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# Umdatul Fiqh

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# The Book of Commercial Transactions *[Kitāb al-Buyūʿ]*

# The Book of Commercial Transactions
## *[Kitāb al-Buyūʿ]*

Allāh (Exalted is He) has said:

Allāh has made trading lawful. *wa aḥalla 'llāhu 'l-baiʿa. (2:275)*

Trading is the exchanging of property for property. It is permissible to trade any possession that can be used for some legitimate purpose. The only exception is the dog, for trading it is not permissible, and no fine is imposed on someone who destroys it, because the Prophet (Allāh bless him and give him peace) forbade the setting of a price on the dog.[11]

It is not permissible to trade any item that is not a possession of its vendor, except with the permission of its owner, or when acting as his guardian.

It is also impermissible to trade the following:

- Things that serve no useful purpose, like vermin.
- Things of which the use is unlawful, like alcoholic liquor and *maita* [carrion; meat that has not been ritually slaughtered].
- Things that are not yet in existence, like the future produce of the owner's slave woman or his tree.
- Things of which the identity is unknown, like the fetus [in the slave woman's womb], and the article that is absent, that has not been described, and that has not been seen before the transaction.
- Things that cannot be handed over, like the runaway slave, the horse or camel that has bolted, the birds in the air, and the fish in the water.
- Things that are misappropriated.
- Things that are not singled out, like an unspecified slave from among the owner's slaves, or an unspecified sheep from his flock,

[11] The dog may be used for hunting game. (See p. 261 below).

except when the parts are all of equal value, like a measure of ground wheat.

## Subsection

Allāh's Messenger (Allāh bless him and give him peace) forbade the following practices:

- The modes of bargaining called *mulāmasa* [mutual touching], *munābadha* [throwing the article to and fro between the parties] and *baiʿ al-ḥaṣāt* [concluding the sale by throwing pebbles to each other].
- The trade in which a man outbids his brother.
- The trade in which a townsman acts a broker for a nomad.
- Bidding up the price of an article, without intending to buy it.
- Combining two transactions in one, as when the vendor says: "I have sold you this for ten whole coins or twenty broken coins," or: "I have sold you this on condition that you sell me this, or that you buy this from me."

The Prophet (Allāh bless him and give him peace) also said:

> Do not procure articles of merchandise until the markets drop their prices. If someone buys food, he must not sell it until he has received the full amount.

Chapter

# Usury
## *[Ribā]*

As reported by ʿUbāda ibn aṣ-Ṣāmit, Allāh's Messenger (Allāh bless him and give him peace) once said:

> Gold for gold, silver for silver, wheat for wheat, barley for barley, fruit for fruit, and salt for salt, like for like, equal for equal; but if these articles are different, you may trade them however you wish, provided that the transfer of ownership takes place immediately. If someone increases the quantity, or asks for more, he is practicing usury.

It is not permissible to trade an edible commodity—one that is sold by measure or one that is sold by weight—for one of the same species, except in equal quantities. It is not permissible to trade a measured amount thereof for something of the same species that is weighed, nor a weighed amount for a measured amount. If the two species are different, however, it is permissible to trade them on whatever terms are preferred, in an immediate transaction. Postponement is not permissible, nor separation [of the parties] before taking possession, except in the case of the price for the commodity sold for a fixed price.

Whenever two things have a particular name in common, they are one species, unless they are from two different roots. The branches of the species are therefore different species, even if they are all covered by a general term, like *adiqqa* [cereal grains] and *ad'hān* [oils]. It is not permissible to trade one of them that is fresh for one of the same species that is dry, nor one that is pure for one that is mixed, nor one that is raw for one that is cooked.

Allāh's Messenger (Allāh bless him and give him peace) forbade *muzābana*, which is the trading of dried dates for the unripe dates on the tops of date palms. In the case of fresh dates gathered from palm trees, amounting to less than five camel loads, he allowed dried dates to be traded for their conjectural equivalent of dates that are eaten fresh.

Chapter

# The Sale of the Roots and the Fruits
## *[Baiʿ al-Uṣūl wa 'th-Thimār]*

The Prophet (Allāh bless him and give him peace) is reported as having said:

> If someone sells a date palm after it has been pollinated, its fruit belongs to the seller, unless the buyer stipulates its inclusion in the sale.

The same rule applies to the sale of any tree, if its fruit is visible. If someone sells land, and on it there is a crop that has been harvested only once, the crop belongs to the seller, unless the buyer stipulates its inclusion in the sale. If it has been reaped time after time, the roots belong to the buyer, and to the seller belongs the crop that is visible at the time of the sale.

### Subsection

Allāh's Messenger (Allāh bless him and give him peace) forbade the sale of the fruit [on the tree] until its good quality is apparent. If someone sells the fruit after its good quality has become apparent, on condition that it be left [on the tree] until the harvest, that is permissible. Then, if it is smitten by a blight, it reverts to the seller, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> If you sell fruit to your brother, and it is smitten by a blight, it is not lawful for you to receive anything for it. How can you take your brother's property without any right?

The good quality of the fruit of the date palm becomes apparent when it turns red or yellow, that of grapes when they become juicy, and that of other fruits when they show signs of ripeness and taste good.

Chapter

# The Option to Revoke
## *[al-Khiyār]*

The two parties have the option to revoke the sale, so long as they have not separated physically. If they separate, and one of them does not rescind the transaction, the transaction is binding, unless it is stipulated that both of them, or one of them, will retain the option for a fixed period of time. They are then bound by their stipulation, even if the period is very long, unless they revoke it.

If one of them discovers some defect in the article he has purchased, and he was not aware of it at the time of the sale, he is entitled to return the article, or to receive compensation for the defect. If the article develops or happens to acquire some increase in value, before he notices the defect, the increase belongs to him, in accordance with the legal maxim *al-kharāj bi'ḍ-ḍamān* [profit goes where the responsibility lies]. If the commodity is ruined, or the slave is emancipated, or returning him is unfeasible, the buyer is entitled to compensation for the defect.

The Prophet (Allāh bless him and give him peace) once said:

> You must not tie the udders of camels and sheep or goats [to prevent their young from sucking them]. If someone buys them after that, he may choose between two options after he has milked them: he may keep them if he finds them satisfactory, or, if he is dissatisfied with them, he may return them together with a measure of fruit. If he notices before milking them that they have had their udders tied, he may return them without anything extra.

The same rule applies to any transaction in which the buyer is swindled, without knowing that he is being swindled: for instance, the seller applies rouge to a slave girl's face, or dyes or curls her hair, or he stores water and releases it over a barren plot of land at the time of showing it to the buyer. Likewise if the seller describes the

commodity in a manner that increases its price, and the buyer finds that it does not match his description: for instance, the seller attributes craftsmanship or penmanship to a slave, or describes a riding animal as trotting at a quick and graceful pace, or a cheetah as a fine hunter or a well-trained beast, or a bird as having a sweet voice, and so on. In all such cases, the buyer is entitled to return the commodity.

If the seller informs the buyer of the price of the commodity, and its value then increases, the seller may claim the increase and his share of the profit, if it is a case of *murābaḥa* [a transaction in which it is stipulated that the profit must be divided between the two parties]. If it becomes clear that the seller mistakenly undervalued the commodity, the buyer may choose between two options: he may return it, or he may give him the amount required to make up for his mistake. If it becomes clear that the seller is postponing delivery of the commodity, and he did not inform the buyer of its postponement, the buyer is free to choose between returning it and keeping it.

If the two parties disagree about the amount of the price, they must swear to each other, and each of them is entitled to revoke the transaction, unless he is satisfied with what his companion says.

Chapter

# Advance Payment
## *[as-Salam]*

Ibn ʿAbbās (may Allāh be well pleased with him and his father) is reported as having said: "Allāh's Messenger (Allāh bless him and give him peace) arrived in Medina, where they were making payment for fruit one or two years in advance, so he said:

> If someone pays for fruit in advance, let him pay in advance for a fixed measure or a fixed weight, to be delivered on a fixed date.

Advance payment is valid for everything that matches the description exactly, if the seller describes it precisely, mentions its quantity in terms of volume, or weight, or length, or number, and fixes a date for its delivery, and if the buyer gives him the price before the parties separate. Advance payment is also permissible for something to be received in separate parts and at fixed times. If the buyer pays a single price for two things in advance, it is not permissible unless the price of each is clearly distinguished.

If someone pays for a certain thing in advance, he may not transfer the payment to something else. When a commodity has been paid for in advance, it is not permissible to sell it before taking possession of it, nor to transfer it to a third party. It is permissible to revoke the advance payment, or part of it, because revocation *[iqāla]* is a form of annulment *[faskh]*.

## Chapter

# Lending
## *[al-Qarḍ]*

As reported by Abū Rāfiʿ, Allāh's Messenger (Allāh bless him and give him peace) once borrowed a young camel from a man. Then, when the camels levied for the alms-due were presented to him, he commanded Abū Rāfiʿ to go and select one with which to reimburse the man for his young camel. Abū Rāfiʿ came back to him and said: "I could not find any amongst them [that might be suitable], except an excellent camel four cubits in height," so he said:

> Give it to him, for the best of all people is the one who is finest in the settlement of debt.

When someone borrows something, he is obliged to return its equivalent, though it is permissible for him to return something better. He may also borrow separate parts and return a whole item, provided there is no stipulation attached to the loan. If the lender sets a deadline, repayment should not be postponed. It is not permissible for the lender to stipulate something by which he will profit, except when he stipulates a pledge *[rahn]* or a security *[kafīl]*. The lender may not accept a gift from the borrower, unless that was a regular habit of theirs prior to the loan.

Chapter

# The Rules of Debt
## *[Aḥkām ad-Dain]*

When payment of a debt is due at the end of a fixed term, the creditor may not demand it before its term has expired, and he may not revoke its term. Payment does not fall due because of the debtor's bankruptcy, nor because of his death, provided that his heirs guarantee it with a pledge or a security. It does fall due before its time, however, if the debtor intends to embarks on a journey, or on a military campaign as a volunteer, so his creditor may prevent him from leaving, unless he receives a guarantee.

If the debt is due immediately from a person in straitened circumstances, he must be granted a delay. If he claims impoverishment, he must swear an oath and thereby obtain relief, unless he is known to have property before that, in which case his word will not be accepted without proof. If he is actually well-to-do, he is obliged to pay the debt in full, and if he refuses, he will be imprisoned until he pays it in full. If his wealth is not sufficient to settle his debt completely, so his creditors ask the judge to prohibit him from using his property freely, he must respond to their request. Then, if the judge prohibits him, it is not permissible for him to dispose of his property, his acknowledgment of responsibility is not accepted, and the judge must take charge of the settlement of his debt. He must begin with anyone who is entitled to the blood money for a crime committed by his slave, so he must provide the victim of the crime with the lesser of two things: the blood money or the value of the criminal. Next in line is anyone who holds a pledge, so must provide him with the lesser of two things: the debt owed to him or the price of his pledge. Where the rest of his debt is concerned, he is entitled to make terms with the creditors.

If someone finds that the commodity he sold for ready money has not suffered any partial damage, and has not been increased by an inseparable addition, and he has not received any part of its price, he is entitled to take possession of it, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> If someone sells his commodity for ready money, to a person who is bankrupt, he is more entitled to it than anyone else.

The debtor must distribute the rest of his property among the creditors in proportion to their claims. He must also spend some of his wealth on the bankrupt, and on those whom he is obliged to support, until he has finished the distribution. If a claim is established against him by a witness, and he refuses to swear an oath, his creditors are not required to swear.

Chapter

# Transference and Guaranty
## *[al-Ḥawāla wa 'ḍ-Ḍamān]*

If someone's debt is transferred to a person who owes him the same amount, and the latter agrees, the transferor is freed from responsibility. If someone's debt is transferred to person who is solvent, he is obliged to accept the transfer, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> If one of you is referred, for the payment of what is owed to him, to a solvent person, let him accept the reference.

If a guarantor provides him with security, the debtor is not freed from responsibility, and the debt becomes incumbent on them both. The creditor is thus entitled to demand payment from whichever of the two he wishes. If he receives the full amount from the one who is ensured, or acquits him of the debt, the guarantor is freed from responsibility. If he acquits the guarantor, however, the actual debtor is not freed from responsibility. If he receives the full amount from the guarantor, the latter may reclaim it from the debtor.

If someone assumes responsibility for the debtor's appearance [to answer a suit in court], but he fails to produce him, he is obliged to pay the debt. If the debtor dies, however, his surety *[kafīl]* is freed from responsibility.

Chapter

# Pledging or Pawning
## *[ar-Rahn]*

It is permissible to pledge or pawn anything of which the sale is permissible, and whatever may not be sold may not be pledged or pawned. The transaction does not become binding except by appropriation, which is effected by delivering the pledge, if it is a movable object, or by making it available in other cases. Appropriation by the authorized agent of the pledgee is tantamount to appropriation by the latter in person.

The pledge is a deposit with the pledgee, or with his agent, and he is not accountable for it unless he is guilty of misconduct. The pledgee may not use it for his own benefit, unless it is an animal that can be ridden or milked, in which case he is entitled to ride or milk it in proportion to the fodder he provides.

The pledger is entitled to the profit resulting from its produce, its earnings and its growth, but that is an added pledge. He is responsible for the cost of its maintenance and its storage, and [in the case of a slave] his funeral shroud if he dies. If he damages it, or [if it is a slave] removes it from the pledge by emancipation or *istīlād* [fathering the child of a slave woman], he is obliged to replace it with a pledge of equal value.

If a third party commits a crime against the [slave held as a] pledge, the pledger [not the pledgee] is the litigant [when the case comes to trial], and whatever compensation he receives is a pledge. If the pledge [is a slave and he] commits a crime, the victim of the crime is more entitled to his slave, but if he ransoms him, he is still a pledge.

If the debt falls due, and the pledger does not pay it, the pledge must be sold. The due amount will then be paid from its price, and the remainder will belong to the pledger.

If a sale is made conditional on a pledge or a guarantor, but the pledger refuses to deliver it, and the guarantor refuses to guarantee, the vendor has two options: he may cancel the sale, or he may implement it without a pledge and without a guarantor.

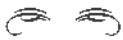
Chapter

# Reconciliation
## *[aṣ-Ṣulḥ]*

If someone deducts part of the debt owed to him, or gives his debtor some of the cash that he has in hand, it is permissible, provided he does not make the gift and the exemption conditional on full payment of the rest, or deprive him of his right in any other way, or deduct part of the deferred payment in order to make him pay the rest immediately.

It is permissible for the creditor to demand payment in gold instead of silver, and silver instead of gold, provided he accepts it at its current price, and they conclude their transaction during the session.

If a person claims that another person owes him a debt, but the defendant does not acknowledge his claim, so he becomes reconciled with him on some agreed terms, that is permissible. If one of them is aware of his own falsehood, however, reconciliation is invalid. If someone has a rightful claim against a man, but neither of them knows its actual amount, so they become reconciled with each other, that is permissible.



Chapter

# Agency
## *[Wakāla / Wikāla]*

This is permissible in every case where delegation is permissible, so long as the one who appoints and the appointee are both duly qualified. It is a legal contract that is annulled by the death of either one of them, by his violation of it, by his insanity, and by the revocation of his legal competence on account of a lack of sound judgment. The same rules apply to every legal contract, like *shirka/ sharika* [copartnership], *musāqāh* [the watering of trees for a share of their produce], *muzāraʿa* [cultivation of land for a share of its produce], *jiʿāla / jaʿāla / juʿāla* [rewarding], and *musābaqa* [competition].

The agent is not entitled to commission a third party as his agent, nor to purchase from himself, nor to sell to himself, except with the permission of his mandator.

The agent is a trustee who is not responsible for what is damaged, provided that he is not guilty of misconduct, and the word is his word with regard to the damage and the denial of misconduct.

It is permissible to appoint an agent to work for a fixed wage or on some other terms, so the contract is valid if he is told: "Sell this for ten coins, and anything extra is yours."

Chapter

# Copartnership
## *[Shirka/Sharika]*

There are four types of copartnership:

1. Copartnership of the reins *[shirkat al-ʿinān]*. This means that the two partners share in what they acquire with their properties and with their bodies.
2. Copartnership of the faces *[shirkat al-wujūh]*. This means that they participate in what they acquire by means of their high-ranking positions.
3. Profit-sharing *[muḍāraba]*. This means that one of the two hands over to the other the goods in which he does not traffic himself, and they share in the profits.
4. Copartnership of the bodies *[shirkat al-abdān]*. This means that they share in whatever legal property they acquire with their bodies, whether by craftsmanship, or harvesting, or hunting and the like, because ʿAbdu'llāh ibn Masʿūd (may Allāh be well pleased with him) is reported as having said: "Saʿd and ʿAmmār and I formed a partnership on the Day of [the Battle of] Badr. Saʿd then came up with two prisoners of war, and neither I nor ʿAmmār came up with anything."

In all of the above, the profit is shared on the basis of what the partners have stipulated, and the loss in proportion to the capital invested. It is not permissible for dirhams [silver coins] to be specified for either partner, nor any specific form of profit. The same rule applies to *musāqāh* [the watering of trees for a share of their produce], *muzāraʿa* [cultivation of land for a share of its produce].

The loss is refunded from the profit. Neither partner may sell his credit, nor take anything from the profit, except with the other's permission.

Chapter

# The Watering of Trees for a Share of their Produce *[Musāqāh]* and the Cultivation of Land for a Share of its Produce *[Muzāraʿa]*

*Musāqāh* [the contract of watering] is permissible in relation to any tree that bears fruit, for a known portion of its fruit, and *muzāraʿa* [the contract of cultivation] is permissible in relation to any plot of land, for a portion of its produce. It does not matter whether the seeds are provided by both parties to the contract, or by only one of them. This is based on the saying of Ibn ʿUmar: "Allāh's Messenger (Allāh bless him and give him peace) employed the people of Khaibar for a share of the crops and fruit produced by the trees and the land." In one version, the wording is: "on condition that they cultivate them at their own expense."

The employee is obliged to perform the work that is normally required. If the employer provides a man with a riding beast on which to work, that is permissible by analogy.

Chapter

# The Revival of Uncultivated Land
## *[Iḥyāʾ al-Mawāt]*

The term *mawāt* is applied to land that is covered with sand and dust blown by the wind, and which is not known to have any owner. If someone revives it, he thereby acquires its ownership, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> If someone revives a dead plot of land, it belongs to him.

Its revival signifies its cultivation, by whatever means are suited to the purpose intended, such as building a wall around it and channeling water on to it, if the intention is to sow crops, and uprooting its trees and its rocks, which prevent its being planted and sown. If the reviver digs a well in the land, and strikes water, he acquires possession of the inviolable area surrounding it, which is fifty cubits on every side, if it is an ancient well. If the well was first dug in the time of Islām, its inviolable surrounding area is twenty-five cubits.

Chapter

# Rewarding
## *[Jiʿāla / Jaʿāla / Juʿāla]*

This means that a person says: "If someone returns my lost property, or my stray beast, or if he builds this wall for me, he shall have such-and-such." If someone does that, he is therefore entitled to the reward. This is based on the following traditional report:

According to Abū Saʿīd, a man from among a group of people was stung by a scorpion, so they came to the Companions of Allāh's Messenger (Allāh bless him and give him peace) and said: "Is there a charmer among you?" They replied: "Not until you offer us something as a reward," so they offered them a flock of sheep. One of them thereupon set about reciting the Opening Sūra of the Book *[Fātiḥat al-Kitāb]*, charming and sputtering, until the man recovered. Then they took the sheep. When they asked Allāh's Messenger (Allāh bless him and give him peace) about that, he said:

> How do you know that it is a charm? Take [the reward] and let me share it with you!"

If someone stumbles upon a treasure trove before he learns of the reward, he is not entitled to it.

Chapter

# The Treasure Trove
## *[al-Luqṭa]*

There are four types of treasure trove:

1. That which has very little value. It is permissible to take it and make use of it without notification, because of the saying of Jābir: "In the case of the staff, the whip and suchlike, Allāh's Messenger (Allāh bless him and give him peace) granted us a concession, allowing the man who finds it by chance to make use of it."
2. The kind of animal that can protect itself from the smaller beasts of prey, like the camel and the horse, for instance. It is not permissible to take control of such an animal, because the Prophet (Allāh bless him and give him peace) was asked about the stray camel, and he said:

   > What business is it of yours? Leave it alone! It has its hoof, [with which to defend itself], and its stomach, in which to store water and the food it eats from the trees, until its owner comes to it.

   If someone does take control of this kind of animal, he does not become its owner. He is obliged to guarantee its welfare, and he is not relieved of responsibility for it except by handing it over to an agent of the Imām.
3. Things of considerable value, including precious coins, commodities, and the kind of animal that cannot protect itself from the smaller beasts of prey. It is permissible to take control of any such treasure trove, and it must be advertised in the places where people gather, like the markets and the doors of the mosques. Then, when its seeker comes and describes it, the finder must hand it over to him without proof. If it has not been advertised,

it is like the rest of his property, but he cannot dispose of it freely until he advertises its trappings and its quality. Then, when its seeker comes and describes it, he must hand it over to him, or its equivalent if it has already perished. If it is an animal that needs provision, or something that is in danger of perishing, he may eat it before making the advertisement, or sell it and then advertise it, because Zaid ibn Khālid is reported as having said: "Allāh's Messenger (Allāh bless him and give him peace) was asked about the treasure trove of gold and silver, so he said:

> You must advertise its wrapper and its container, and continue to advertise it for a whole year. Then, if its seeker comes some day, you must hand it over to him."

When asked about a sheep, he said:

> Take it, for it belongs to you, or to your brother, or to the wolf!

If the treasure trove perishes during the year of advertisement, without any misconduct on the finder's part, there is no liability for it.

## Subsection concerning the Foundling *[al-Laqīṭ]*

The foundling is an abandoned child. The law requires him to be treated as free from slavery and as a Muslim. If any property is found with him, it belongs to him. His guardianship belongs to his finder, provided that he is a Muslim with an honorable record. His maintenance is defrayed from the public treasury, if he has nothing of his own to maintain him. His background is a shadow. If someone claims to be related to him, he will be attached to him, unless he is an unbeliever, in which case he will be attached to him in the context of genealogy, not of religion, and he will not be placed in his custody.

Chapter

# Wagering
## *[as-Sabaq]*

Competition without a prize is permissible in all things, but it is not permissible for a prize, except in horse and camel racing and in archery, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> There is no wagering except on an arrowhead or the hoof of a camel or horse.

If the prize is awarded by someone other than the two contestants, it is permissible, and it belongs to the winner. If it comes from one of the two contestants, and he wins or the result is a tie, he keeps his wager and is not entitled to anything else. If the other wins, he collects it. If they wager together, it is not permissible unless they insert between them a third contestant, whose horse is comparable to their horses, or his camel to their camels, or his marksmanship to their marksmanship, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> If someone inserts a horse between two horses, and he does not feel sure that he will win, it does not constitute a gamble *[qimār]*.

If someone inserts a horse between two horses, and he feels quite sure that he will win, it does constitute a gamble. If he beats them in the race, he will therefore win both their wagers. If one of the other two comes in first, he will keep his own wager and collect his companion's wager.

It is essential to define the contest precisely, to make the goal clear, and [in the case of archery] to determine the target and the number of shots. The archery contest is a matter of hitting the target, not a matter of distance.

Chapter

# The Deposit
## *[al-Wadīʿa]*

The deposit is a trust held by the consignee, who is not subject to any liability for it unless he is guilty of misconduct. He is liable for it, however, in any of the following cases:

- If he does not keep it in a safe place along with similar items, or in the kind of safe place in which he is instructed to keep it.
- If he makes use of it for his own purposes.
- If he mixes it with something from which it cannot be distinguished.
- If he removes it in order to do business with it, and then replaces it.
- If he breaks the seal of its container.
- If he disclaims it and then acknowledges it.
- If he refuses to return it when it is requested, despite the fact that its return is possible.

If he says: "You did not entrust me," and then claims that it has perished or been returned, his claim is not accepted. If he says: "I have nothing belonging to you," and then claims that it has has perished or been returned, his claim is accepted.

[Unlike the deposit], the loan *[ʿāriya]* is guaranteed, even if the borrower does not mistreat it.

# The Book of Hiring and Leasing
## *[Kitāb al-Ijāra]*

# The Book of Hiring and Leasing
## *[Kitāb al-Ijāra]*

Hiring or leasing is a contract relating to utilities. It is binding on both parties, neither of whom has the right to revoke it, and it is not annulled by his death or his insanity. It is annulled by the perishing of the commodity that is the subject of the contract, or by the termination of its usefulness. The leaseholder is entitled to annul the contract because of a defect in the commodity, whether the defect is ancient or recent.

A contract of hire or lease is not valid unless its usufruct is determined, either by common knowledge, like the occupation of a house, or by description, like the tailoring of a particular garment, or the building of a wall, or the transporting of something to a particular place. If the contract refers to a specific object, its precise definition is essential.

If someone takes a lease on something, he is entitled to substitute another person for himself, if the substitute reimburses him for the cost of his lease, or provides him with something of equal or lesser value.

If someone hires a plot of land for the purpose of cultivating a particular crop, he is entitled to cultivate one that is less troublesome. If he cultivates one that is more troublesome, he is obliged to pay the corresponding rate of hire.

If someone hires a beast in order to ride to a certain place, and he travels beyond it, or in order to transport a certain load, and he adds to it, he is obliged to pay the corresponding fee for the increase, and he is held accountable for the commodity if it perishes. He incurs no liability, however, if it perishes without any malpractice on his part.

As for the hireling who hires himself out for a specific period of time, he is not held accountable for anything that perishes in his hand without any negligence on his part. No liability is incurred by

a cupper, or a circumciser, or a physician, provided that he is known for his skill in the craft, and their hands do not cause injury, nor by the shepherd, so long as he does not behave improperly. As for the bleacher and the tailor, and other such craftsmen, they are held accountable for anything that is ruined by their work, but not for something that perishes in their custody.

Chapter

# Misappropriation, Usurpation *[Ghaṣb]*

If a person has misappropriated something, he is obliged to return it. He must also pay the regular fee for hiring such an article, if he has the amount due for the period in which it was at his disposal. If he has less, he is obliged to compensate for the shortfall.

If a misappropriated slave commits a crime, the blood money for his crime is incumbent on the usurper, whether he commits it against his master or a stranger. If a stranger commits a crime against the misappropriated slave, his master is entitled to hold responsible whichever of the two he wishes [either the usurper or the stranger].

If the misappropriated item increases in value, the usurper must return it with its increase, whether the addition is inseparable or separable. If it increases or decreases, he must return it with its increase and hold himself responsible for the decrease, whether the difference results from his action or from some other cause. If he carves a piece of wood to make a door, or works on a bar of iron to fashion needles, he must return them with their increased value, and hold himself responsible for any decrease in their value. The same rule applies in cases like the following:

- He misappropriates some cotton wool and spins it, or a piece of yarn and weaves it, or a garment and bleaches it, or takes it apart and stitches it.
- He misappropriates some seeds and they become crops, or some date stones and they become trees, or some eggs and they become chickens.

If he misappropriates a slave, and he increases in his physique or because of his training, but the increase then departs, the usurper must return him and the value of the increase.

If the misappropriated item perishes, or its return is unfeasible, the usurper is liable for its equivalent, if it is a commodity that is measured or weighed, and for its price if it is not like that. If he then becomes able to return it, he should return it and receive the price.

If he mixes the misappropriated item with something that is indistinguishable from it, he is obliged to return its equivalent from the mixture. If he mixes it with something of a different kind, he is obliged to its return its equivalent from wherever he wishes.

If he misappropriates a plot of land and then plants trees on it, he must uproot what he has planted, return the land, provide compensation for its loss of value, and pay its rent. If he cultivates it and reaps the crop, the usurper must return the land and pay its rent. If its owner becomes aware of the crop before its harvesting, he is free to choose between that and taking the crop for its price.

If someone misappropriates a slave girl, then has sexual intercourse with her and makes her bear a child, he is subject to the legal penalty [for sexual misconduct]. He must also return her and her child to her owner, provide the dower appropriate to a woman of her kind, compensate for her loss of value, and pay the fee for hiring a slave like her. If he sells her and the buyer has sexual intercourse with her—without knowing that she is misappropriated—the buyer is liable for her dower, her price and that of her child, and the fee for hiring a slave like her, all of which he may reclaim from the usurper.

Chapter

# The Right of Preemption
## *[Shufʿa]*

The right of preemption *[shufʿa]* is a person's entitlement to wrest his partner's share from the hand of its buyer. It is subject to seven preconditions:

1. Sale. It does not apply to a gift, nor to a pious endowment, nor to compensation for a *khulʿ* [divorce at the instance of the wife],[12] nor to a bridal dower.
2. The preempted share must consist of immovable property, or something connected with building and cultivation.
3. It must be an undivided property. As for that which is divided by fixed boundaries, there is no right of preemption where it is concerned, because of the saying of Jābir: "Allāh's Messenger (Allāh bless him and give him peace) decreed preemption in the case of any property that is not divided. There is no right of preemption, therefore, when the boundaries have been fixed and the roads have been turned in different directions."
4. It must be divisible. As for property that is indivisible, there is no right of preemption where it is concerned.
5. The preemptor must take the whole share. If he demands only part of it, his right of preemption is therefore annulled. If there are two preemptors, the right of preemption is held by them both, in proportion to their shares. If one of them refrains from exercising his right of preemption, the other has no option except taking the whole or abstaining.

[12] See p. 224 below.

6. The ability to pay the price. If the preemptor is incapable of paying it, or part of it, his right of preemption is annulled. If the price is fungible, he must pay its equivalent, and if it is not fungible, he must pay its value. If the two parties disagree about its amount, and neither of them has proof, the word is the word of the buyer together with his oath.
7. The claim must be made immediately, as soon as the preemptor knows of the transaction. If he postpones it, his right of preemption is therefore annulled, unless he is incapable of making his claim because of absence, or imprisonment, or sickness, or juvenility, in which case he may exercise his right of preemption when he becomes able to do so. His right of preemption is annulled, however, if he is capable of having his claim witnessed, but he fails to do so. If he does not come to know of the transaction until three or more parties have bought and sold with one another, he is entitled to claim from whichever of them he wishes. If he takes from the first, the second may reclaim what the first took from him, and the third may reclaim what the second took from him. When he takes the property, and it has on it a plantation or a building belonging to the buyer, the preemptor must give him its price, unless the buyer prefers to uproot it without causing damage. If it has on it crops or visible fruits belonging to the buyer, they should be left until the harvest or the gathering.

   If someone buys an immovable property and a sword in a single contract, the preemptor is entitled to take the immovable property exclusively.

# The Book of Endowment
## *[Kitāb al-Waqf]*

# The Book of Endowment
## *[Kitāb al-Waqf]*

The term *waqf* signifies the inalienable endowment of the root, and the dedication of the fruit to charitable purposes. It is permissible in the case of any article of which the sale is permissible, and from which benefit will always be derived, because of its permanent nature. It is not valid in the case of anything other than that, such as coins, foodstuffs and perfumes. It is not valid unless it is dedicated to a pious or charitable purpose, as indicated by the following traditional report:

'Umar said: "O Messenger of Allāh, in my opinion, the property I gained at Khaibar is more precious than any property I have ever obtained. What do you command me to do with it?" He received the reply:

> If you wish, you may endow its root and dedicate its fruit to charitable purposes, with the provision that its root must not be sold, nor donated, nor bequeathed as inheritance.

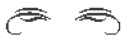
'Umar therefore dedicated it to charity, for the sake of the poor, needy relatives, slaves, the cause of Allāh, the traveler and the guest.

No sin is committed if its administrator eats of it in moderation, or feeds a friend, provided that he does not enrich himself from it.

The validity of the endowment is established by verbal statement, and also by action that proves it, such as building a mosque and giving the call to prayer therein, or constructing a watering place and making it available to the people. Its sale is not permissible, unless its usufructs are completely exhausted, it which case it should be sold and the proceeds used to purchase a replacement for it. If a horse that has been endowed is unfit for military expedition, it should be sold and the proceeds used to purchase something useful for the holy war *[jihād]*. If a mosque serves no useful purpose in its location, it should be sold and transferred to a place where it provides benefit.

Deference must be paid to the intention of the founder, with regard to the endowment, its expenditure, its prerequisites and its organization. His wishes must also be consulted with regard to the inclusion and exclusion of beneficiaries, as well as the qualification of the administrator and his maintenance. If the founder assigns the endowment to the offspring of so-and-so, then to the needy, the males and the females are equally entitled, unless he gives preference to some of them. If none of the offspring survive, the endowment belongs to the needy.

If the endowment is assigned to all those who can possibly be included, it is necessary to include them all, and to treat them equally, unless the founder gives preference to some of them. If their total inclusion is impossible, it is permissible to prefer some of them over others, and to allot it to one of them exclusively.



## Chapter

# The Deed of Gift
## *[al-Hiba]*

This is the transfer of the ownership of property, during life, without any exchange. It is validated by offer and acceptance, and by presentation combined with evidence of its nature. It becomes binding upon receipt. Its retraction is not permissible, except in the case of the father, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> It is not lawful for anyone to give a gift and then retract it, except when the gift is given by the parent to his offspring.

In the giving of gifts to offspring, the law requires that they be treated fairly in proportion to their inheritance, because of the saying of Allāh's Messenger (Allāh bless him and give him peace):

> Practice true devotion to Allāh, and treat you offspring equitably.

If someone says to a man: "I have assigned my house to you for life," or, "It is yours as a gift for life," it belongs to him and to his heirs after him. If he tells him: "Its habitation is yours for your lifetime," he may take possession of it whenever he wishes.

Chapter

# The Sick Person's Donation
## [*ʿAṭiyat al-Marīḍ*]

As for the donations made by a sick person who is in danger of dying from his sickness, or by someone whose life is in similar danger—like a soldier standing between the ranks when battle is joined, and one who is sent forward to be killed, or the sailor on the stormy sea, or someone whose town is visited by the plague—such donations are governed by six of the rules that apply to the testamentary bequest [*waṣiyya*],[13] namely:

1. If made to a stranger, the donation is not permissible in excess of one third [of the donor's property], and if made to an heir, it is not permissible except with the consent of the other heirs. This rule is based on a traditional report, according to which a man emancipated six slaves at the time of his death, when he owned no property apart from them, so the Prophet (Allāh bless him and give him peace) sent for them, divided their number by three, then emancipated two of them and enslaved the other four.
2. In keeping with the traditional report, freedom should be granted to one of the slaves by casting lots, if their total number is not divisible by three.
3. If he emancipates a slave without specific identification, or with an identification that is ambiguous, the selection should be made by casting lots.
4. It is necessary to consider whether the donation came from one third of the donor's estate at the time of death. If he emancipated or donated a slave when he owned no other property, but then

[13] See p. 169 below.

came to possess twice his value at the time of death, we should conclude that the slave was wholly emancipated at the time of his emancipation, and that what the donor acquired after that belonged to the donor. On the other hand, if he incurred a debt that would consume his acquisition entirely, no part of the slave would be emancipated, and his donation would be invalid. If he bequeathed something, but the legatee did not receive it for some time, it would be valued at the time of the legator's death, not at the time of receipt.

5. In order to determine whether he [the donee] is an heir, it is necessary to consider the state of affairs at the time of death. If someone makes a donation or a bequest to his brother, when he [the donor or legator] has no children, and a son is born to him [after his death], the donation and the bequest are both valid, but if he had a son and then died, both would be null and void.
6. Where both [the donation and the bequest] are concerned, no consideration is given to the refusal and consent of the heirs, except after the death [of the donor or legator].

The donation is different from the bequest where these four rules are concerned:

1. The donation is effective immediately. If someone emancipates a slave, he thus becomes a free man, and if he donates a slave to a person, the donee becomes his owner and his earnings belong to him. On the other hand, if he bequeathes him, the legatee does not become his owner until after the legator's death, and if he makes his emancipation conditional on his liberator's death, he is not emancipated until that time. Whatever he earns in the meantime belongs to the heirs, and so does any separable element that happens to augment his value.
2. In the case of the donation, its acceptance and its rejection take effect immediately. In the case of the bequest, on the other hand, its acceptance and its rejection are irrelevant except after the death of the legator.
3. The donation is binding, so the donor has no right to retract it, whereas the legator is entitled to retract the bequest whenever he wishes.

4. The donor is entitled to make various donations to one person after another, so long as their total does not amount to more than one third of his property. In the case of the bequest, on the other hand, the legator must bequeath the same amount to the each legatee, from the first to the last. He must allocate any loss of value to each one in proportion to his bequest, whether or not it includes emancipation. The same rule applies to donations, if they are made simultaneously.

# The Book of Testamentary Bequests *[Kitāb al-Waṣāyā]*

# The Book of Testamentary Bequests
## *[Kitāb al-Waṣāyā]*

Sa'd is reported as having said: "I said: 'O Messenger of Allāh, hard work has brought me to the point you observe. I am wealthy, and I have no one to inherit from me except a daughter. Should I donate two thirds of my wealth to charity?' He said: 'No!' I said: 'One half?' He said: 'No!' I said: 'One third?' He said:

One third, for one third is a very great deal. That you should leave your heirs rich is better than that you should leave them poor, reduced to begging from other people."

When someone leaves wealth or property, he is recommended to bequeath one fifth of his estate. The bequeathing of property and *tadbīr* [the promise of emancipation for a slave after his master's death] are both valid when made by anyone whose deed of gift *[hiba]* is valid, and also by the minor of sound mind and the spendthrift, whose freedom to dispose of his property is otherwise restricted.

The bequest is valid when made in favor of anyone in whose favor the deed of gift is valid, and also in favor of the child in the womb, if he is known to exist at the time of the bequest in his favor. It is valid when it consists of anything that may be used for a legal purpose, like the hunting dog and sheep or goats. It is also valid when it consists of impurities that serve some useful purpose, and of something that has not yet come into existence, like the child in the womb of the legator's slave woman, or the future produce of his tree. It is also valid when it consists of any of the following:

- Something that cannot be delivered by the legator, like birds in the air and fish in the water.
- Something that he does not possess, like one hundred silver coins that are not in his possession.
- Something that is not specifically identified, like a slave from

among his slaves. (The heirs may then give the legatee whichever of them they wish.)

- Something of unknown quantity, like a portion or a part of his property. (The heirs may then give the legatee whatever they wish.)

## Subsection

If the testamentary bequest *[waṣiyya]* is annulled, in whole or in part, it reverts to the heirs. Consider the following examples:

If the testator decrees that the slave of Zaid should be bought for one hundred coins and thereby emancipated, but the slave dies, or his owner does not sell him, the hundred coins belong to the heirs.

If he bequeaths one hundred coins to be spent on a *faras ḥabīs* [a horse to be used by warriors in the sacred cause], but the horse dies, the money belongs to the heirs.

If he bequeaths one thousand coins to enable Zaid to perform the Pilgrimage, but he does not perform the Pilgrimage, the money belongs to the heirs. If the legatee says: "Give me more than the cost of the Pilgrimage," he will not be given anything.

If the legatee dies before the death of the legator, or he rejects the bequest, it reverts to the heirs.

If he makes a bequest to a living person and one who is dead, the living person is entitled to half of the bequest.

If he bequeaths one third of his estate to his heir and to a stranger, the stranger is entitled to one sixth, and the heir's sixth is dependent on the approval [of the other heirs].

Chapter

# The Executor
## *[al-Mūṣā ilai-h]*

It is permissible for the testator to appoint any Muslim of sound mind and honest reputation, whether male or female, as an executor responsible for any action that would be permissible for the testator, such as settling his debts, distributing his bequest, and considering the interest of his infant children.

When he assigns to his executor the guardianship of his children who are infants or lunatics, his guardianship over them is established, and he may manage their property in any way that is to their advantage, such as buying and selling, receiving what is given to them, spending a reasonable amount on them and on what is necessary for their support, trading on their behalf, and investing their wealth for part of the profit. If he does business for them personally, he is not entitled to any share of the profit, but he is entitled to consume some of their property when necessary, to the extent required by his work, and he incurs no penalty thereby. He may not consume [any of their property] if he is rich, however, because of the saying of Allāh (Exalted is He):

| | |
|---|---|
| Whoever is rich, let | *wa man kāna ghaniyyan;* |
| him abstain generously | *fa-'l-yasta'fif:* |
| and whoever is poor let | *wa man kāna faqīran* |
| him consume in reason. (4:6) | *fa-l'-ya'kul bi'l-ma'rūf.* |

The executor is not entitled to delegate the responsibility that has been assigned to him, nor to buy and sell anything from their property for his own benefit. That is permissible only for the father, so no one may have absolute control of the property of the minor and the lunatic, except the father, or his authorized agent, or the governor.

## Subsection

The guardian is entitled to permit a discerning minor to act independently, in order to put his discretion to the test. What is meant here by "discretion *[rushd]*" is competence in dealing with property. Then, if he sees evidence of his discretion, he should deliver his property to him when he reaches puberty. This is equally applicable to a male or a female. If the young person reverts to childish incompetence, the guardian should reimpose restriction on him. No one should supervise his property except the legal authority, and the restriction should not be released from him except by his decree. His acknowledgment is not acceptable in relation to property, but it is acceptable in relation to legal penalties *[ḥudūd]*, retaliation *[qiṣāṣ]*, and divorce by repudiation *[ṭalāq]*. If he repudiates [a wife] or emancipates [a slave], his repudiation is therefore effective, but not his emancipation.

## Subsection

If the owner permits his slave to engage in trade, his buying and selling and his acknowledgment are valid, but his independent action is effective only to the extent of the permission granted to him. If his owner or his guardian sees him acting independently, and does not forbid him to do so, this does not amount to his having been granted permission.