This has been found to be so by a group of trusted people. Thus, whoever, among the faithful, acts upon the edicts contained therein shall be acquitted of their religious obligation. Inshallah (Allah willing)

Sealed

Ali al-Hussaini as-Seestani

25th Thil Hijjah, 1416H.

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*"Wisdom is the lost property of the Believer,
let him claim it wherever he finds it"*

Imam Ali (as)