

# Hanbali Fiqh: Book of Transactions

Explanatory Notes on *Akhsar al-Mukhtasaraat*

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Safar 19, 1442 | October 6, 2020

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# Book of Transactions

- I. Definition for the Arabic word for *sale*:
  - A. **Linguistic**: When something is given and something is taken between two parties
  - B. **Technical**: It is the exchange of wealth, even when it is only a guarantee to be given at a later date or a benefit, perpetually without interest and loan
    1. So a sale can be for:
      - a) A specific item that is present  
(1) Ex: I sell you an item in my shop
      - b) A specific item that is absent  
(1) Ex: I sell you an item to be delivered at a later date from the warehouse
      - c) A benefit of some sort  
(1) Ex: I allow someone to tour my garden for a fee
- II. **Pillars** of a valid contract are **three**:
  - A. Contracting parties
    1. Meaning there is a buyer and a seller
  - B. Commodity
    1. The goods being sold
  - C. Formulation of the terms of the contract
    1. It defines how the ownership of the commodity will be transferred to the buyer and how the price of the commodity will be transferred to the seller
    2. It could be verbal or based on action even without saying a word because the intention is understood
- III. A **contract** can take place in **two ways**:
  - A. Seller and buyer both **receive** something
    1. This is the contract based on action even though no exchange of words may take place between the two because it is understood
    2. Ex: a buyer goes to a store and purchases a product for cash
      - a) Seller receives the cash and the buyer receives the product
      - b) Even if no words were exchanged between them because it is understood
  - B. Seller and buyer both **agree** to move forward with a transaction
    1. This is the verbal contract
      - a) It might be via tongue or through a written contract
    2. Ex: a seller works out a written contract with the buyer to sell his home or a seller says, "I will sell you this car of mine for \$2000," and the buyer responds, "I accept."

## Conditions for a Valid Contract

There are **seven** conditions for a contract to be **valid**:

- I. Both parties **willingly agree** to the contract
  - A. If **forced**, then it is **invalid**

1. **Exception:** if a ruler **intercedes** on behalf of the buyer because the latter's rights were violated in some way, then in this case the ruler can **force** the seller to sell based on the original agreement between the two
- II. Both parties be among those for whom it is **permissible** to **conduct** the contract
  - A. Related to **qualification** and **competence**. Meaning they should be:
    1. Free
      - a) Because slaves do **not** generally own anything and it is **invalid** to sell something one does **not** own
    2. Pubescent and sane (*mukallaf*)
    3. *Rasheed* - those who are mature enough to understand it
      - a) They need to be able to understand the sale and be able to make a **decision** on it
        - (1) A small child or a senile cannot understand the sale
          - (a) It is **valid** for children to deal with small priced items but not complicated or high value contracts that they **cannot** grasp
- III. There is some sort of **commodity** in place for exchange that has **value**
  - A. The commodity is whatever contains **permissible benefit**
    1. So it is **invalid** to sell or buy impermissible things
- IV. The commodity should be **owned** by the seller or the seller has **authorization** from the owner to sell the commodity on his behalf
  - A. It is **invalid** to sell something one does **not** own
- V. The seller must have the **ability** to **deliver** it
  - A. So he **cannot** sell something that is **not** in his possession
    1. Ex: a seller says, "I will sell you a fish from the sea." This would make the contract **invalid** because the particular fish must already be in his possession
  - B. This condition is there to **safeguard** the rights of the buyer so that he is not deceived or loses money because the seller could not deliver on his promise
- VI. They should both **know** the commodity by either one of **two** ways:
  - A. Seeing it
    1. So that they can see what they are buying or selling
    2. If the commodity **changes** with **time**, then you need to view it **every** time before purchase
      - a) Ex: an animal, fruit, etc.
  - B. There is a **sufficient description** of the commodity that will be **delivered** at a **later** date (*salam*)
    1. Meaning the description is clear and precise enough so that they both understand what they are buying or selling, when it will be delivered, where it will be delivered, etc.
      - a) Ex: the product is in a warehouse and there is an accurate description of the product online or in a sale flyer
    2. There are **specific** rules related to a *salam* type of transaction that will come later *insha'Allah*
- VII. The **exact price** of the commodity must be **known**
  - A. It must be **clear** how much a particular commodity will cost **before** the deal is finalized, if it is not, then the transaction is **invalid**
    1. There should be no **hidden** fees. The **exact** amount that the buyer will pay **must** be **clear**
    2. This is to **safeguard** the buyer from being cheated or deceived
  - B. Examples

1. It is **invalid** if a seller says, "I will sell you such and such item for whatever the amount for it is in my store."
  - a) Because the price is **unknown**
2. It is **invalid** if a seller says, "I will sell you such and such for an x amount of gold and silver."
  - a) Because the price is **unclear** due to the fact that gold and silver are valued **differently** and we do **not** have a clear picture of what the price of the item is in gold and/or silver

## Selling a Valid and Invalid Commodity in One Transaction

- I. Examples of this type of sale include:
  - A. Someone selling his own property and a property of another **without** his permission in the same sale
  - B. Someone selling something permissible and impermissible in the same sale
- II. This transaction would be considered **partially valid**
  - A. Meaning the sale for the **valid** portion of the commodity would be **accepted** but the rest would be considered **invalid**
    1. Ex: a seller sells wine and fruit in the same transaction. The sale for the fruit would be considered **valid**, whereas, the sale for the wine would be considered **invalid**
    2. Ex: a seller sells his own car and someone else's car **without** his permission in the same transaction. The sale for his own car is **valid**, whereas, the other sale is **invalid**
- III. In such a case, the buyer has an **option** to either **keep** the **valid portion** of the sale or **return** it for a full refund
  - A. Meaning he has the **right** to return the item for a full refund
    1. Maybe the buyer is not pleased with dividing the transaction and was only interested in the sale of both items together
    2. Ex: a **buyer** finds out that the two watches that he was sold only one of them belonged to the seller while the other was not the seller's right to sell. The buyer must **return** the latter watch to the owner and will receive a refund for that portion of the sale. As for the first watch, he has a **choice** to either **keep** it or **return** the watch and demand his **full** money back from the seller
- IV. If it is **impossible** for us to **distinguish** the price of the valid commodity vs the invalid one in the sale, then the **whole** transaction becomes **invalid**
  - A. Ex: a seller sells his own land and his brother's land **without** his permission for a certain amount but we **cannot** distinguish the **value** of each land to **separate** the two commodities

## Invalid Contracts

- I. **Selling** or **buying** something **without need** for **those** for whom *Jumu'ah* prayer is obligatory **after** the **second adhaan** of *Jumu'ah*
  - A. If there is a **need**, then it is **allowed**
    1. Ex: a person is very hungry and needs to buy food, a person needs to buy clothes to cover himself properly for *Jumu'ah*, etc.

- B. However, **other** types of contracts are **valid**
  - 1. Ex: hiring, collateral, loan, marriage, etc.
- II. To sell juice or grapes for the purpose of making wine with them or to sell weapons in times of **internal turmoil** (*fitnah*)
  - A. In other words, we are **not** allowed to sell something **permissible** that we **know** will be used to do something **impermissible** with it
    - 1. Because it is not allowed to assist in sin
  - B. Times of internal turmoil here is referring to when two Muslim groups are fighting each other
    - 1. It is **not** allowed to assist one against the other by selling weapons to them
  - C. If you **know** the buyer will use such items in a **permissible** way, then it is **allowed**
- III. To sell a Muslim slave to a disbeliever **unless** with the **possibility** of freeing the Muslim slave through it
  - A. A disbeliever should **not** have authority over a Muslim
  - B. The **exception** here is referring to those disbelievers whose **immediate relatives** (*mahram*) are Muslim slaves. In such a case, when a disbeliever purchases his immediate relative, who is a Muslim slave, the latter becomes automatically **free**
    - 1. Ex: a disbeliever purchases his father, mother, brother, sister, son, or daughter who is a slave but has converted to Islam. Once he purchases him/her, the family member becomes free
- IV. It is **invalid** and **impermissible** to **sell** or **buy** an item **over** your brother **after** the deal is already finalized but **before** the end of the session
  - A. Following **two** conditions **must** be present for the sale/contract to become **impermissible** and **invalid**
    - 1. It happens **before** the session is over
      - a) Referring to **Khiyar al-Majlis**: it refers to the time period in which there is an option for both contracting parties either to revoke or to continue with the contract before departing from the contracting session
        - (1) This session's end could be when both or one of them leaves the location, the phone is hung up, the buyer leaves the store, etc.
    - 2. There was **no condition** put in place to allow it
      - a) Referring to **Khiyar al-Shart**: it refers to an option in a sale contract concluded at the time of signing the agreement, giving one of the two parties to the contract a right to cancel the sale within a stipulated time
  - B. Example of selling over your brother
    - 1. A buyer and seller have finalized a deal and then a third party comes in during the session and offers the same product to the **buyer** at a **cheaper** price
  - C. Example of buying over your brother
    - 1. A buyer and seller have finalized a deal and then a third party comes in during the session and offers the **seller** to buy the same product at a **higher** price
- V. It is **valid** but **impermissible** to haggle over your brother
  - A. The contract itself is **valid** but it is **impermissible** to do this
    - 1. So this is **different** than the case before where it was both **impermissible** and **invalidated** the contract
  - B. This is referring to **after** the seller **explicitly** agrees **verbally** to sell the product at the negotiated price
    - 1. Ex: a buyer and seller are bargaining over the price of a commodity and the seller explicitly agrees by **verbal** consent to sell it at a specific price, then a third person

**interjects** and offers a price which the seller accepts. The contract itself is **valid** but it is **impermissible** to do this

2. Auctions are **permitted** because they occur **before** there is an agreement on a negotiated price between two parties

VI. The above rules related to not buying, selling, or haggling over your brother are in place to keep harmony and love between Muslims

## Conditions Placed in the Contract

- I. This chapter deals with conditions that the two contracting parties put on each other in order to move forward with the sale
- II. There are two types of conditions that can be placed **in the contract**:
  - A. Valid conditions
    1. The conditions could be the type that benefit the **contract**
      - a) Ex: adding collateral or a guarantor for delayed payment
      - b) For this type, you **can** have multiple conditions
    2. The condition could be the type that contains a **known benefit** in the sale for **either** of the two contracting parties
      - a) Could be from the **seller's** side
        - (1) Ex: I will sell you this house provided I live in it for a month after which I will hand it over to you for good
      - b) Could be from the **buyer's** side
        - (1) Ex: I will buy this firewood from you provided you cut it for me
      - c) If the conditional benefit in the sale is **unknown**, then the condition is **invalid**
        - (1) The **exact** benefit must be **known** so that the parties are clear on the terms and there are no surprises, otherwise, it leads to conflict
      - d) However, you **cannot** add **multiple** conditions in the contract for this type. If you do, it will **invalidate** the contract
        - (1) Scholars differ over if this is allowed or not but the official position of the Hanbali school is that you can **only** add **one** such type of condition
          - (a) Because when you open this door, it leads to more arguments, disagreements, and conflicts
    - B. Invalid conditions
      1. Two types
        - a) First Type: Invalidates the **whole** contract
          - (1) Type where you do a contract with the condition of doing **another contract** along with it
            - (a) This other contract could be related to a loan, rent, or sale
              - (i) Example, "I will sell you this car with the condition that I also borrow from you \$100k", "I will sell you this house with the condition you let me rent it out to others", "I will sell you this commodity with the condition that you sell me such and such commodity in return", etc.
          - (2) Type that **suspends** the sale **until** a particular condition is met sometime in the **future**

- (a) Ex: “I will sell you this commodity if Fatima comes to the store”, “I will sell you this commodity if Zayd comes to my house”, “I will sell you this commodity if so and so brings a bag of food”, etc.
- (b) Exceptions by Hanbalis for this type. Meaning they allow the following:
  - (i) You make the condition “if Allah Wills”
    - (a) Ex: “I will sell you this commodity if Allah Wills”
  - (ii) Giving a down payment and then promising the rest to pay later
    - (a) Ex: “I will purchase this commodity from you and pay an x amount of its price now and the rest in the future when I get my paycheck.”
- b) Second Type: Does **not** invalidate the whole contract but **only** the invalid condition
  - (1) Putting a type of condition where you will **not be subject** to any sort of **loss**
    - (a) This is not allowed because once you take ownership of a commodity, then the responsibility of its profit/loss is on **you** not another
    - (b) Ex: “I will buy this commodity from you with the condition that if I resell it for a loss, then you will pay me the difference.”
    - (c) Also includes things like putting a condition that if you are unable to sell the product or when its demand in the market dies, then you will return it
  - (2) Seller puts in a condition that he will not be liable for any **unknown problem(s)** that may arise with the commodity
    - (a) Ex: “I will sell you this car with the condition that if any problems arise, then I am not responsible.”
    - (b) However, if the seller **points out** the problem(s) to the buyer **beforehand** and the latter still chooses to move forward with the sale, then the seller is **not** responsible
      - (i) Ex: “I will sell you this car with the condition that I am not responsible for such and such problems that the car already has within it.”

## Al-Khiyaar (Options)

- I. Means choosing the **best** option between **execution** or **cancellation** of a contract
  - A. It is a **right of both** the seller and the buyer to either **continue** with the contract or to **cancel** it within certain conditions
- II. There are **seven** types of options:
  - A. *Khiyaar al-Majlis* (Option due to assembly)
    - 1. The time period when both parties have an **option** (to continue or cancel the contract) as long as their **bodies** have not yet **separated** according to **custom**
      - a) Meaning if the two parties have **finalized** the deal but have not yet **physically** separated, then one of them still has the **right** to cancel the deal if he wishes.

Once they are physically separated, according to **custom**, the contract is **binding** and **cannot** be cancelled

- b) According to custom means whatever is **culturally accepted** as the end of *khiyaar al-majlis* in the marketplace of their region
  - (1) Ex: a deal in a room may be seen to end *khiyaar al-majlis* once one of them leaves the room, a deal on the street may be seen as an end to this option once one of them walks far away, a deal on the phone may be seen as an end to this option once one of them hangs up, etc.
- c) Exceptions:
  - (1) Both agree to **drop khiyaar al-majlis before** finalizing
    - (a) Meaning they both agree before the deal that there will be no such option on the table and whatever is agreed upon between the two parties is final and immediately binding
  - (2) Both agree to **drop khiyaar al-majlis after** finalizing
    - (a) Meaning they both agree after the deal that there will be no such option on the table and whatever has been agreed upon between the two parties is final and immediately binding
- 2. By default, it applies to **all contracts** except in the case where an **agent** purchases something from his sponsor. In this case, there is no *khiyaar al-majlis*
  - a) Because the agent is already assumed to know the property well enough to make a decision on it
    - (1) The whole point of *khiyar al-majlis* is to allow parties to pull out in case they feel uncomfortable with the deal, because generally people are uncertain if a deal will be of benefit or not

B. *Khiyaar al-Shart* (Option due to a condition)

- 1. It is when either **both** of the contracting parties or **one** of them **requires a specified period** of time to either **continue** or **cancel** the contract as a **condition**
  - a) Ex: I will buy this car from you with the condition that I am free to return it within 30 days for a full refund, I will sell you this product with the condition that I can retrieve it back from you within 15 days with a full refund, etc.
  - b) **Both** must agree to it
  - c) There must be a **specific time** mentioned in the condition for it to be valid
    - (1) Ex: This would be **invalid**: "I will buy this with the condition that I can return it whenever I want"
  - d) If they **both** require *khiyaar al-shart*, then there will be **restrictions** placed on the **commodity** from the side of the **buyer** and on the **money** from the side of the **seller**
    - (1) Ex: if a seller and buyer both agree on a goat with the condition that both sides have an option to cancel the sale for a refund within three days, then the buyer cannot sell or consume the goat for that amount of time and the seller cannot spend the money earned from it for that amount of time. This is because there is a possibility of the sale contract becoming annulled from either side
- 2. It is **prohibited** to **trick** the other party with this method
  - a) There should be a **clear** conscious and **real intention** to buy and sell from both sides
  - b) It **invalidates** the sale if **both** had bad intentions

(1) If only **one** of them had a bad intention, then it will go in **favor** of the one who had a **good intention** as long as he **agrees**

(a) Ex: a seller needs to borrow some cash for a few days so he sells an item with the condition that he can retrieve it within 10 days if he wants. Then after 8 days, he requests his item back for a refund. So he did not have a real intention to sell the product but just wanted access to some quick temporary cash. If discovered, the sale will favor the buyer, thus, the buyer has an option to either keep the product or return it for a full refund

3. The **ownership** of the property **transfers** to the **buyer** whether the condition is set by both or one of them

a) Meaning technically the buyer **owns** the product in **either case**

(1) However, some **restrictions** will be **required** if there is *khiyaar al-shart* on the side of the **seller**, thus, preventing the buyer from consuming the commodity or selling it off to another

(a) Ex: if the condition is that **both** have 30 days to reconsider, then the buyer **cannot** sell the property to another for 30 days. If the buyer did so, the sale will be considered **invalid**

(b) Except in **two cases** the buyer can do **whatever** he pleases with the item even if the specific time period has not yet ended:

(i) He unconditionally sets a slave free

(ii) The *khiyaar al-shart* was **only** set by him

(a) Ex: the buyer **alone** has time to reconsider and not the seller

#### C. *Khiyaar al-Ghabn* (Option due to injustice)

1. When the seller **overcharges** for a commodity **far higher** than its **usual** value

a) The buyer in this case has an **option** to either **keep it** with the overcharged price or **return** it for a full refund **if he did not know** that he was being overcharged

(1) Ex: seller raises the price in an auction by having someone keep bidding in order to raise the price, seller takes advantage of someone outside of town who does not know the market price, etc.

b) If the buyer **knew** that he was being overcharged, then he does **not** have the right to return it

2. There is **no right** for the one who is **rushing** to buy

a) Meaning if the buyer could have figured it out, if he wanted, that he was being overcharged had he done the research or asked the right questions but was just hasty to buy the item at whatever price, then in this case he does not have the right to return it

3. After finding out, he is **not** required to request a refund immediately

#### D. *Khiyaar al-Tadlees* (Option due to deception)

1. When a seller **raises** the price of a commodity by **deceiving** the buyer in some way

a) Ex: he makes a milking animal seem like it gives more milk than it really does by not milking it for a few days, he hides some of the defects of a product by making it seem that it does not have those defects, etc.

2. In this case, the buyer has an **option** to either keep it or return it for a full refund

a) After finding out, he is not required to request a refund immediately

- (1) **Exception:** if he bought a **milking animal** thinking it produced milk but then found out that it does not, he has **three days** after finding out to return it
3. If there is **evidence** to suggest that the buyer is **pleased** with the commodity despite its flaws, then he does **not** have the option to return it
- E. *Khiyaar al-'Ayb* (Option due to a defect)
1. When a commodity has a defect that **decreases** the **value** of it
    - a) Ex: an animal that is sick, missing a part, containing extra parts, etc.
  2. If the buyer comes to know of it after purchase, then he has an **option** to either return it for a full refund or keep it by **requesting part of the money back** based on its **actual** value called *arsh* (أرش)
    - a) Ex: Let's say a car with a good engine is worth \$10,000 and one with a bad engine is worth \$5,000. If a buyer buys a car thinking the engine is good for \$10,000 but later finds out after taking it home that the engine is actually bad, then he has the option to either return it for a full refund or keep it but request the seller to return \$5,000 to him because that's the actual worth of the car
    - b) If the defect does **not** decrease the value, then the buyer does **not** have the right to return it
    - c) After finding out, he is **not** required to request a refund immediately
    - d) How to find value of it and determine the *أرش*
      - (1) Find the market value of the item without the defect
      - (2) Ask the market how much the value of it is if it had the defect
      - (3) Subtract what you paid for it by what it's actually worth
  3. If the **buyer damages** or **defects** the commodity in some way (**after** discovering the original defect), then he has **two** options:
    - a) Keep it but **request** part of the money back based on its **actual value** with the defect
    - b) Return it for a refund but **must** pay the seller for the damage/defect that he **caused**
  4. If there is a dispute between the two as to who caused the defect, then the **buyer** is given preference with an **oath**
- F. *Khiyaar al-Takhbeer Saman* (Option due to seller's dishonesty about the principal price)
1. When the seller tells the buyer how much he **himself** has paid for the item but is **dishonest** about it
    - a) Ex: seller and buyer are negotiating, then the seller tells the buyer, "I paid for this item \$10 and I will sell it to you for that much as well and no less," the buyer accepts but finds out later on that the seller actually paid only \$8 for it
  2. There are **five forms** of this:
    - a) The seller told a price **higher** than he actually bought it for
      - (1) Ex: the seller says that he bought an item for \$10 and sells it for that amount, but then the buyer later finds out that the seller actually bought it for just \$8, thus, he was deceived
      - (2) There is **no option** to return it in this case but the buyer has the option to **request the extra** money back
        - (a) So in the previous example, the buyer can request \$2 back
    - b) The seller bought the item on credit but hides this fact from the buyer

- (1) Ex: I will sell you this item for \$200 and that is exactly how much it cost me
  - (a) However, he is hiding the fact that he bought it on \$200 credit and is paying it off in installments
- (2) In this case, the buyer has **no option** for returning it but he has the right to tell the seller to get it from him on credit the **same way**
- c) Seller bought it from a person whose attestation is not accepted in this context
  - (1) Meaning the seller tells the buyer that the item cost him such and such price but is **hiding** the fact that the person who sold it to him is a **close family member** (father, son, wife, etc.)
    - (a) Close family members' attestation is not accepted in this context because there is a **bias** in place. It is possible that the family member sold it for a high price so that the seller can also sell it for a high price by saying that that is how much it cost him
    - (b) In general, the seller is **not** required to tell the buyer from whom he bought the item, whether he bought it on credit or not, how much he paid for it, etc., however, if he does **choose to reveal** such information, then he **must** be **honest** about it so that the buyer can make an **informed** decision
      - (i) The focus here is to **assure** that the deal is **fair** and that the buyer is not deceived in some way
  - (2) In this case, the buyer has the **option** to either keep it or return it for a refund
- d) **Much** of the price is a **deception**
  - (1) Ex: Muhammad owes Zayd \$900 but cannot pay it off, so Muhammad instead offers Zayd his car, which is worth only \$450, as a way to relieve himself from the debt. Zayd accepts the car, which is worth \$450, and then sells it off to someone for \$900 by telling the buyer that that is how much he himself paid for it
    - (a) This is a form of deception
  - (2) In this case, the buyer has the **option** to either keep it or return it for a refund
- e) Seller purchases **multiple quantities** of an item in **one deal** and sells each based on his **own estimation** of the principal price but **passes** it off as the **actual** principal price
  - (1) Ex: a seller purchases two different cars for \$100,000 and sells them for \$50,000 each by saying that that is how much he paid for each
    - (a) But this is **false** because he bought both **together** as one deal. Splitting them evenly is his **own estimation** and not the actual value of each on its own
  - (2) In this case, the buyer has the **option** to either keep it or return it for a refund
    - (a) Because the seller was dishonest about it

G. *Khiyaar li ikhtilaaf al-mutabaay'ayn* (Option due to difference between the contracting parties)

1. If there is a difference over the **price** or **rent** and there is **no evidence** in either party's favor or they **both** have **contradictory** evidence against each other, then the following steps should be taken:

- a) **Seller** takes an **oath**: he should say “By Allah, I did not sell it for such and such but I sold it for such and such”
    - (1) He does it first because he is the one that will lose the deal
  - b) **Buyer** takes an **oath**: he should say “By Allah, I did not purchase it for such and such but I bought it for such and such”
  - c) If **both** are still **dissatisfied** despite the other’s oath and then **one** of them **wants** to void the contract, then the sale will be **cancelled**
    - (1) The buyer receives his refund and the seller his commodity
  - d) If the goods were **damaged** by the buyer **before** the payment and then there is a dispute about the price:
    - (1) They will both take an oath as discussed above
    - (2) The **buyer is responsible** for its price with its **current value**
      - (a) The price will be based on the value of the commodity with the damage in the market
      - (b) Ex: Buyer buys something with a promise to pay for it later. The buyer returns sometime later to pay the seller but there is a dispute as to how much was agreed upon and there is no evidence for either side. They both take an oath as mentioned above and then one of them wants to cancel the deal. However, it is discovered that the buyer damaged the product. In this case, we will ask the market for the value of the damaged commodity and that will be determined to be the price of the product
        - (i) If the sale is to be cancelled and the product returned, then the buyer must compensate for the damage
2. If there is a difference over the **duration of the contract** or a **condition of the contract** and there is no evidence for either side, the decision will **favor** the one who **negates**:
- a) **Duration ex**: Buyer claims it was 6 months, the seller claims it was 10 months. The buyer is favored in this case because the one who **negates** the **longer time** is given preference
  - b) **Condition ex**: Buyer claims x was part of the contract as a condition, the seller claims it was not. The seller is favored because he **negates** the condition
    - (1) The *as/* is the absence of the condition
3. If there is a difference over the **particular commodity** or its **quantity**, then the **seller** is given **preference**
- a) Because the one who **acquires** the commodity is the one that needs to **prove** that he deserves a particular commodity over another or a particular quantity from the seller
    - (1) Ex: seller says he sold the buyer a Honda Civic but the buyer insists that the seller sold him Ford Focus. The seller’s claim will be given preference; a seller says that he sold 10 quantities of a commodity to the buyer but the latter claims that he was sold 20 quantities. The seller’s claim will be given preference
- III. If the buyer is delivered a commodity that is **different** in description he was told about or it has **changed** since he last saw it at the store, then he has the **option** to either accept the sale or cancel it for a refund

# Measurement Contracts

- I. This chapter deals with rules related to commodities sold in **measurements**
  - A. It is particularly speaking about the following types of measurements:
    1. Things sold based on **weight**
    2. Things sold based on **number** per piece
    3. Things sold based on **specific measurements** like metrics or meters
      - a) Ex: fabric
- II. Whoever purchases something in measurement:
  - A. The contract for it is **valid** and the **ownership** transfers to the **buyer**
  - B. However, the buyer **cannot** do whatever he likes **before** possession of it
    1. Ex: he cannot sell it, rent it, or do anything else with it until he has **received** all of it in his **possession**
    2. If he does something before possession, then it would be invalid
- III. How to take possession of such items:
  - A. It should be weighed/measured/counted in the **presence** of the buyer or his representative before possession
    1. If the buyer wants to take it with him in his own container, then that should be present as well
      - a) Once the buyer or his representative see it weighed/measured/counted and put into the **container**, it is considered possessed
      - b) Buyer can also use his **hand** as a container if it is possible for him to do so
    2. This is to assure that it is measured/weighed/counted properly and is complete so that there is no dispute
  - B. If it's a large pile(s) of food or an animal(s), then such things will be considered **possessed** once they are **transported** to the buyer's location
  - C. If the commodity consists of **small items**, then they will be considered **possessed** once they are **handed over** to the buyer in his **hand**
    1. Ex: jewelry
  - D. If the commodity is a type of item that **cannot** be moved, then it is considered **possessed** once the seller **evacuates** it after finalizing the contract
    1. Ex: land, house, etc.
- IV. What if **one** of them wants to **cancel** the contract **after** it becomes binding?
  - A. This is **allowed** if the other party agrees
    1. This is known as إفالة
    2. It is **sunnah** to **accept** the request for cancellation
    3. *Hukm wadi'* (declaratory law) in this case is that it will cancel it once the other party agrees
- V. Terms to know
  - A. *Ibtaal* (إبطال) - Invalid
    1. Means contract was invalid to begin with
  - B. *Faskhun* (فسخ) - Cancel
    1. Contract is valid but a request was made by one of the parties to cancel it and it was accepted
  - C. *'Aqdun* (عقد)

1. Contract is valid and currently binding

## Interest (Ribaa)

### I. Definition

A. *Ribaa* means an increase in a particular item. The word is derived from a root meaning increase or growth

1. It is prohibited according to the Qur'an, Sunnah, and consensus of the scholars
2. It is one of the seven major destructive sins
3. It does **not** refer to **any** and **every** type of growth in a sale but **only** particular types of growth

a) Typically occurs in items sold in **measurements** or **weights**

(1) This means **any** exchange transaction that is **not** done based on measurement/weight **cannot** be usurious

(2) Ex: gold, silver, salt, dates, barley, wheat, copper, meat, iron, etc.

(a) Because all such items are either typically sold in measurement (dates, barley, wheat) or weight (gold, silver, iron, copper, meat)

II. There are **two** types of interest (*riba*) that are **prohibited** in Islam: **Surplus** and **deferred payment**

A. Surplus (*fadh*)

1. Def: When you **exchange** the **same type** of goods based on measurement/weight but with a **surplus** and the exchange is done **immediately**

a) Even if the measurement/weight is **small** and insignificant in **size**, it is not allowed

b) Same type examples: gold for gold, silver for silver, dates for dates, etc.

(1) Ex: you sell 10 grams of gold for 15 grams of gold to be exchanged immediately, you sell a *saa'* of dates for a *mudd* of dates to be exchanged immediately, etc.

(a) *Saa'* is a full two handfuls of something and *mudd* is four full two handfuls of something

2. **Conditions** for it to be considered the prohibited *riba al-fadh*:

a) Both exchanges are of **same type**

(1) So if the exchange is for **different types**, for example, selling gold for silver, then it would be **permissible** if there is a surplus because they are of different types

b) One receives a **surplus** in return

(1) So if the exchange is in **equal** amount of measurement/weight for the **same type**, then it would be **permissible**

c) Exchange happens **immediately**

(1) Meaning the buyer and seller both take **possession** of their commodities immediately

(2) If the exchange does **not** take place immediately, then it would be the second type of *riba* discussed below

3. Based on the above, the exchange is **valid** and you can **avoid** *riba al-fadh* if:

a) The commodities are **equal** in measurement/weight when of **same type**

(1) Ex: 20 grams of gold for 20 grams of gold, a *saa'* of dates for a *saa'* of dates, etc.

- (2) If they are of **different types**, then they are **not** required to be equal
  - (a) Ex: 20 grams of gold for 30 grams of silver, a *saa'* of dates for a *mudd* of barley, etc.
- b) The exchange **must** happen **before** they separate **regardless** of whether the commodities being exchanged are of the same type or not
  - (1) Meaning the buyer and seller both take possession of their commodities immediately
  - (2) **Exception**: it is **permissible to delay** the payment if someone wishes to purchase a weighed/measured commodity (other than gold/silver) **with** gold/silver/cash
    - (a) Ex: someone purchases iron in weight and wishes to pay for it in gold/silver/cash after a month
    - (b) Cash is considered a type of gold/silver
- 4. It is **neither permitted nor valid** to exchange commodities of **same type** calculated **originally** in measurements through weights and vice versa
  - a) Weights and measurements are considered **separate** types of calculations
  - b) Ex 1: selling a *saa'* of dates for a **kilo** of dates
    - (1) *Saa'* is a measurement and kilo is a weight. Dates are **originally** calculated in measurements and not weights
    - (2) Because there is a **possibility** that they may **not** be equal in measurement
  - c) Ex 2: selling 2 **grams** of silver for 2 *saa'* of silver
    - (1) Grams is a weight and *saa'* is a measurement. Silver is **originally** calculated in weights and not measurements
    - (2) Because there is a **possibility** that they may **not** be equal in weight
  - d) **Exception**: if it is **known** that they both are **equal** in their **original standard** calculation
    - (1) Ex: if someone sells a *saa'* of dates for a **kilo** of dates and the latter was **measured to assure** that it was also a *saa'* because dates are **originally** calculated through measurement

B. Deferred payment (*nasee'ah*)

- 1. Relates to **delay** in **timing**
  - a) Meaning the **possession** of goods is **delayed** and is not done immediately
- 2. Def: When you **exchange** goods based on weights/measures but it is **delayed**
  - a) Ex: you sell 10 grams of gold for 10 grams of gold to be paid after a month
    - (1) Notice that even if there is **no surplus** between the same types, it would **still** be considered *riba al-nasee'ah*
  - b) **Even** if the goods are of **different types** but calculated under the **same category**, it would **still** be considered *riba al-nasee'ah*
    - (1) Ex: you sell 10 grams of **gold** for 15 grams of **silver** to be paid after a month
      - (a) Gold and silver both belong under the **same category** of **weights**
  - c) **Exception**: it is **valid to delay** the payment if someone wishes to purchase a weighed/measured commodity (other than gold/silver/cash) **with** gold/silver/cash
    - (1) Ex: someone purchases meat in weight and wishes to pay for it in gold/silver/cash after a month
- 3. The following are **valid**:

- a) To exchange a commodity sold in **measurement** for a commodity sold in **weight** and vice versa
  - (1) Ex: to sell 5 *mudd* of dates for 3 grams of gold
    - (a) *Mudd* is a measurement and gold is a weight
  - (2) In this case, it is **allowed** to be exchanged **either** immediately or through a delay
    - (a) It also is **not** required to be equal
    - (b) The same goes for exchanging something measured/weighed for **anything** else that is **not** sold in measurements/weights
      - (i) Ex: selling a *saa'* of dates for a t-shirt
- b) To exchange gold for silver and vice versa is valid **but**:
  - (1) If the two parties separate **before** complete possession takes place, then whatever was **not** exchanged becomes **invalid**
    - (a) Ex: a seller exchanges 10 grams of gold for 20 grams of silver. The seller receives the 20 grams of silver but only pays 5 grams of gold and says that he will give the rest next month
      - (i) This will **invalidate** the 5 grams that he owes because the exchange must happen immediately

III. To sum up the rules:

- A. We first look to see if the two exchanges are of **usurious types**
  - 1. Meaning we find out if it is something sold based on measurement/weight
- B. If both are of the **same category**, then it is **required** that they be exchanged **immediately**
  - 1. Ex: weights for weights (gold for silver) or measurements for measurements (dates for barley)
  - 2. **Exception**: to purchase a weighed/measured commodity (other than gold/silver/cash) with gold/silver/cash
    - a) In such a case, it is allowed to be delayed
- C. If both are of the **same category** and **type**, then it is **required** that they be exchanged **immediately** and be **equal** in amount
  - 1. Ex: gold for gold, dates for dates, etc.
- D. If both are from **different categories**, then it is **not required** that they be exchanged immediately **nor** that they be equal in amount
  - 1. Ex: weights for measurements (copper for dates), non-usurious types of exchanges (t-shirts for shoes), weights/measurements for non-usurious types (copper/dates for clothes)

## Sale of Assets and Fruits

- I. This chapter specifically deals with rulings related to the sale of the following types of assets: homes, land, trees, slaves, fruits, and plantations
- II. When a **house** is **sold**, the following will **automatically** be considered part of the deal:
  - A. The **land** on which it is built
  - B. The **building** itself
  - C. Roof, connected door(s), staircase, nailed shelves, any hidden warehouse or depository, etc.
    - 1. Basically anything that is **fixed** or **connected** to the house is automatically **included** in the sale of the house without it even being mentioned explicitly in the contract

2. **Exclusions:** lock(s), key(s), bucket(s), roller(s), etc.
    - a) Basically anything that is **not** fixed **nor** connected to the house and is **movable**. Such things are **not** automatically included in the sale of the house
      - (1) Such things either require a separate **new contract** or must be mentioned explicitly in the original contract in **addition** to the house
    - b) Rollers were a way to bring buckets of water from the well in the old days
- III. When a **land** is **sold**, the following are **automatically** considered **part** of the deal:
- A. Any **trees** planted on it
    1. Following are **excluded**:
      - a) Plants that grow only **once** and then are **cut** and their implanted **seeds**
        - (1) Such plants usually do not have any trunks
        - (2) However, if the **buyer** puts in a **condition** that he will **also** own all such buried seeds and plants, then it will be considered part of the deal as well
          - (a) It is **valid** even if the buyer does not know how many such seeds and plants are in the land
            - (i) Meaning he can just make a general statement in the contract, "I buy this land from you and whatever is planted in it and its seeds"
    - B. Any **buildings** built on it
    - C. Rulings related to whatever is **cut** and **picked repeatedly** from the plants:
      1. Ex: clover, fruit, etc.
      2. They all **automatically** belong to the **buyer** and are **part** of the deal with the land purchase
        - a) However, if at the time of the deal there is something **ready** to be **picked**, then it belongs to the **seller** by default unless the **buyer** puts in the **condition** that those **too** belong to him
- IV. Whoever **sells** a **date palm tree** that is ready for **pollination** and its fruits are either **ready** or **almost ready**, then its fruits belong to the **seller**, thus, are **not** automatically considered part of the contract
- A. If the fruits have **not** yet come out, then its **future** fruits automatically belong to the buyer
  - B. But if the buyer makes it a condition, then it all belongs to him
    1. Buyer can either make a separate contract for each tree or one for all trees
  - C. The **same rule** applies to **all trees** whose fruits are apparent and can be seen
    1. The following cases also fall under this rule:
      - a) Plants that start off as flowers and then **transform** into fruit. If the fruits begin to appear from the flowers, they belong to the **seller** unless the **buyer** puts it **explicitly** in the contract
        - (1) Ex: apricot
      - b) Plants that start off **folded** and then open up: If the plant has begun to be **unfolded** and the fruit in it begins to appear, then it belongs to the **seller** unless the **buyer** puts it **explicitly** in the contract
        - (1) Ex: cotton
    2. General rule here is that any fruit that appears **after** purchase of a tree(s) belongs to the **buyer** by default, however, fruits that have **begun to appear**, even if not completely, **before** the purchase are considered **separate**, hence, they belong to the **seller** by default unless the **buyer** makes it part of the **condition** in the contract that it also belongs to him

- a) Similarly, if a tree is sold in the **early stages** when its fruits have **not** yet begun to appear, then they will belong to the **buyer** by default
  - b) Leaves **always** belong to the **buyer** because they are **part** of the trees
    - (1) Even if the leaves can be made of use separately
- V. It is **not** valid to sell **fruit on trees** by themselves **until** they are **ready** for **consumption**. Similarly, it is **not** valid to sell **grains** until they are ready for harvest (rice, corn, etc.)
  - A. This is in order to keep harmony in the community, because it is not guaranteed that the fruit/grain will not go bad or become ruined before they are ready
  - B. **Exceptions:**
    - 1. Selling the fruit(s) to the **owner** of the **tree** or the grain(s) to the **owner** of the **land**
      - a) In this case even if the fruits/grains are not yet ready, it is **valid**
      - b) Ex: a farmer has a farm on a land that he is renting from someone else. In this case, the farmer can sell the grains before they harvest to the owner of the land
    - 2. Selling with the condition to cut it **immediately** to be used for some benefit
      - a) Ex: selling it to someone to use as fodder for his animals
      - b) This is provided that the owner of the fruits is **not** a partial owner
        - (1) Meaning he must **not** share the ownership of the fruit with a business partner
- VI. It is **not** valid to sell **green vegetables** (lettuce, clover, parsley, mint, okra, etc.) and **cucumbers** except **piece by piece** or with its **root**
  - A. Meaning when it comes to such plants, we can **only** sell what has **grown** and is **apparent** in front of us
    - 1. Ex: you can only sell **pieces** of cucumbers/lettuce/mint/etc. that you **see** grown on the plant and **not** those that will appear in the **future**
    - 2. Such types of plants are **constantly** cut and then **regenerate**
    - 3. Whatever has **not** yet grown **cannot** be sold because it is categorized as **unknown**
    - 4. Selling it with its **root** means selling the source (**whole tree** or the **plantation**) so that whatever grows in the **future** will belong to the **buyer**
  - B. Once a buyer **agrees** to purchase what is grown and apparent, he must **cut** and **pick** it **quickly** and if he does not, then it will **invalidate** the contract if it **grows** unless the growth is a very **insignificant** amount
    - 1. This is because such plants (lettuce, clover, parsley, mint, okra, etc.) grow **very quickly** and the new growth, which **belongs** to the **seller** and is **not** part of the **deal**, will **mix** with the buyer's, thereby, making it **difficult** to **distinguish** between the two
    - 2. There is an **exception** for **wood** which **also** regenerates on a tree
      - a) In this case, it is allowed to delay its cut because it grows **slowly** and is easy to distinguish by measuring
        - (1) Therefore, both the seller and buyer have their shares in it even if it grows after the deal because they can distinguish the difference
- VII. It is the **responsibility** of the **buyer** to cut, gather, and pick it up after the deal
  - A. **Unless** he puts it in the **contract** for the seller to do it
- VIII. It is the **responsibility** of the **seller** to water it after the deal
  - A. Because the **seller** is still the **owner** of the tree growing the sold vegetables
- IX. Whatever fruit/vegetables are **ruined** by a heavenly **calamity** (storm, flood, etc.), then it is the responsibility of the **seller**
  - A. A little bit of damage is **tolerated**

- B. Ex: a buyer purchases some fruit from a farmer but has not yet come to pick them up. There is a storm which damages the trees with the sold vegetables. In this case, the farmer is responsible because he is the owner of the source of the fruit
- C. **Exceptions:**
1. The seller **sold** the **tree** with the fruit as well. In this case, it is the **buyer's** responsibility if a heavenly calamity occurs
    - a) Because the buyer is now the **owner** of the **source** of the fruit
  2. The buyer **delays** in picking up his share from the seller beyond what is **customarily** done
    - a) In this case, the buyer will be responsible if a storm damages his fruit because he is the one who **delayed** the delivery **beyond** what is **normally** done in such sales
- X. It is **valid** to sell some types of fruit even if not all of them are ready with the **condition** that some of them are ready, however, they must all be from the **same** garden and the **same** type of tree and fruit
- A. Ex: if there is a garden in which red and green apple trees are planted, then if the farmer sees that one of the green apple trees is growing the fruit fine, then he can sell the fruit from the rest of the green apple trees as well even though they have not grown yet based on the successful growth of one of its trees
    1. He **cannot** do so for the red apples and their trees in this case unless they produce a similar result
  - B. It is **restricted** to the **same** garden, trees and fruit
    1. If any **one** of them changes, then it does **not** apply
  - C. Same goes for grains
- XI. How to tell if fruits are ready
- A. Dates: when they become **red** or **yellow**
  - B. Grapes: when the water in it becomes **sweet**
  - C. Rest of the fruit: when they appear **ripe** and **good to eat**
- XII. If you sell an **animal**, the following are automatically included in it:
- A. Bridle
  - B. Rein
  - C. Animal's sole/shoe which are made of iron and placed under its feet
- XIII. If you sell a slave, then his/her **clothes** that he/she is wearing are **automatically** included in it
- A. Exception: expensive or special occasion clothes are **not** included
    1. Special occasion clothes: those worn on Eid or other suitable occasions
    2. Meaning only his/her clothes that he/she wears while **working** are included

## Delayed Delivery (Salam)

- I. Def: This is when you pay the money up front and then have the item delivered later
- II. There are **four** types of sales:
  - A. The money and the item are exchanged **immediately**
  - B. The money is **delayed** but the item is exchanged **immediately**
    1. Meaning you receive the item but pay for it later. It's a form of debt
  - C. The money is exchanged **immediately** but the item is delivered **later**
    1. This is what this section is about
  - D. **Both** the money and the item are delayed

1. This type is **not** permitted because it is selling debt for debt
- III. It is valid with **seven** conditions. If **any** one of them is missing, then such a sale will **not** be permitted:
- A. It is something that can be described with **precision**
    1. Ex: its description, measurement, weight, quantity, etc.
    2. If it is a type of item that cannot be described with precision, then it **cannot** be sold via delayed delivery
      - a) Ex: Jewels and gemstones that cannot be described precisely, they cannot be sold via delayed delivery
    3. In the past when things were manufactured, they would mix different things together without precision so that it would be difficult to measure precisely what was in it, however, today they generally manufacture with precision and are able to tell what's in it
      - a) So today if we are able to precisely **describe** the manufactured item, then we can sell it with delayed delivery
        - (1) Ex: something manufactured with equal amounts of different products
  - B. It must contain the following **details** in the **description**. This is so it does **not** later result in confusion or dispute:
    1. Its category and type (if applicable)
      - a) Category ex: is it a date or barley?
      - b) Type ex: is it Saudi barley or Emirati barley?
    2. Any type of description which may cause its price to differ
      - a) Ex: dates from Medina vs dates from Syria
    3. Whether it is fresh/new or old
  - C. Its appropriate **amount** must be mentioned
    1. Meaning its quantity, weight, measurement, etc.
    2. It is **not** valid to sell something that is sold in measurements to be sold in weights and vice versa
      - a) Because it leads to interest (*riba*). This was discussed in detail above under the section related to interest
      - b) Similarly, if something is sold in quantities, then it cannot be sold in weights/measurements
        - (1) Ex: selling 10 kilos of computers or books. This is **invalid**
  - D. There must be a mention of **appointed time** of delivery
    1. Ex: it will be delivered in 30 days
  - E. The item should be a type that can be found **most** of the time in the season in which it will be delivered
    1. Meaning seller should be able to have access to it, otherwise, how will he deliver it?
    2. Ex: fruits from different seasons cannot be promised to be delivered in seasons in which they are not grown
      - a) There is an **exception** to this nowadays due to technology because you can find all types of foods the whole year
    3. The condition can be **extended** to any type of item that may be difficult to deliver at the appointed time and/or place for whatever reason
    4. If the seller is unable to deliver it at all or a part of it, the buyer can either:
      - a) Be patient and **wait** for the rest to be delivered
      - b) Request a full **refund** and **cancel** the contract
  - F. The seller must take **possession** of the money **before** separation
    1. If he does not, then this will be selling debt for debt, which is prohibited

- G. The seller delivers the item(s) as an obligation
  - 1. Meaning the item must **not** be present in the store. In that case, it cannot be sold via such a contract
  - 2. It is also **not** valid to sell fruit from a **specific** tree
    - a) Ex: a buyer says he wants to purchase fruit from a specific tree once it grows and that it be delivered to his house
    - b) This is in order to avoid dispute because it is not guaranteed that a particular tree will grow the fruit
- IV. It is **obligatory** for the seller to fulfill the contract by delivering the item(s) to the delivery address **agreed** upon in the contract
  - A. **Exception:** if there was a condition made that another location may also be used for delivery
  - B. If no delivery address is mentioned, then it will be delivered to the place where the contract took place
- V. The following are **invalid**:
  - A. A buyer cannot **resell** the item to someone else **before** taking possession of the item that is to be delivered
    - 1. Because he is trying to sell something that he does not possess which is **not** allowed
  - B. There should be no **transfer** of wealth from either party to a third party
    - 1. Meaning no one else should **interfere** with the deal
    - 2. Ex: buyer gives money for two pounds of meat to be delivered in three days. The seller takes the money and says to him, "Go to so and so and get two pounds of meat from him because he owes me two pounds". This is not valid
      - a) The same goes for the buyer
  - C. The buyer **cannot** take a **pledge** or **guarantee** from the seller
    - 1. Ex: after the buyer gives him the money, he cannot ask for a guarantee or collateral in case the seller does not deliver
  - D. Both parties **cannot** change the order to something else **after** the end of the deal
    - 1. It must be whatever was **agreed** to sell
    - 2. Ex: the seller cannot come to the buyer a few days before delivery and request to change the item

## Loans

- I. Types of loans
  - A. When someone **borrow**s something to **benefit** from it and then returns something **similar** to it but **not** the very same item
    - 1. Ex: someone borrows a bag of rice and then uses it to feed his family and then buys a new bag of same size to pay it back to the lender
  - B. When someone **borrow**s something to **benefit** from it and then returns the very **same** item
    - 1. Ex: someone borrows a car to go to the store and then returns it after shopping
- II. Anything that is **valid** to **sell**, it is also **valid** for it to be **loaned**
  - A. Meaning in general, **anything** that can be sold can also be loaned
  - B. **Exception:** human beings
    - 1. This is in reference to **slaves**. Even though they can be sold, they cannot be loaned
      - a) Ex: someone borrows a slave and then returns another one in exchange for it

2. This was a concern in the past when slavery was common because it could mean borrowing slave girls for sex
- III. Whatever is **borrowed**, it is **obligatory** to return either the item **itself**, something **similar** to the item, or its **value**
- A. Ex 1: someone borrows a pound of meat, he can either buy another pound of meat to return or pay the lender its price
  - B. Ex 2: someone borrows someone's car, he must return the car itself after use
  - C. If the **market** runs out of **similar** type items, then he **must** return the **value** of it on the day the market ran out
    1. The price **stabilizes** for the borrower on the **day** the market runs out of similar items
      - a) Ex: he borrows a *saa'* of dates and then on the third day the market runs out of all types of dates. In this case, he can return the **value** of a *saa'* of dates on the day the market ran out
    2. If it is a type of item that does **not** have something similar at all, then he must return it based on its value on the day of its **possession** (i.e. on the day he borrowed it)
      - a) Ex: a person borrows someone's time to do something for them for an hour
- IV. It is **prohibited** to include a **condition** in the loan contract that will give some sort of extra **benefit** to the **lender**
- A. This is because it is a form of **interest (riba)**
  - B. Ex: lender conditions to a borrower in the contract that the latter will return the original item plus something else in return
  - C. If the borrower fulfills the contract with something better on his **own** in return, gives a gift or something extra, etc. **without** it being agreed upon between them during the contract, then it is **not** a problem
    1. However, this must be done only **after** the loan has been **returned**

## Collateral

- I. Collateral: consolidation of debt through **pledging** something **specific**
  - A. That specific thing can be **anything** that has **value**. It is **sold** to settle the debt
  - B. Ex: something pledged as security for repayment of a loan. "I pledge my car as a security that I will pay for this \$5,000 item in 5 months"
  - C. The borrower is **still** considered the actual **owner** of the collateral and not the lender
- II. In general, **anything** that is **allowed** to be **sold** is also **permitted** to be used as collateral
  - A. Exception: the *mushaf*
  - B. **Fruits** and **plants** that are **not** yet ready for harvest can **also** be used as collateral
    1. **Even though** they are **not** allowed to be sold
  - C. Slaves can also be used as collateral but **not** their kids
    1. Generally, it is **not** allowed to separate a female slave from her kids, however, she can be put up as a collateral because collateral does **not** transfer her ownership to the lender. She is still the property of the borrower
- III. The collateral can **only** be **voided** if it is **still** in the **possession** of the **borrower**, however, when it comes under the **possession** of the **lender**, it can then **no longer** be voided
  - A. Meaning a borrower **cannot** say **after** the collateral has come into the possession of the lender that he wants to void it
    1. It then comes under the **right** of the lender to void and return the collateral or not

- IV. The collateral **cannot** be sold without **agreement** between **both**
- A. Both have restrictions on it in order to protect the interests of both
    1. The lender cannot do as he pleases with it because he is not its actual owner
    2. The borrower cannot do as he pleases with it because it is pledged until the debt is paid
  - B. If any **one** of them sells it **without** the other's **permission**, the sale will be considered **invalid**
    1. **Exception:** the borrower frees his slave
      - a) In this case, the lender will take the **price** of the slave as collateral instead. This is because it is encouraged in the Shariah to free slaves
- V. The collateral is a **trust** in the hands of the lender
- A. This means if the collateral is **damaged** or **stolen** while under the care of the lender, then he will **not** be insured
    1. Provided it took place due to his own **shortcomings** or **transgressions**
- VI. If the **borrower** pledged the **same item** with **two different lenders** and paid back **one** of them or a **lender received payment** from **one** of the **two borrowers** that pledged the **same item**, then in both cases only a **portion** of the debt is considered to be settled
- A. In the first case, the borrower still owes the other lender so half of the item is **still** collateral
    1. Ex: Muhammad pledges his car, which is worth \$2000, to Salih and Zayd from whom he borrowed \$1000/each. Muhammad pays Salih back his money but still owes Zayd. In this case, the car is still considered collateral
  - B. In the second case, the debt from the second borrower is still owed, thus, the item pledged is **still** considered collateral
- VII. If the **time** to pay back the debt arrives and the borrower does **not** pay the lender back:
- A. If the borrower **permits** the lender, he can **sell** the collateral and get his money
    1. If the price the lender receives in payment is **over** the owed amount, then he **refunds** the **extra** amount to the borrower
  - B. If the borrower does **not** permit the lender, then he can go to the ruler or judge to **force** the borrower to either **sell** the collateral or **pay** him back
    1. If the borrower still **refuses** to pay or sell the collateral, then he is either jailed or some other form of **appropriate discipline** is used against him
      - a) If he **still** refuses, then the **ruler** can **intervene** and **sell** the collateral on his behalf **without** his permission and settle the debt
- VIII. If the borrower is **absent** on the day of the payment of debt, then he will be **treated** like the one who **refused** as in the previous case
- IX. The following conditions are **invalid**, therefore, they **cannot** be put into the contract:
- A. When the **borrower** puts in a condition that **no one** can sell the collateral **even** when it is time to pay off the debt
    1. This **defeats** the whole **purpose** of having a collateral
  - B. The **borrower cannot** state as a condition that when the **specified time** comes to settle the debt and he has **not** or **cannot** pay it off, the lender can **keep** the collateral for himself
    1. Because this is trying to sell something with a condition in the **future** which is **not** allowed
      - a) Ex: Someone says, "If I don't pay you by the 15th of next month for this item, then you can keep the collateral for yourself as an exchange for the debt"
        - (1) This is **invalid** and **not** allowed because you are selling something based on a future condition
- X. The lender is **allowed** to **utilize** the collateral for **personal** use **without** the borrower's permission, if it is a type of collateral that **requires** the lender to **spend** on it in order to **maintain** it

- A. However, such a use must be in **accordance** to the lender's spending on it and **not** more than that
  - B. Ex: if the collateral is a riding animal or a milking animal, then in the former case, he can use it to ride it and in the latter case, he can use it to milk it
  - C. This **cannot** be applied to types of collateral which do **not** need to be maintained or spent on because the **general rule** is that the lender **cannot** personally benefit from it
    - 1. Because it does **not** belong to him, rather, it is a **trust** under him
    - 2. Ex: a car. Lender can just leave it parked in his driveway without touching it until the debt is settled
- XI. If the lender spends **extra** on a collateral **without** the borrower's **permission**, then it falls under one of **two** cases:
- A. If it was **possible** to ask the borrower **before** spending on it, then the lender **cannot** ask him to reimburse it
    - 1. Ex: the lender notices some scratches on a watch and goes and gets it fixed without asking the borrower first even though it was possible for him to do so. In this case, the lender cannot request the borrower to reimburse him for the incurred expenses
  - B. If it was **not possible** to ask the borrower, then the lender can **only** request the **lowest price** in the market
    - 1. Provided he **intended** to request the money from him when spending on it, otherwise, it is considered a **gift**
    - 2. Ex: the lender has a sheep as collateral from the borrower and it gets sick, thus, he needs to rush it to the vet for treatment, which is going to cost money, but there is no time to request permission from the borrower or the borrower is not available for some reason. In this case, the lender can request reimbursement
    - 3. Anything paid by the lender **over** the lowest price **available** in the market will be considered a **gift** and the **borrower** is **not** required to reimburse that **extra** amount
      - a) Ex: in the sheep example above, if the lender had the sheep treated for \$100 but it usually costs around \$50 for a similar treatment, then the lender can **only** request up to \$50 max from the borrower
- XII. The following carry the **same** rulings as those mentioned under XI because they are all a form of **trust** just like collateral:
- A. Borrowing something
  - B. Renting something
  - C. Depositing something
    - 1. Meaning someone tells a person to hold something for them
- XIII. If the collateral becomes **damaged** under the care of the lender and he gets it **fixed**, he can **only** ask for the price related to the **materials** required to get it fixed
- A. This is in reference to types of collateral that do **not** require to be fixed, such as, a house, a car, etc. Meaning, if you were to leave the damage alone on such types of items, it would **not** completely **annihilate** it
    - 1. This is **opposite** to a living animal, which if not treated when sick could die
  - B. Ex: the lender has a car under him as a collateral from the borrower and its window breaks. In this case, he can **only** ask for the price of the window that he paid to replace it
  - C. However, if the damage is severe and **necessitates** getting it fixed and the lender **intended** to get it reimbursed while getting it fixed, then he can ask for reimbursement, otherwise, he **cannot** do so
    - 1. Meaning it is a type of damage that cannot be ignored

2. Ex: there is an electrical wiring problem in the house that is on collateral and not fixing it could burn the house down

## Guarantee

- I. This is when a borrower brings in another person as a guarantee to help settle the debt. This is **valid** and **permissible**. This means that the debt becomes an **obligation on both**
  - A. Ex: Zayd brings his friend Muhammad as a guarantee in the contract that if the former is not able to pay off the debt or part of the debt, the latter will take care of it
    1. Muhammad would be called a **guarantor** in this case
  - B. The **guarantor** must have the following qualities:
    1. Free
    2. Sane and pubscnt (*mukallaf*)
    3. Mature
      - a) Meaning he must be mature enough to make financial decisions on his own
- II. A guarantor **cannot** be used in the following cases:
  - A. Items left with the lender as a **trust**
    1. The **lender cannot** request a guarantor in this case but a **borrower can**
      - a) The collateral left with the lender in this case is in itself an assurance for him, thus, he cannot request a guarantor
  - B. The *jizyah* contract
    1. This is the tax paid by the people of the book in an Islamic state
    2. This has to come **directly** from the person **mandated** to give it and **cannot** be extended onto someone else
- III. The **only** person's **agreement** required in this type of contract is that of the **guarantor**
  - A. The lender and the borrower have already agreed to enter it before even bringing in the guarantor
- IV. The **lender** has the **right** to request **any** of the two for the **settlement** of debt at the time of its **duration**
  - A. Meaning he does **not** have to go to the borrower first, rather, he can go to **either** the borrower or the guarantor because they are both **responsible** for the debt

## Surety of Appearance

- I. Def: This is when someone **guarantees** to **bring** the debtor to physically **appear** in front of the lender
  - A. In other words, the **guarantor** is taking on **responsibility** to guarantee the lender that he will **physically bring** the debtor to him to pay off his debt. It is a sort of **insurance** for the lender
  - B. If such a person, after taking on this responsibility, is **unable** to bring the debtor to **physically appear** in front of the lender, then the debt **transfers** to him
- II. This is a **valid** form of contract and can be used for **any** type of loaned **asset**
  - A. The asset could be cash or material
    1. Ex: Ahmad borrows a book from Muhammad. Zayd tells Muhammad that he will guarantee to bring Ahmad physically to him to assure that he returns the book
- III. The only **consent** required for this type of contract is that of the **guarantor**
  - A. The one **assuring** the lender to bring the debtor to him is the one entering the contract through **choice**, thus, his consent is the **only** one that matters

- IV. If the debtor **dies** or the asset is **damaged** due to Allah's decree **before** the creditor has requested a return on the debt, then the **guarantor** is considered to be **free** from the contract and is **not** responsible anymore
- A. Due to Allah's decree means that it was damaged in a way that was **not** in anyone's **control**. There was no way to take **precaution** from it
    1. Ex: storm, flood, etc.
  - B. If the debtor dies or the asset is damaged due to Allah's decree **after** the creditor had already requested a return on the debt, then the guarantor will become **responsible** to pay it off

## Transfer of Debt

- I. Def: This is when a **debt** is **transferred** from one **debtor** to **another**
  - A. Ex: Muhammad owes Ahmad \$100 and Zayd owes Muhammad \$100. When Ahmad comes to collect his debt from Muhammad, the latter tells him to go to Zayd. Then Zayd will pay Ahmad \$100 and will no longer owe anything to Muhammad
- II. It is **permissible** to do this with the following **two** conditions:
  - A. It should be a **stable** debt
    1. Meaning the debt is a type that is 100% **confirmed** and there is **no possibility** to void it
      - a) *Mahr* and *mukataba* are **excluded** for this reason because there is a **possibility** of **voiding** them
  - B. The two debts **must** be **equal** in type, time, description, and value
    1. Type
      - a) Meaning it should be the same type of asset
      - b) Ex: Riyaal for Riyaal
    2. Time
      - a) Meaning they should both be of the same time length
        - (1) Ex: I cannot transfer my debt that is due now to someone who owes me in three months
    3. Description
      - a) Ex: if the loaned item was **sugary** dates, then the one being transferred the debt to should **also** owe sugary dates
    4. Value
      - a) Meaning the amount should be equal
      - b) Ex: if Muhammad owes \$100 to Zayd and Tariq owes \$50 to Muhammad, then Muhammad can **only** transfer **\$50** of his debt to Tariq, because it has to be the **same** and the rest he must pay on his own
        - (1) This is **valid** to do even though the **initial** debt amounts are different
- III. **Consent** is **required** for this type of contract **from** the following **two**:
  - A. One **making** the transfer of his **own** debt to someone else
  - B. The **lender** whose debt is being **transferred** to someone who may **not** be able to pay it
    1. Generally, the debt should be transferred to someone who is able to pay it off, however, if it is being transferred to someone who may be **unable** to pay it off, then **consent** is **required** from the **lender** whose debt is being transferred, otherwise, the transfer would be considered **invalid**
      - a) Examples of those who may not be able to pay it off: poor, procrastinator, bankrupt, etc.

- b) Basically the **lender** in this case has to **agree to risk** having it transferred to someone who **may** not pay it off

## Reconciliations in Financial Contracts

- I. Def: It is a type of contract to **settle** any **disputes** between two **quarreling** parties
- II. It is of **two** types:
  - A. **Affirmation** - when one of the parties **acknowledges** the **claim** made **against** him
    1. Ex: Ahmad says Muhammad owes him \$100 and Muhammad **acknowledges** this but says he does not have the money right now
    2. This type can be further divided into **two** types:
      - a) Reconciliation through the **same type** of asset
        - (1) Ex: Ahmad claims Muhammad owes him \$100 dollars and Muhammad acknowledges this but says it's too much and he does not have the money right now. Then they both **reconcile** with \$50 dollars, because Ahmad **agrees** to **exempt** him of the extra \$50 dollars that he owed
          - (a) In this case, the reconciliation is based on the same type of asset: dollars
        - (2) For this type, the party **making** the claim against the other either **forgives** or **gifts a part of the debt** but requests the rest
          - (a) This is **valid** to do provided:
            - (i) It is someone from whom it is **valid** to donate or forgive it away
              - (a) Meaning he is sane, free, mature and has authority over the wealth
            - (ii) It is done **without** utilizing the word **sulh** (reconciliation)
              - (a) Words **ibraa'** (exempt) or **hibah** (gift) should be used because the word **sulh necessitates** compensation
            - (iii) It is done **without** setting any conditions
        - b) Reconciliation through **substituting** the original type of asset with another
          - (1) Ex: Muhammad admits he owes \$100 to Ahmad but offers his watch **instead** as a settlement
          - (2) If it is **different** currencies, then it should be **immediate** exchange
            - (a) Ex: Muhammad borrowed dollars but wants to settle the debt in pounds. This should be done immediately
          - (3) If the debtor **offers** an item for the debt price, then the rules of a **sale contract** will apply as discussed previously in other chapters
            - (a) Ex: Muhammad borrowed \$100 from Ahmed and now Muhammad is offering an Android phone **instead** of paying Ahmed back his money. In other words, he is offering his phone for a \$100
            - (b) Same for the opposite
              - (i) Ex: Ahmad borrowed a book from Muhammad but now wants to offer cash for it instead rather than returning the book

- B. **Denial** - when one of the parties does **not acknowledge** the claim made against him but tries to settle to end the dispute
1. Ex: Ahmad says Muhammad owes him \$100 but Muhammad **denies** this and says he owes him nothing or he remains silent
  2. In this case, the following **two** things are taking place:
    - a) The debtor **exempts** himself from his debt
      - (1) He is doing this by either denying it or remaining silent
    - b) The debtor tries to give **something** to the lender just to **settle** the dispute
  3. If any **one** of the two is **lying**, then the reconciliation is **invalid**

## Neighborly Property Rights

- I. If a neighbor's **branch** from a tree comes into a person's land, wall, or his space, then the neighbor must **remove** it. Similarly, if someone **built** some sort of a **building** on another's property
  - A. If the **owner** of the property **requested** the branch or building to be **removed** but it remained and caused some **damage**, then the neighbor or the builder is **responsible** for it
  - B. In the case of the **branch**, if the neighbor **refuses**, then the **violated** owner of the property **cannot** force the neighbor to remove the branch. He should instead just **bend** it away from his property. If it is **not possible** to bend it away, he can **cut** it off even **without** a judgement from the **authorities**. This is because the branch is **growing** on its **own** into the person's property
    1. However, if it is a **building**, then the owner **can** have the builder **forcefully** remove it through the authorities. This is because it is the builder's **own** doing
- II. It is **permissible** to have a **door** built on a property that **opens** to the **main street**
  - A. The main street is the street that is shared by everyone in the community
  - B. The following are **not allowed** except with **permission** from the Muslim **leader** and provided it will **not** cause **harm** to others:
    1. A balcony, shade, or something else built that is **connected** to the house but **extends** onto the **main street**
    2. An **overpass** or **bridge** on main street **extended** from the house
    3. A **drainage** system **connected** to the house that **extends** onto the main street
  - C. If it is **not** a main street but a street **shared** between a **few** neighbors:
    1. It is **not** permissible to do any of the above mentioned in such a situation **except** with all of those neighbors' **permission**
- III. A person is **not** allowed to put **wood** on his **neighbor's** wall, which he shares with him, **except** with the following **two** conditions:
  1. He fears that he will **lose** his own **roof** if he removes it
    - a) Meaning removing the wood will **collapse** his own house. He needs the wood on the shared wall to keep his own house standing
  2. It will **not** cause any **harm** to the **neighbor**
    - a) If there is a **possibility** of any **harm** taking place, then the person will **not** be allowed to do so

B. The **same** rules as above apply if there is a **mosque** connected to the house

  1. Meaning a **mosque** that **shares** a wall with someone's house
- IV. If the **shared wall** between two neighbors **collapses**, then one of them can **request** the other to build it back up **with** him. If the one requested **refuses**, then the requester can **force** the other to build it with him. This is because they both are **responsible** for it and benefit from it

- A. The **same** ruling applies if they share the **same roof** and there is a fear of it **collapsing**. They both are responsible for it, hence, if one of them refuses to get it fixed, the other can force him to do it
  - 1. This is in reference to houses that have a large shared roof and a wall between the neighbors to separate the houses
  - 2. Forcing the other means getting the **authorities** involved to force the other to pay for his share
- B. If one of them gets it fixed on his **own** but **intends** to seek **reimbursement** for it from his neighbor for his half later, he may do so, **otherwise**, it will be considered a form of **charity**
  - 1. Meaning if he intended **not** to seek reimbursement **while** fixing it, then he **cannot** seek it later
- V. If a **group** of neighbors **share** a **river** for some use and it gets damaged in some way, then they **all** are responsible for getting it fixed, therefore, they must all **chip** in
  - A. The same with other **shared things** like a shared water pipe that breaks

## Financial Legal Disability (*Hajr*)

- I. Def: It implies **prohibiting** the dispositions of a person with respect to **all** or **some** of his property due to a legal (*shari'*) **justification**
  - A. In other words, the person is **prohibited** from **spending** his own wealth
- II. Two types
  - A. It is done for a person's **own** interest
    - 1. Ex: a child may spend his wealth in a destructive manner, therefore, he is appointed a guardian over his wealth and prevented to do with it as he pleases until he reaches maturity
  - B. It is done for **someone else's** interest
    - 1. Ex: a person who owes money to his lenders but does not have **enough** to pay them back, therefore, he is **restricted** from spending his wealth until the debts are **settled**
      - a) This is done in interest of the **rights** owed to **others**
    - 2. The **Muslim ruler/judge** is the **only** one that can **impose** this type
      - a) However, he can **only** do so if the lender(s) **request** it
- III. The **debtor** is of **three** types when the lender(s) request the money back:
  - A. One who does **not** have **any** money to pay back his debt(s)
    - 1. He **cannot** be forced to pay it back nor can a **hold** be put on his spending. Instead, he is given **more time**
  - B. One who has **enough** money to pay back his debt(s)
    - 1. He will be **forced** to pay it back
  - C. One who has money but **not enough** to pay back his debt(s)
    - 1. If **some** or **all** of his lenders request a hold on his wealth, then he will be **prevented** from spending his remaining wealth (*hajr*) by the **Muslim ruler**
      - a) Ex: a person owes debts to different lenders in the amount of \$1000 but he only has \$500 in the bank. If some or all of his lenders request a hold on his wealth, then he will have a hold put on his spending and 50% of their loans will be returned from his wealth because that is all he has in the bank
        - (1) It is done with **proportion** to how much he has vs how much he owes

2. It is **recommended** to **alert** the people about the one who has *hajr* enacted upon him so that they may **know** about his situation and deal with him with **foresight**
  3. The one who has *hajr* enacted upon him **cannot** deal with his wealth as he pleases, therefore, if he were to buy/sell unnecessary things, then the transaction will be considered **invalid**
  4. If the one who has *hajr* enacted upon him **purchases** something that is **not** a necessity but **claims** that it is not for him but **someone else**, then his claim will **not** be accepted
    - a) Because there is a **possibility** that he is trying to trick his way out of the legal restriction
    - b) **Instead**, the item that he bought will be **sold** and its price **distributed** among his lender(s), and the **person** he claims to have bought it for will be **added** to his list of lenders
      - (1) So his claim is taken as a **confession** that he has another person to whom he now **owes** something
    - c) Once the *hajr* is **lifted** from him by the **Muslim ruler**, the new added lender can request his right
  5. Whoever **sold** something to a person who has *hajr* enacted upon him out of **ignorance** but has **not** yet **received** a payment for it, then **after** learning about the *hajr* upon him may take it **back** provided the following **three conditions**:
    - (1) The item has **not changed** in any way and is **exactly** as it was when sold
    - (2) Its **complete payment** is still **yet** to be received
      - (a) If even **part** of the payment was made, in **any** amount, then he **cannot** take it back
    - (3) The item is **not** somehow **connected** with someone else's **right**
      - (a) Meaning the buyer has not **sold** it off to someone else nor someone is using it as **collateral**, because in those cases the **right** will now be **connected to someone else**
      - b) If the person in such a case **knew** that the buyer has *hajr* enacted upon him **before** selling the item to him, then he **cannot** retrieve his item back
  6. The one who has *hajr* enacted upon him, the Muslim ruler **sells** all of his property and **distributes** it among his lenders
    - a) He sells **everything** that has **value** and **distributes** it in **proportion**
- IV. What should be done about the one who has **no ability** to pay **anything**?
- A. We **cannot** request it from him nor jail him for it. Instead, he is given more time
    1. He should also **not** be pursued constantly with annoyance
    2. This **same** ruling also applies with the **lender** who lent money on **deferment**
      - a) Lender must **honor** his contract. He can **only** demand it **after** the term is over. The borrower is **not** responsible to pay it back before the term's end
        - (1) Ex: if a lender lends money to someone and says he can pay him back **after** six months, then he **cannot** request his money back **before** that period
- V. The **deferred** debt **cannot** be requested in the following **two cases**, meaning the lender **cannot** request **early** payment because of it:
- A. One who has **gone** or **possibly** may go **bankrupt**
    1. Ex: a lender lends \$1000 to Ahmed and agrees to have it paid back to him after one year. Then after three months Ahmed goes bankrupt. The lender in this case cannot

come to Ahmed and demand his money back just because Ahmed went bankrupt. He has to honor the contract and let the remaining term pass by before requesting payment

- a) The same rule applies to a lender who suspects that the one he lent money to might go bankrupt by the time his debt is due

B. If the debtor **dies** before its time is due and the **inheritors** assure the payment of debt via either:

- a) Putting a **sufficient collateral** in place
- b) Putting a **wealthy guarantor** to assure the lender that he will pay it if they are unable

(1) The guarantor must be both **reliable** and **financially capable**

2. Ex: A lender lends \$1000 to Ahmed to be paid back after one year. However, Ahmed dies after 6 months. Technically, the lender can now request his money back from his inheritance, however, if Ahmad's inheritors assure him that they will pay it back once the term is over (6 more months) by putting in place either a sufficient collateral or a wealthy guarantor. In this case, the lender must wait and cannot request it now

- a) If they **cannot** assure it in one of the **two ways** mentioned above, then it **must** be paid **now** even if the term has not ended

VI. If **another lender** appeared **after** distribution had been completed by the Muslim ruler among the lenders through *hajr*, then this **new lender** will **take** his share from the **other lenders** in **proportion** to what he is owed

A. Ex: Ahmed owes \$20,000 to five lenders for a total of \$100,000. The money is due now for all of them but he only has \$50,000 (50%) in the bank, thus, his lenders request a *hajr* on him by the Muslim ruler. Then the ruler takes his \$50,000 and distributes it among his lenders by giving them \$10,000 each, which is 50% of what they are owed. After a month, a new lender appears and claims that he too was owed from the distribution and that he also lent Ahmed \$20,000. In this case, this new lender has to request his money from the other lenders and not the debtor, because they took his share in his absence

1. How will it be distributed among them now with this new lender?

- a) Counting this new lender, the total amount owed by Ahmed to his lenders was actually \$120,000. Since he only had \$50,000, or 41.67%, of what he owed to his lenders in the bank, this means that all lenders should have received 41.67% of their debt, which is \$8334. This new lender will now go to the five lenders and request \$1666.80 from each to complete his owed \$8334

B. Only the **Muslim authority** can **release** the *hajr*

1. It should be released as soon as the debt is paid **even** if not completely

- a) If only a **part** of the debt is paid through *hajr*, then the debtor is **still** responsible for the rest but the *hajr* will be **lifted**. The lenders can request the *hajr* again later if they want to until the debt is completely paid

## Preservation of the Wealth of the *Mahjoor*

I. *Mahjoor* - A person who is prevented or restrained to do business

A. There are **two** types

1. Those who can **only** be prevented by a Muslim judge/ruler for the interest of **others**

- a) Rulings related to such types were discussed in the previous section

2. Those who can be prevented **without** a command from a Muslim judge/ruler for their **own** interest
  - a) This is what this section discusses
- II. *Hajr* is done for the following for their **own protection** even without a command from the Muslim judge/ruler:
  - A. Child
  - B. Insane
  - C. Foolish - one who spends in an **immature** manner
- III. Whoever gave the above three types of individuals his wealth, whether as a **contract** or **not**, then he can **only** request back whatever **remains** and **cannot** claim what was **lost**
  - A. Because these three are **not** considered **responsible** for wealth management
  - B. Ex: a person gives \$1000 as a trust to a child to hold onto it for a month, then when he goes to retain it, he finds out that \$500 is missing. He can take the \$500 back but cannot request the rest from the child because the child is not considered responsible for wealth management
    1. This is seen as the owner's own fault because he should have known better
  - C. However, this is **only** when the owner gives the wealth to one of them **himself**, because if they take the wealth themselves **without** the owner's **permission** and then lose it or destroy it, then they will be held **responsible** through their **guardian**
- IV. However, they are considered responsible for the following:
  - A. Crimes
    1. Ex: crimes that result in *hudood*, such as, murder, theft, etc.
    2. This **only** relates to the **foolish** one. The other two are **not** responsible
  - B. They cause **destruction** with something that was **not** given to them
    1. See note III. C above
- V. When a child reaches **puberty and maturity** or an insane becomes **sane and mature**, the *hajr* can **only** then be lifted:
  - A. The **maturity** part is **required** as well and just reaching puberty and sanity alone do **not** suffice
    1. This is why you need to test them to see if they are mature enough or not
      - a) If they **pass**, then their wealth can be **released** to them and a judgement is **not** needed by the judge like in the previous section
      - b) If they **continue** to show **immaturity**, then keep testing periodically **until** they show maturity
        - (1) Generally for kids, start early training before puberty (from 7-14)
    2. Maturity means:
      - a) He can buy and sell without anyone **swindling** him
        - (1) This is for the preservation of his wealth
        - (2) Ex: seller increases the price by 10x, buyer decreases the prices by 10x
        - (3) If it is just a small amount of taking advantage, then it is fine
      - b) He does **not** spend on **prohibited** things
      - c) He does **not** spend on things that have **no benefit**
        - (1) Meaning he does **not** waste money
- VI. Signs a **male** has reached puberty. Any **one** of the following suffices:
  - A. Ejaculation
  - B. Reaches the age of 15 in lunar years
  - C. Growth of hair around the front private parts
- VII. Signs a **female** has reached puberty. Any **one** of the following suffices:
  - A. Ejaculation

1. Pregnancy is considered evidence for ejaculation as well
- B. Reaches the age of 15 in lunar years
- C. Growth of hair around the front private parts
- D. Menses

## Guardianship (*Wilayah*) of the *Mahjoor*

- I. The following can be guardians **during** the time of *hajr*. It should be in the following **order**:
  - A. Father
  - B. Father's trustee after his death
    1. This is usually stated in the will
  - C. Judge
- II. Guardian should take care to do **whatever** is in their **best** interest
  - A. Meaning the guardian needs to be **cautious**
- III. If a dispute occurs between the guardian and the *mahjoor* after the *hajr* has been lifted, then it falls into one of two categories:
  - A. The guardian's statement is the one that is **accepted** if he claims one of the following reasons:
    1. Benefit
      - a) Ex: Ahmad claims that when he was young his guardian wasted his money, however, the guardian claims that it was only for Ahmad's own benefit. The guardian's statement is the one that will be believed
    2. Necessity
      - a) Ex: Zayd claims that when he was insane his guardian unnecessarily wasted his money, however, the guardian claims that it was due to necessity. The guardian's statement is the one that will be believed
    3. Loss of some wealth
      - a) Ex: Ahmad claims that when he was young his guardian purposefully lost his money, however, the guardian claims that he invested it on his behalf but the investment fell through, thus, he lost it. It was not done on purpose. The guardian's statement is the one that will be believed
  - B. The guardian's statement is **not** accepted
    1. **Return** of wealth **back** to the *mahjoor*
      - a) Ex: Ahmad claims after the *hajr* has been lifted from him that his guardian has not handed him over his wealth but the guardian says that he has already done so. In this case, Ahmad is the one that is believed
    2. **Exception**: if the guardian was doing his duties for free as a **volunteer**
      - a) In this case, we accept the guardian's statement because he is doing it as a **trust** and there is no **reason** to suspect him
- IV. If a slave falls into debt **with permission** from his master to deal in financial matters, then the **master** is responsible for the **debt**
  - A. Ex: a master tells his slave that he can go to the market and buy stuff on his behalf. The slave buys something on credit for \$1000. In this case, the **master** is responsible to pay it off because **he permitted** his slave to spend the wealth
  - B. If a slave had **not** been granted permission from his master and falls into debt, then the master is **technically** not responsible but **still** must take care of it, otherwise, that **particular** slave of his will be **sold** and the amount will be taken from the **sale price** of that slave

1. **Same rule** applies if the slave either:
  - a) Damaged property
    - (1) Even if he damaged it **unintentionally**
    - (2) Because this is categorized under doing something without the master's permission
  - b) Fine for a crime that he has done
    - (1) Ex: blood money, indemnity, financial penalty for injury towards others, etc.
    - (2) Because this is categorized under doing something without the master's permission

## Agency Contract (*Wakalah*)

- I. Def: it refers to a contract where a **principal** (*muwakkil*) **authorizes** or **appoints** an **agent** (*wakeel*) to do a well-defined legal action on his behalf
  - A. It **only** applies to things in which it is **allowed** to do so, because there are things in which this type of contract will **not** be permitted
    1. **Permitted example:** Ahmad tells his friend Mahmood to go and settle a debt on his behalf or to sell his car on his behalf
    2. **Not permitted example:** Ahmad tells his friend Mahmood to pray *Dhuhr* on his behalf
- II. It is a **valid** form of contract as long as:
  - A. The *muwakkil* **allows** permission through some sort of **statement**
    1. There are no specific words but can be **any** form of statement made from him that **indicates** permission
  - B. The *wakeel* **says** or **does** something to show that he **accepts**
  - C. Both the *muwakkil* and the *wakeel* are among those for whom it is **allowed** to **dispose** of wealth
    1. Ex: a child or an insane person cannot be a *muwakkil* or *wakeel* because they are **prevented** from disposing of **any** type of wealth whether their own or someone else's
      - a) Those who are **not** allowed to dispose of their **own** wealth are **automatically** barred from disposing of other people's wealth
    2. If someone is **allowed** to dispose of wealth, then he can play the role of *muwakkil* or *wakeel*
- III. It is **valid** for following types:
  - A. Generally, **any** right related to a **human being**
    1. **Exceptions:** *dhihaar*, *li'aan*, oaths
      - a) Meaning someone else **cannot** be appointed to do these things
      - b) *Dhihaar* and *li'aan* are issues related to marriage and dealt in more detail in a separate chapter
      - c) Oath example: If someone says, "I swear by Allah that I will do such and such by appointing so and so to get it done". This is **not valid** because a person **cannot** obligate someone else to do something through an oath
        - (1) Oath obligations **only** apply to those who take the oath on **themselves**
  - B. **Some** of the rights related to **Allah**
    1. *Hajj*, *Umrah*, distribution of *zakkah* or general charity, and fulfilling vows
      - a) Ex 1: someone appoints someone with \$2000 to give charity to the poor on his behalf

- b) Ex 2: someone vowed to fast three days if he passes an exam and succeeds, however, he is unable to fast due to health issues, thus, he **requests** a friend of his to do it on his behalf

(1) This friend has an **option** to either accept or reject the offer

2. It is an ease put in to **help** the person

IV. *Wakalah* is a **jaa'izah** type of contract

A. Meaning **either** party can back out **whenever** they want, thereby, **cancelling** the contract

B. We can divide contracts into **three** types:

1. **Laazim**: neither party can back out of it without **permission** from the other

a) Both parties become **committed** until the end

2. **Jaa'izah**: Either party **can** step out of the contract **even** without permission

a) The contract becomes **cancelled** if **either** of them steps out

3. **Dependent**: When it is **laazim** for one party and **jaa'iz** for the other

a) Meaning one can step out but the other is stuck until the end or until the other steps out

V. The following are **invalid** to do **without** permission from the **muwakkil**:

A. The *wakeel* **sells** the item to **himself**

1. Ex: Ahmad appoints Zayd to sell his car. Zayd takes it and sells it to himself

a) He **cannot** do this except with **permission** from Ahmad first

B. The *wakeel* **buys** the item from his **own property** for the *muwakkil*

1. Ex: Ahmad appoints Zayd to buy a car for him for \$25,000. Zayd takes the money and sells him his **own** car for that amount

a) He **cannot** do this except with **permission** from Ahmad first

C. **Same** rules as above apply if the *wakeel* sells/buys to or from his family members or his *mukaatib* (slave who has entered into a contract of manumission)

1. Because there is a possibility of **conflict of interest**

VI. If the *wakeel* **sells** or **buys** something **less** or **more** than the **market value**, then it is **valid** but he will be **responsible** for the difference

A. Meaning he will pay the difference

B. Ex 1: Ahmad tells Zayd to **sell** his car. Zayd sells it very much **below** the market price. In this case, Zayd is responsible to pay Ahmad the difference

C. Ex 2: Ahmad tells Zayd to **buy** a car for him. Zayd buys a car but pays a much **higher** price for it than what it is worth in the market. In this case, Zayd is responsible to pay Ahmad the difference to cover the extra cost

VII. If the *wakeel* is **only** responsible for **delivering** the goods, then he has **no right** to receive the cash from the purchaser

A. Meaning there are cases where the *wakeel* is **only** responsible to **deliver** the commodity but is **not** entrusted to **receive** the money for it, rather, the buyer will pay the *muwakkil* directly or some other method arranged between them

1. Ex: Ahmad owns a restaurant and people can order online. Once an order is placed and payment made online, Ahmad sends a delivery guy to deliver the food

B. **Exception**: Due to a reason

1. Meaning if it is a type of sale where reception of cash is **expected** to be given to the seller

a) Ex: Ahmad tells Zayd to sell his car in the market. Zayd takes the car and sells it to a random stranger in the market. In this case, Zayd is expecting the money

from the stranger before handing him the car keys because there is a possibility of fraud

- VIII. If the *wakeel* is made responsible for a **purchase** through cash, then he **delivers** the cash **and** takes the **goods**
- A. Because this is what **custom** necessitates
  - B. Ex: If Ahmad gives Zayd \$500 to purchase an item for him, then it is **expected** that Zayd will **give** the money to the seller and **receive** the item. It's not that Zayd will just give the money to this random seller and walk away
- IX. If the *wakeel* is entrusted to **settle** a **dispute** and is **only** made responsible for making a **claim** on **behalf** of the *muwakkil*, then he does **not** receive the object of dispute
- A. Because he is **only** there to **present** the **claim** of the *muwakkil*. This is very similar to a lawyer
    1. Ex: Ahmad tells Zayd to go to court and present his case against a fraudulent seller that cheated him in a sale and took money from him in a deceptive manner. In this case, Zayd will **only** go to court to **present** the case of his client and will **not** receive the disputed money to give to Ahmad. This is because he was entrusted by Ahmad to only present his claim
  - B. However, if the *muwakkil* gives **permission** to the *wakeel* to go and **obtain** his right in the dispute, then this **automatically** authorizes the *wakeel* to do both: present the claim and receive the object of dispute
    1. This is because the latter **cannot** be done without the former
- X. The **volunteer** *wakeel* is generally considered **trustworthy**, therefore, he is **not** responsible for any **loss** unless he was **negligent** or **transgressed**
- A. If the *muwakkil* **claims** without evidence that the volunteer *wakeel* was negligent or transgressed, however, the latter **denies** it, then it is the **volunteer** *wakeel's* claim that will be **accepted** as a general rule
    1. In this case, the volunteer *wakeel* will be asked to take an **oath** denying the allegation of the *muwakkil*
    2. Ex: We **accept** the claim of a **volunteer** *wakeel* that he **returned** an item or its price to the *muwakkil*
      - a) However, it will **not** be accepted if the volunteer *wakeel* claims that he returned an item or its price to an **inheritor** of the *muwakkil* without **evidence**
        - (1) Because the contract was between the *wakeel* and the *muwakkil* and not the latter's inheritors
        - (2) Ex: Ahmad claims that he returned the money that Zayd, who is now dead, had given him to buy a car on his behalf to the latter's son. This will **not** be accepted **unless** he brings **evidence** that he gave the money to Zayd's son
  - B. If the *wakeel* is **not** a volunteer but rather is **paid** for the job, then his claim is **not** accepted in **any** case and he **must** bring evidence to support his claim because there is a **conflict of interest**
- XI. Types of *wakalah*
- A. **Specific** - when it is for something very particular and the *wakeel* is **restricted**
    1. This is **allowed**
    2. Ex: Ahmad tells Zayd to sell his house which is located on such and such location
  - B. **General** - when it is very general and the *wakeel* has **more** flexibility
    1. This is done **only** in **financial** issues
    2. This is **allowed**

3. Ex: Ahmad tells Zayd to sell **any** one of his cars
  - C. **Authorization** - when the *wakeel* is authorized in everything in one's life
    1. This is **not allowed** due to possibility of *gharar* (deception)
- XII. Can a *wakeel* choose **another** *wakeel* to do the same work?
- A. It is **allowed** if it is **recognized** and serves the **interest** of the *muwakkil*
  - B. Ex: Zayd appoints Muhammad to buy a car for him. Muhammad passes the job off to Ahmad to buy a car for him so he can deliver it to Zayd

## Partnership (*Sharika*)

- I. Def: It is an **agreement** between **two** or more parties whereby their assets or funds are **commingled** or their labor, services, obligations and liabilities are **combined**, with the aim of doing business and making profit
  - A. This can be either a:
    1. Ownership partnership
      - a) A type of partnership which basically involves joint ownership by two or more persons in a particular property **solely** for the sake of **ownership**
        - (1) This type of partnership is usually created by ways of inheritance, wills, or other situations where two or more persons come to hold an asset in common
      - b) Ex: Ahmad and Muhammad both combine their money and purchase a piece of land together, thereby, becoming its co-owners
    2. Contractual partnership
      - a) A partnership that is formed by means of **mutual agreement** between **two** or more persons who agree that each of them **contributes** to the business and is entitled to a corresponding **share** in its financial results (profits or losses)
        - (1) The contracting parties **agree** to combine their assets, efforts, and/or liabilities for the **purpose** of making profits
- II. The **contractual partnership** can be divided into **five types**:
  - A. ***Al-'inaan***: a partnership between **two or more** persons, each **contributing a portion of the total capital** and **participating in work and management**. Each partner has its share in profit or loss as **agreed** in the contract. Therefore, shares in contributions or profits need **not** be equal between the partners
    1. The partners must **specify** contributions and profit **ratios** by **agreement**
      - a) Ex: Ahmad and Muhammad agree to go into business with a certain defined amount of cash invested from each and that the former will take 60% and the latter will take 40% of the profit
    2. All partners involved in this type of partnership **must** be among those who are **allowed** to spend their wealth
      - a) Meaning those who have **not** reached the age of puberty, the insane, etc. **cannot** get involved in this type of partnership because they have **restrictions** on their spending
    3. The partners **must** bring either **gold, silver, or cash** as capital for this type of partnership. It should also be **known** exactly how much **each** will contribute towards the capital as mentioned above
    4. They both receive their respective **shares** in the profits **immediately**

- a) Meaning they **cannot** agree that one will take all the profits for the first six months and the other the next six months because this leads to **disputes**. For example, the business may do really well the first six months and terrible the following six months or vice versa
- B. **Mudarabah**: This is a type of partnership where **one puts forth the capital** and the **other supplies the labor**. The **split** of the profit is determined **before** the contract is signed
1. The capital should be **specific** and **known**
    - a) We need to know exactly **how much** the partner providing the capital is investing so we can **determine** the appropriate amount of profit. If we do not know, then how can we measure the profit and determine its split?
  2. They both will take **specified** and **agreed** upon **ratios** from the profit
    - a) Ex: Ahmad and Muhammad want to start a business together. Ahmad invests \$50,000 in an ice cream truck business and Muhammad is made in charge of doing the labor part of it (ordering the ice cream, getting it ready, driving it around, etc.). They both agree to share the profit 60% for Ahmad and 40% for Muhammad
  3. If there is a **loss**, then the one who gave the capital loses the **money** and the other loses the **effort** that he put into it plus part of the profit that he was suppose to receive
  4. Another partner **cannot** be added if it will cause **harm** to the **first one**
    - a) This is **forbidden** unless the first one **permits** it
      - (1) However, if there is **no harm** to the first partner, then it is **permissible** even without permission
        - (a) **Example of harm**: putting all time and energy in the second business and ignoring the first, thereby, it not profiting
      - b) Ex: Ahmad gives Muhammad \$50,000 to do a business that the latter will run and manage. Muhammad takes the money and goes to Zayd and sets up a similar contract where Zayd gives him another \$50,000 to run and manage a separate business. However, this new venture with Zayd will take a toll on the first business
        - (1) This is **not** allowed unless Ahmad **permits** him to do so because it puts Ahmad's investment at risk of not profiting. The agreed upon contract **initially** was between Ahmad and Muhammad **alone**, therefore, the former's permission is necessary for Muhammad to move forward with Zayd
    - c) If another partner was added **without** the first partner's **permission** and it **harms** the first business, then the **person's portion** of the **profits** from the **second** partnership will be **added** to the **profits** from the first partnership. It will then be divided and distributed based on initial agreement
      - (1) As long as the second *mudarabah* contract, done **without** permission, **harms** the first *mudarabah* contract, the person's portion of the profits from the second will **continue** to be taken and **combined** with the first and then **distributed**
      - (2) Ex: Ahmad gives Muhammad \$50,000 to do a business that the latter will run and manage. They agree to split the profit 50/50. Muhammad takes the money and goes to Zayd and sets up a similar contract where Zayd gives him another \$50,000 to run and manage a separate business on a 50/50 profit split. However, this new venture with Zayd will take a toll on

the first business. In this case, **whatever** profit Muhammad receives from the second business will be **added** to the first one and then distributed 50/50 between Ahmad and Muhammad

5. If there is any **destruction** or **loss** of the capital **before** the profit has been **divided** and distributed, it will be **redeemed** from the **profit**
  - a) Ex: Ahmad invests \$1000 into a *mudarabah* partnership with Muhammad. In three months, they make a profit of \$2000 so now they have \$3000 in the bank. Then in the fourth month, they have a bad month and they lose \$500. In this case, the \$500 will be taken from the \$2000 profit so now they have \$2500 in the bank and \$1500 of profit to split based on initial agreement
    - (1) As long as the profit has **not** been divided and distributed, **any** destruction or loss from the **capital** will be **redeemed** from the **profit**
6. Conditions
  - a) Capital should be gold, silver, or cash
  - b) Capital should be well identified
  - c) Clear specification on how profits will be shared
- C. **Al-Wujuh**: This is a partnership between **two** or more persons carrying a business on **credit only** without investment of capital through their own money. They **purchase** goods on **credit** on the basis of their **reputation** and then sell them to make profit
  1. This is allowed by the Hanbalis and Hanafis
  2. The **profit** belongs to the partners **only** and **not** the lenders. The latter are only **owed** the **amount** that they **lended**
  3. Ex: Ahmad and Muhammad want to go into business together. However, they do not have enough money to start it. So they both go to a lender and borrow money **together** to start the business
    - a) It is **expected** that the lender(s) will **only** give them the money provided they have a **good reputation** and/or **creditworthiness**. A lender will usually **not** give to someone who has a bad reputation or their creditworthiness is weak
  4. If there is a **loss**, then the partners **share** in it because they are considered **agents** (*wakeel*) of each other due to the fact that they are co-owners of the business
    - a) Meaning they both are **responsible** and **guarantors** for any loss occurred and will owe money **together** to the lender(s) for any loss even if only one of them borrowed
  5. If one partner borrows 60% and the other 40% and there is a loss, then they **each** pay the lender back with their **respective percentages** to return the money. If one of them is **unable** to do so, then the other is responsible for it all
    - a) Ex: if one borrowed 60% of the loan and the other 40%, then that is the amount that they each owe to the lender(s). Now let's say one of them had a family tragedy that cost money and could not pay his portion of the loan, then the other is responsible for all of it
- D. **Al-Abdaan**: This is a type of partnership between **two** or more where **neither** partner puts forth any capital but **rely solely on their labor** to make money
  1. Ex: hunting edible animals to sell, catching fish from the sea to sell in the market, gathering firewood to sell, etc.
  2. The labor **must** be for something **permissible**
  3. Another form of it: **agreeing to provide** some sort of **labor service** to the buyer
    - a) Ex: tailor, plumber, carpenter, blacksmith, painter, builder, etc.

4. Whatever **profit** is earned is **split** between them based on the **initial agreement**
  5. If **one** of the partners **agrees** to provide the service to someone, then it becomes **binding on all** partners to fulfill it
    - a) Ex: Muhammad and Zayd are two painters as partners in a business together. Muhammad meets Uthman and agrees to paint the latter's house. This job is now **also** binding on Zayd
      - (1) Meaning they **both** are **responsible** to fulfill it
  6. If **one** of them **abandons** the job **whether** with or without a **legitimate** excuse, he will **still** share in the profit
    - a) Early Hanbalis **differed** and said if it is **without** a legitimate excuse, then he will **not** share in the profit
      - (1) This is **not** the official position of the school (*mu'tamad*) for the later Hanbalis
  7. If one of them **has** a **legitimate** excuse **not** to do the job or he does **not** know **how** to do it, then he **must** find **someone** else to **replace** him to do the job
- E. *Al-Mufawadha*: This is a type of partnership where **two** or more persons become partners in **every** financial action that **any** one of them takes. They **equally** share in both profit and loss
1. Each partner is an **agent** as well as a **guarantor** for the other partners
  2. A partner is **liable** for the actions of other partners, therefore, any **financial action** taken by **one** partner automatically **binds** all other partners
  3. However, **rare** types of earnings and losses are **excluded**
    - a) Meaning if the earning/loss by one of the partners was through a method which is **rare**, then other partners are **excluded** from it and will **not** share in it
      - (1) Ex: inheritance, indemnity, guarantor of a loan, etc.
    - b) This is added as a condition because the *mufawadha* type of contract is very generic and expansive, thus, a **clarification** on its **restriction** is needed
    - c) Ex 1: Muhammad and Zayd have a *mufawadha* contract with each other. Muhammad's father passes away and leaves him \$10,000 as inheritance. Zayd will have no share in this inherited money based on the contract because this is a rare type of earning that is unusual
    - d) Ex 2: Muhammad and Zayd have a *mufawadha* contract with each other. Zayd is a guarantor on his friend Uthman's loan. The time arrives for Uthman to pay his loan but he is unable to do so due to losing his money on a recent project, thus, Zayd is now responsible to pay it. In this case, Muhammad will not share in the loss despite a *mufawadha* contract because this is an unusual type of financial occurrence
    - e) If someone includes this type of earning into this type of contract, then it will **invalidate** the contract
- III. All of the above **five** types of contractual partnerships are **optional** for the **participants**
- A. Meaning **any** one of the partners can **cancel** it anytime and **free** oneself from the contract
- IV. The partners in all **five** cases above are **not** responsible for any **loss** unless one of them either **transgressed** or was **negligent**
- A. Meaning **generally** any loss will be shared among them based on the contract, however, if one of them transgressed or was negligent with the partnership money, then that partner **alone** will be **responsible** to cover the loss from his **own** wealth and others will **not** share in the loss

# Watering of Trees (Musaaqaah) and Cultivation of Lands (Muzaar'ah)

## I. Definitions:

- A. *Musaaqaah* - when someone is given responsibility to **water** someone's **trees** with **specific** share of **fruits** in **return**
  - 1. A percentage shareable from all the trees and **not** just a specific tree because he is taking care of all of them
- B. *Muzaara'ah* - when someone is given responsibility to **cultivate** someone's **land** with **specific** share of the **produce** in **return**

## II. Rules related to a *musaaqaah* contract

### A. *Musaaqaah* contract is **valid** for the following:

- 1. Trees which have **edible** fruits
  - a) Meaning the owner of the trees gives someone **responsibility** to **water** his **trees**. When they bear **fruit**, they will **share** it according to their **agreement**
- 2. The fruits **exist** on the trees
  - a) There are two possibilities
    - (1) The owner gives someone trees to water that do **not** have fruit on them
    - (2) The owner gives someone trees to water that **do** have fruits on them
      - (a) When the fruits **ripen** on the trees, they will **both** have a share in them
- 3. Trees which he **plants** and **works** on **until** they bear fruit
  - a) Meaning the owner gives someone trees to **plant** and **work** on them **until** they bear fruits
  - b) In this case, the one who did the work on them can either take a part of the **fruits**, part of the **trees** on the owner's land, or a part of **both**

### B. If the owner **Cancels** the contract **before** the appearance of fruit

- 1. Then the worker gets his **pay** based on the **amount** of work he put in
  - a) The amount will be **determined** through **custom**
- 2. If the **worker** is the one that cancels the contract, then he gets **nothing**
  - a) Because he is **not** considered to have completed the job

### C. If the owner **Cancels** the contract **after** the appearance of fruit but **before** it is ripened

- 1. Then the worker is **still** entitled to his **share** of the fruits according to whatever was **agreed** between them
  - a) The worker will also **continue** maintaining the trees **until** its fruits are ready to be picked because half of the fruits on them are **his** property
  - b) Ex: Muhammad owns fruit trees and asks Zayd to take care of them with the agreement that they will share the fruits 50/50. After the fruits appear, but still not yet ready to be picked, Muhammad cancels the contract. In this case, Zayd will still receive 50% of the fruits that have appeared because he is the owner of them based on the initial agreement

### D. **Responsibility** of the worker and the owner of the trees is as follows during the **maintenance** period and once the time arrives to **pick** the fruits, then **each** will receive his **agreed upon** share of the fruits:

- 1. **Worker** is responsible for the following: the fruits' growth, ripening, harvest, etc. and anything else either related to or fulfilling such jobs according to **custom**

2. **Owner** is responsible for the following: preservation of the land and anything else either related to or fulfilling such a job according to **custom**
- III. Rules related to a *muzaara'ah* contract
- A. *Muzaara'ah* type of contract is **valid** and **permissible**
  - B. Ex: Muhammad owns a piece of land on which he wants to grow some grains. He goes to Zayd, a farmer, and tells him to work on his land to grow the grains and that Zayd can have 50% of whatever the land produces
  - C. Conditions
    1. Knowledge of what **type** of seed(s) will be used
      - a) Meaning they should both be **agreed** upon as to what **type** of seed(s) will be planted for growth
    2. Knowledge on the **quantity** of the seeds
      - a) Meaning they should both be **agreed** upon as to **how many** seeds will be planted
    3. The seeds **must** be provided by the **owner** of the land
      - a) According to a **second opinion** in the school, this is **not** a condition, rather, it is based upon whatever is **agreed** between them. Therefore, it could come from the owner, the worker, or both

## Renting/Hiring Contract (*Ijarah*)

- I. Def: a contract for **hire** of persons/services or **usufruct** of a property
  - A. Usufruct: the right to enjoy the use and advantages of another's property
- II. It is a **valid** and **permissible** form of contract
- III. It does **not** need to be done using certain words for it to be valid
  - A. It is valid with **any** speech or action which **indicates** acceptance of the *ijarah* contract
- IV. Conditions
  - A. Knowledge of **benefit** from the contract
    1. Meaning the lessee/hirer **must** be able to **identify** the **benefit** in the contract
      - a) **Ignorance** of it will **invalidate** the contract because how can someone enter such a contract without knowing the benefit behind it?
      - b) Ex: I am renting this car so that I may use it to drive to my destination in another city far away
        - (1) The benefit here is the **utility of transportation**
  - B. The benefit which the lessee/hirer hopes to achieve **must** in itself be **permissible**
    1. Ex: a person **cannot** rent a nightclub for the night or hire a prostitute because the 'benefit' sought through such means is **forbidden**
  - C. Knowledge of the **payment**
    1. Meaning the rent/hire **amount** must be **clearly** known **before** the contract goes into effect
      - a) If it has **not** been identified from the beginning, then it will **invalidate** the contract
    2. Exceptions
      - a) Giving the payment in the form of **food** or **clothes** does **not** need to be **specifically identified** beforehand because it can **vary** and is **not** fixed
        - (1) It will be based on **custom**

- (2) Ex: paying a wet nurse with food and clothing as a form of payment for breastfeeding
- b) If it is a type of hiring/renting contract where the price is **not** set beforehand due to **custom** or **habit**, then it is **valid** to make payment after **despite** first not clearly indicating the final payment
  - (1) Ex: taxi, tailor, boat ride, etc.
    - (a) The rate may be known but there is no final price set in the beginning. It will be determined after the job is done
  - (2) **Habit example**: when it is well known to locals how much a trip costs on a taxi from destination A to B, therefore, they do not ask the driver for the price before sitting in it and heading to their destination

V. There are **two** types of *ijarah* contracts:

A. Renting properties

- 1. Ex: house, car, land, etc.
- 2. Conditions
  - a) Knowledge of the property
    - (1) Meaning having knowledge of its **characteristics** and **details**. It must be known **clearly** what it is that the person is renting
  - b) **Ability** to hand it over
    - (1) Meaning the owner has possession of it and someone else is not already renting it
  - c) The contract **must** be based on the property's **utility** and **not** part(s) of it
    - (1) Ex: a person cannot rent just an engine of a car without rest of the car because the benefit derived from it can only come about through renting the whole car as one unit
    - (2) **Exception**: breastfeeding woman's **milk** because it is considered **property** inside of her
  - d) The property must **include** whatever is **necessary** for its utility and purpose of use
    - (1) Ex: If it is a house, then it should have all parts which are needed to live there, such as, bathroom, bedroom, kitchen, running water, etc. Similarly, a person cannot rent a car without an engine in it because it is necessary to actually make use of the vehicle
  - e) The contract **must** be undertaken by the **landlord** or his **representative**
    - (1) Meaning the **owner** of the property is the one that will actually conduct the contract
- 3. It can be divided into **two** types
  - a) Renting the property for a **specified period**
    - (1) Ex: Muhammad rents out his apartment to Zayd for 1 year
    - (2) The **amount** of the period **must** be such that there is a **strong probability (zann)** of the property **remaining** useful in it
      - (a) Ex: a person cannot rent his car for two weeks to someone if it is in a type of condition that it will most likely become dysfunctional within a week. If he does so, the contract will be invalid
  - b) Renting the property for a **specific use**
    - (1) Meaning the person rents it for a **specific purpose** after which the property is returned

(2) Ex: Muhammad rents a car to deliver a particular item to someone and then returns it to the owner

B. Hiring for **specific qualities** or **skills**

1. Ex: teacher, tailor, driver, builder, etc.

2. Conditions

a) Payment must be based on either the **work** or the **time period**

(1) Meaning there should be **no** ambiguity about it in the contract. **Details** should be **clear** as to **which** of the two is intended. They have different rules applicable to them in the contract based on whether the hired person is a specific worker or a shared worker

(a) More details between these two types of workers is coming below *insha'Allah*

(2) Based on **work** ex: the hired worker is paid just **once** when the job is completed

(3) Based on **time** period ex: the hired worker is paid **\$100 per week** until the job is completed

(a) Hourly wage workers also fall under this

b) The hired worker should be a person who is **permitted** to conduct transactions:

(1) Meaning he should be free, *mukallaf* (sane and pubescent), and mature enough to **deal** in transactional matters

c) It cannot be for **actions** which **require** its doer to be a **Muslim**

(1) Ex: prayer, *hajj*, *umrah*, call to prayer, *iqaamah*, teaching Qur'an, *fqh*, *hadith*, etc.

(2) However, the Hanbalis **allow** the person to take payments for such tasks in the following cases **provided** the benefit from it is for **others** and **not** the doer himself. For example, he **cannot** be paid to do *hajj* for himself but **can** if he does so on behalf of someone else:

(a) Public treasury (*bayt al-maal*)

(i) This is when the leader of the Muslims gives him something from the public treasury

(b) A reward for performing a service (*ju'alah*)

(i) This is seen as more **expansive** and **flexible** than a *ijarah* contract because there are no preconditions set beforehand and there are no expectations for payment

(ii) Ex: an open promise by one party to pay a reward to whoever performs a particular task

(iii) There is a separate section dedicated to this type of contract coming later *insha'Allah*

VI. The **hirer/lessor** is **required** to do by **default** whatever is **customarily** done for someone in that position in his area

A. Ex: provide running water in the house that the owner wants to rent out. Similarly, in the old days lessors would customarily clean out the property's sewer before handing the place to the lessee

VII. The **hired/lessee** is **required** to do by **default** whatever is **customarily** done for someone in that position in his area

- A. Ex: utility bills for a rented house are customarily paid by the lessee and not the lessor. Similarly, in the old days the lessee would customarily clean out the property's sewer before handing the place back to the lessor
- VIII. The hired/lessee can **choose** to impose the customary practices on the hirer/lessor instead in the contract and vice versa, however, in their **absence** from the contract the **custom** will be taken as the **rule**
- IX. The *ijarah* is a **laazim** type of contract
- A. **Laazim**: **neither** party can back out of the contract without **permission** from the other
1. Both parties become **committed** until the end
  2. If the **lessee** is the one that cancels **before** the contract's term is up, then he must **compensate** the lessor for the rest **unless** the latter agrees to **forgive** it
    - a) Ex: Muhammad agrees to rent out Zayd's aptment for six months at \$500/month. However, after three months Muhammad decides to cancel the contract. In this case, Muhammad must still pay Zayd for the remaining three months even if he moves out unless Zayd decides to forgive it
  3. If the **lessor** is the one that cancels before the contract's term is up, then he gets **nothing**
- X. The *ijarah* contract will be immediately **voided** in the following situations:
- A. The **very thing** which is being hired/rented becomes **damaged**
    1. Ex: Muhammad rents a car for three days but it breaks down after 12 hours
  - B. Death of the **baby** being breastfed
    1. This will **void** the contract with the wet nurse
  - C. Tooth that was supposed to be **removed** by the dentist but the patient pulled it out himself, the patient died, etc.
    1. This will **void** the contract because the **hired** has no role to play now
- XI. The following **hired workers** in general are **secure** from any **harm** that may occur on the job, thus, they will **not** be held responsible:
- A. The **specific worker** that does something wrong by **mistake** because such a worker is considered a representative of the owner
1. Ex: a housemaid breaks a glass in the house by mistake. In this case, she will **not** be held responsible for her action
    - a) However, if she did so due to **negligence** or **transgression**, then she will be considered responsible
  2. Specific worker vs shared worker
    - a) Specific: provides his services **just** for **one person** and he is paid based on **time**
      - (1) Ex: Muhammad hires a driver for a month at his house
    - b) Shared: provides his services to **multiple** clients and he is paid based on the **work** he performs
      - (1) Ex: Muhammad goes to a tailor's shop and gives him a suit to sew
- B. Doctors, vets, and cuppers are **not** responsible for **any** harm that may occur **provided** the following **three** conditions:
1. They are **known** to be **skillful** in their craft
  2. They have **permission** from the **mukallaf** (sane and pubescent) or the **guardian**
  3. They were **neither** transgressing nor neglectful during the procedure
- C. Shepherd who **herds sheep** as long as the harm was **not** due to transgression or negligence
1. Meaning he is **not** responsible for any harm that may come to the sheep
- XII. If someone is a **shared worker**, then he is **responsible** for **any** damage through his action

- A. Ex: Muhammad goes to a tailor to get a suit sewn but the latter damages the cloth during the process. In this case, the tailor will be held responsible and must compensate Muhammad
  - B. However, if it was due to something that was **not** in the shared worker's **control**, then he is **not** responsible but he will **not** be paid
    - 1. Ex: Muhammad goes to a tailor to get a suit sewn. The tailor completes the job and places it in the store. Then the store is robbed or is burned down in a fire. In such cases, the tailor will not be held responsible. However, the tailor will also not be paid for the completed job in this case because Muhammad never received the completed item
  - C. It is **obligatory** to pay both the shared and specific worker at the **beginning** of the contract and **not to delay** it until the end **unless** they both **agree** to do so
- XIII. The **lessee** is **not** responsible for any **damage** that may occur **unless** it was due to **negligence** or **transgression**
- A. Ex: Muhammad rents out his apartment to Zayd. Then after a few days, the water pipe breaks. In this case, Zayd is not responsible unless he was the one who caused it due to negligence or transgression
  - B. If there is any **dispute** that arises between the lessor and the lessee as to who is **responsible** for the damage of the rented property, then the one who **denies** being negligent or transgressing will be the one given preference

## Competition (Musaabaqah)

- I. It is **permissible** to compete in the following: foot racing, archery, ship racing, spears, racing on animals, etc.
  - A. However, **no reward** can be given for such competitions **except** for the following: camel racing, horse racing, and archery
    - 1. The **official** position of the Hanbali school **only** allows reward for these **three** types of competitions. It **allows** other competitions **but** only if done **without** offering a reward
- II. Types of rewarded competitions
  - A. Permissible
    - 1. A **third** party pays the reward
      - a) Meaning this party is **not** a participant in the competition but will **pay** the reward to the winner of the competition
        - (1) Ex: the governor of a state agrees to reward the winner of an archery competition
      - b) No disagreement over its permissibility
    - 2. **One** party **only** agrees to pay the reward
      - a) Ex: Ahmad and Muhammad go out to compete in archery. The former agrees to reward the latter in case Muhammad wins, however, the latter does **not** agree to pay the former anything in case Ahmad wins
    - 3. **All** participants put down money and the winner **takes** all provided there is a **muhallal** in place
      - a) A *muhallal* is a person that pays **nothing** to enter the competition. If there is no *muhallal*, then it is **forbidden**
      - b) Ex: Muhammad, Zayd, and Ahmad go out to compete in camel racing. Muhammad and Zayd put down \$50 each but Ahmad puts down nothing. All three agree that the winner will take all (i.e. \$100)

## B. Forbidden

1. The loser pays the winner
  - a) Ex: Ahmad and Zayd go out to compete in archery. They both agree that the loser will pay the winner a reward
2. **All** participants put down money and the winner takes all and there is **no muhallal** in place

## III. Conditions

- A. Specification of the **type of animal** competing in the competition if it is a race on a riding animal
  1. Meaning it should be **clear** whether the competition consists of horses or camels
- B. The competing riding animals should be of the **same type**
  1. Meaning you can **only** have camels compete with other camels or horses with other horses. You **cannot** have horses competing with camels
- C. Specification of the **shooters**
  1. Meaning if it is an archery competition, then the **participating** archers in the competition should be identified and **known**
- D. Specification of the **distance**
  1. Meaning the **exact** distance to win the race should be **defined**
- E. Knowledge of the **value** of the reward
  1. Meaning the **exact** amount that will be rewarded should be **known**
- F. Reward should be of a **permissible** nature
  1. Meaning it **cannot** be from stolen money or a forbidden product, such as, wine
- G. It should **not** resemble **gambling**
  1. Gambling is when all participants put something down and the winner takes all or when the loser(s) pays the winner

## Borrowing

- I. Def: when you **borrow** an item **temporarily** and then **return** that **exact** item back to its owner **after** use
  - A. Ex: Ahmad borrows plates and cups from Zayd for a dinner gathering and then returns them after use
  - B. This is **different** than **ijarah**, where a person **pays** rent to use something
  - C. It is also **different** than a **loan** when the **exact** same item is **not** returned but something **similar** to it
    1. Ex: a person is lent a bag of rice to cook for consumption and then buys the owner another bag to replace it
- II. It is **recommended** to allow one's property to be borrowed by others for a **permissible** use
- III. It is **permissible** to borrow another's property for use
- IV. It is **valid** to borrow **anyone's** property that brings **permissible benefit** to the borrower **except** in the following cases:
  - A. Private parts
    1. Meaning sexual pleasure. This is **not** allowed except through a marriage contract or through right hand possession
  - B. Muslim slave borrowed by a disbeliever
    1. Meaning it is **not allowed** to give a Muslim slave to a disbeliever for use
  - C. Hunting animal or its like be given to a **muhrim** (someone in a state of **ihraam** for 'Umrah or Hajj)

1. Meaning a *muhrim* should **not** be given to borrow **anything** that is **forbidden** for him/her to use **during ihraam**
  - a) Ex: a hunting animal should not be temporarily given to a *muhrim* to slaughter nor should he be given perfume to borrow
- D. A **slave girl** or a **beardless boy** should **not** be given to someone **untrustworthy** to borrow
- V. The borrowed **item** is considered **guaranteed** whether it was due to negligence/excessiveness or not
  - A. Meaning if the borrower **lost** or **broke** the borrowed item, **even** if accidentally, then he **must** either:
    1. **Replace** it with something **similar**
    2. Give the **price** of something **close** to it based on its **value** on the **day** the item was damaged/lost
      - a) This option is done if the first one is **unavailable**
  - B. The following are **exceptions**, meaning the borrower will **not** be held **responsible** if the borrowed item is damaged in the following situations:
    1. Loss of **value** or damage due to **normal** use
      - a) Ex: Ahmad borrows a new shirt from Muhammad. After use, the shirt is no longer 'new' but 'used'. In this case, Ahmad is not responsible for the loss of its value
        - (1) This is because Muhammad gave Ahmad permission to use it
      - b) However, if an item loses value or becomes damaged due to its use **not** in a normal way, then the borrower **will** be responsible
        - (1) Ex: Ahmad gives a new shirt to Zayd to borrow thinking the latter will wear it, however, Zayd uses it to clean the gutters
    2. *Waqf* (endowment)
      - a) Ex: a person borrows some books from a mosque to read and he damages some of them due to use. In this case, he will **not** be held responsible because he is one of its **beneficiaries** and the use of them was **permitted** to him
        - (1) However, if he used them in a **neglectful** way which caused damage to them, then he **will** be held responsible
    3. *Ijarah* with **permission** from the owner
      - a) Ex: Ahmad is **renting** a car for a **fee** from Muhammad. Zayd asks Ahmad to let him borrow it for a few hours. Ahmad calls Muhammad and asks for **permission** and the latter agrees. Zayd borrows the car but it gets damaged **without** his fault. In this case, Zayd is **not** responsible
    4. Person allows someone who is **cut off a ride** for Allah's sake
      - a) Ex: Ahmad runs into someone on the street who is cut off from his wealth and needs a ride to get to his destination outside of town. Ahmad allows this person to borrow his riding animal/vehicle, or offers him a ride with him, for Allah's sake to get to his destination. However, the person damages the riding animal/vehicle in the process. In this case, the borrower will **not** be held responsible
- VI. It is the responsibility of the **borrower** to return the borrowed item and **not** the lender to pick it up

## Usurpation

- I. Def: to take something belonging to someone else by **force**
- II. It is a **major** sin
- III. Whoever usurps someone's **permissible dog**, then he **must** return it

- A. A permissible dog is a dog that is used for hunting, herding, or guarding. These **three** are the **only** cases when it is **permitted** to acquire a dog
- IV. Whoever usurps a *dhimmi's* wine that he drank in **private**, then he **must** return it because it is permitted in **their** religion
- A. However, if he drinks it **openly**, then he is **not** required to return it, rather, it will be **spilled**
- B. If the person usurps a **Muslim's** wine, even if he drank it in private, then he does **not** return it, rather, he will **spill** it
- V. **Skin** of a dead animal (*maytah*) taken by force is **not** required to be returned because it is **impure**
- A. This is in reference to the **skin** of a dead **pure** animal that was **not** slaughtered according to Islamic guidelines, such as, a goat that died of a natural cause
1. The list of pure and impure animals was discussed earlier under the Book of Purification
  2. The Hanbali school **allows** its use on dry surfaces but it can **never** be purified even through tanning according to the **official** position of the Hanbali school
- VI. If the dog, wine, or the impure skin of a dead pure animal taken by force is **destroyed** or **damaged**, then there is **no** compensation
- A. This is because these items carry **no value**, thus, they **cannot** be sold or bought
- B. Ex: Ahmad takes someone's hunting dog and then kills it. In this case, he is **not** required to compensate the owner for it
- VII. If someone **captures** a **free adult Muslim** by **force** and the latter is harmed while in **custody**, then the abductor is **not** responsible for it unless he **intended** to harm him
- A. Ex: if the abductor **neglects** to give food or drink to the victim and the latter dies, then the abductor will be responsible, however, if he did give the victim food and drink but he died anyway, then the kidnapper will not be responsible
- B. **Exception:** if the abductor captured a child and damaged the child's clothes or jewelry, then he **will** be responsible to compensate
- C. If the abductor **forces** the captured person to **work** for him or just **holds** him in custody, then he must **compensate** him for as long as he had him in his custody
1. Meaning he is **obligated** to provide him with **compensation** to cover the loss of pay while in custody or to pay him for the work that he did
- VIII. If someone takes something by **force**, he must return it **and** any **increase** that stems from it
- A. Ex 1: an animal that gives birth while in custody **must** be returned **with** its child
- B. Ex 2: an animal that weighed 20 kg before usurpation and 30 kg after it must be returned in all. The one who took it by force **cannot** request to be compensated for the extra 10 kg
- IX. If someone takes something by **force** and he is the **cause** of its drop in value while in **custody**, then he **must** return the item **plus** compensate for its loss in value
- A. Ex: a person takes someone's sheep that is worth \$300 by force. While in custody, the sheep weakens and its value drops to \$200. In this case, the person is **required** to return the sheep **plus** pay \$100 to compensate for its loss in value because he was the **cause** of it
- B. However, if the value of the item drops due to the **market** and **not** due to the one who took it by force, then he is **only** responsible to return it **without** having to compensate for the loss of its value
- X. If someone **forcefully** starts to **build** or **plant** something on someone else's **land**, then he must:
- A. Remove whatever was planted/built on it
  - B. Compensate the owner of the land if the planting/building caused the land's value to drop
  - C. Flatten and fix the land
  - D. Pay for the length of time he usurped it
    1. Because the owner was not able to profit from it nor use it during that time

- XI. If someone usurps another's **wealth** and does **business** with it resulting in **profit**, then he **must** return **both** the original money **plus** the profit
- A. Ex: Ahmad steals \$1000 from Zayd and invests it in a business. Ahmad earns a profit of \$1000 so now he has \$2000 in possession. In this case, he is obligated to return all of the \$2000 back to Zayd, because the **original** money that was usurped from which he profited belonged to him
  - B. If a **hunting animal/instrument** was usurped and **used** for hunting an animal, then the one who usurped it must return **both** the hunting animal/instrument **plus** what was hunted using it
    1. Ex: Zayd steals a falcon belonging to Muhammad. Then Zayd uses it to hunt a rabbit. In this case, Zayd must return both the falcon and the rabbit back to Muhammad
  - C. If someone stole a **harvesting instrument** and **used** it on a field, then he **must** return **both** the instrument **plus** what was harvested with it
    1. Ex: Zayd steals Ahmad's sickle and uses it to cut grains from his **own** field. In this case, Zayd must return the sickle **plus** the grains that were cut using it back to Ahmad
      - a) This is because the grains are also considered to belong to Ahmad since it was **his** instrument that was used **without** permission to cut the grains
    2. Another opinion in the school says that he returns the **instrument** plus **pays** the other person a **fee** for using the instrument without permission, thus, it does **not** require him to return what was harvested using it
- XII. If someone usurps something from another and **mixes** it with another item which makes it **difficult** to **distinguish** between the usurped item and the other, then they become **partners** based on the **degree** of their **ownership** in it
- A. Ex: Ahmad steals Zayd's 20 oz oil bottle and mixes it with his own. There is no way to separate between Zayd's usurped oil and Ahmad's own. In this case, they both become partners in its ownership. Zayd owns 20 oz of this oil and the rest belongs to Ahmad
  - B. **Similar** ruling applies if someone steals another's **clothes** and **dyes** it with another color
    1. Ex: Ahmad steals Zayd's \$50 new shirt and dyes it with another color, which increases its value to \$100. The dye now cannot be separated from the shirt. In this case, they become co-owners and each owns 50% of the shirt
  - C. If the mixture or dye **drops** the usurped item's **value**, then the one who usurped it is **responsible** to compensate the **owner** for any **loss**
    1. Ex: Ahmad steals Zayd's \$50 new shirt and dyes it with another color, which decreases its value to \$25. The dye now cannot be separated from the shirt. In this case, Ahmad must pay Zayd the \$25 loss because Ahmad is the **cause** of the item's loss in value

## Usage of the Usurped Item

- I. Whoever buys a **land** and starts to **plant** or **build** on it but then discovers that the land is actually **stolen**, then the land must be **returned** to its **original owner** because the **seller** had **no right** to sell it in the first place
  - A. There are **two** who are **oppressed** in this situation: the **original owner** and the **buyer**
  - B. The seller **must** pay the buyer with whatever the latter **lost** of initial payment **plus** investment(s)
- II. If a person usurped someone's **food** and then gave it to another to **eat**, then the **one who usurped it is responsible**
  - A. Ex: Ahmad steals Muhammad's sheep and gives it to Zayd to slaughter and eat. Zayd did **not** know that Ahmad stole it from Muhammad. In this case, Ahmad is responsible to pay compensation to Muhammad for the sheep

- B. If the **one who ate it** knew it was usurped, then **he** is the one that will be held responsible
  - 1. Ex: Ahmad steals Muhammad's sheep and gives it to Zayd to slaughter and eat. Zayd **knew** that Ahmad stole it from Muhammad. In this case, Zayd is responsible to pay compensation to Muhammad for the sheep
- III. The **general rule** is that **compensation** for a damaged/lost **usurped** item is given with something **similar** to it, if unable, then **compensation** is given based on its **value** on the **day** it was damaged/lost
  - A. So based on this, items fall into **two** categories:
    - 1. Those that **can** be compensated with **similar** types
      - a) These **must** be purchased as **replacement** for the damaged/lost item
      - b) Ex: bag of food, products available with the same brand and model number, etc.
    - 2. Those that **cannot** be compensated with similar types
      - a) In this case, their **value** on the **day** of its damage/loss is **paid** as compensation
      - b) Ex: rare jewelry/items, items not in production anymore, etc.
- IV. It is **forbidden** to **use** an item that was **usurped**
  - A. Meaning **any** type of **use** of it is **forbidden**
    - 1. Ex: driving a stolen car, eating a stolen bag of rice, etc.
  - B. Any **contract** related to it will be considered **invalid**
    - 1. Meaning a person **cannot** usurp someone else's property and then do **business** with it
      - a) Ex: Zayd steals Ahmad's car and then sells or rents it to Khalid. The sale or rental contract to Khalid will be considered **invalid**
  - C. It **cannot** be used in **worship** either and will **invalidate** it
    - 1. Ex: using stolen water to make *wudu* will not count, praying on a stolen land will not count, etc.
- V. The usurped item's value, amount, or description are **based** on the **claim** of the **one who usurped it** unless the **original owner** puts forth some **evidence** to refute him
  - A. Meaning if there is a **dispute** between the **owner** and the **one who usurped it** in one of these **three** attributes, the latter's claim will be given **preference** in this regard if we do **not** have any evidence to **prefer** one over the other, **unless** the owner brings **evidence** to support his own claim
    - 1. The three attributes
      - a) Value
        - (1) This tells us **how much**
        - (2) Ex: Ahmad stole a watch from Zayd and then damaged it. Ahmad claims the watch was worth \$100 but Zayd says it was worth \$150. If we do not have any way of finding out the actual value, Ahmad's claim will be given preference
          - (a) This is because they both **agree** on the \$100 and the **extra** \$50 is what needs to be proven
      - b) Amount
        - (1) This tells us **how many**
        - (2) Ex: Ahmad claims that Zayd stole two watches from him, however, Zayd claims it was only one. If we do not have any way of proving one over the other, Zayd's claim will be given preference
          - (a) This is because the **lower** number is **certain** and the **higher** one is **doubtful**. Certainty is **stronger** than doubt
      - c) Description
        - (1) This tells us about the usurped item's **attributes**

(2) Ex: Ahmad claims that Zayd stole a **red van** from him, however, Zayd claims it was a **blue sedan**. If we do not have any way of proving one over the other, Zayd's claim will be given preference

- VI. If there is a **dispute** between the **owner** of an usurped item and **the one who usurped it** on whether the item was **returned** or not, then the **owner's** statement will be given **preference** unless the other puts forth some **evidence** to refute him
- A. Ex: Zayd claims that he returned the car that he stole from Ahmad back to him, however, Ahmad claims Zayd did not. If we do **not** have any way of proving one over the other, Ahmad's claim will be given **preference**
    - 1. This is because Zayd **acknowledged** the existence of usurpation on his part, however, there is no evidence that he returned it
  - B. Same with the **dispute over a defect** on the returned item
    - 1. Ex: Zayd claims that when he stole Ahmad's car, it was **already** damaged, however, Ahmad says it was **not**. If we do **not** have any way of proving one over the other, Ahmad's claim will be given **preference**
      - a) This is because the **absence** of a defect in an item is the **general rule** and any defect in it must be **proven**
- VII. If someone has an usurped item in his **hand** or **another's** item, such as a trust or a pledge, that he wants to **return** but is **ignorant** of its **owner**, then he should give it away as a **charity** on **behalf** of the owner. In addition, he should make an **intention of guarantee**
- A. Meaning he does **not** have any way of finding out **who** the owner is or the owner is dead/missing without any known inheritors
  - B. This will **drop** the sin of usurpation
  - C. Ex: Ahmad steals \$500 cash from someone's wallet in a park. After a few months, he repents but does not know who the owner of the cash was or how to find him. In this case, he can give it away in charity on the owner's behalf
  - D. Meaning of '**intention of guarantee**'
    - 1. Meaning he intends that if the owner ever **comes** forward to **claim** his right, then he will **return** it by either:
      - a) **Compensating** him for his loss through payment
      - b) **Returning the original item** from the **recipient** of the charity
        - (1) In addition, he will need to **compensate** the recipient for losing the charitable gift
- VIII. Whoever **destroyed** something **respectable**, even if by **mistake**, is responsible to **compensate** for it
- A. Respectable means that it is **permissible**, carries **value**, and belongs to a **Muslim** or **Dhimmi**
    - 1. Ex: Ahmad accidentally steps on Zayd's watch on the floor and breaks it. In this case, Ahmad must compensate Zayd even though it was unintentional
  - B. If he did it on **purpose**, then he is sinful as well in **addition** to being responsible
- IX. If someone **tied** an **animal** in a **narrow road** and it damaged something, then the **owner** of the animal will be **responsible** to compensate
- A. If it is a **wide road**, then he will **not** be held responsible
- X. If a person is **leading** an **animal** from its **front** or **back** and this animal **damages** something, then the person is **responsible** to compensate for it
- A. The same rule applies if the person is **riding** it and **controlling** it with his hand
  - B. Ex: Ahmad is riding a horse on its back and it tramples on someone's property destroying it or it destroys something with its mouth. In this case, Ahmad will be responsible to compensate for it

- C. However, if the animal destroys something with its **back legs**, then the person is **not** responsible because he **cannot** control that
- D. The general rule is that if a person was either the **doer** of an act of destruction or the **cause** of it, even if **indirectly**, then he will be **responsible** to compensate for it

## Preemption (Shuf'ah)

- I. Def: it implies that a co-owner has the **right to demand** a pre-emption from his **partner** in a **jointly** owned **property** to purchase it at a certain price, **before** other people
  - A. Ex: Ahmad and Zayd own a business together. They both have a 50/50 take in the company. Zayd wants to sell his portion of the share in the company. In this case, Ahmad has the **right** to purchase it from him **before** the opportunity is given to others by Zayd
- II. The **right** to preemption is **established** given the following **conditions**
  - A. It should be done **immediately** and not delayed
  - B. The partners must be **Muslims**
    - 1. A non-Muslim partner does **not** have a right to preemption
  - C. The **selling partner** must have complete **ownership** of his share
    - 1. Ex: it cannot be a *waqf* because there is no specific owner for it, rather, it's purpose is to just bring some sort of benefit
  - D. The share's **ownership** must be **transferred** through exchange of **wealth** at the price agreed on in the contract
    - 1. Therefore, it **cannot** be given for free like a gift
  - E. The **partner requesting** preemption should **already** be a partner **before** the **selling partner** decides to sell his portion
    - 1. Ex: Ahmad, Zayd, and Muhammad own a piece of land. Zayd sells his portion to Ibrahim and Muhammad sells his portion to Bilal. In this case, Bilal cannot request Zayd to sell his portion to him as well due to right of preemption, because Zayd had already sold it to Ibrahim before Bilal was even a partner
  - F. If it is co-ownership in a **widespread** land, then it can **only** be done provided:
    - 1. There are **no boundaries** on the land **distinguishing** who owns what
      - a) If there were, then they would be considered **neighbors** not co-owners of the whole land
    - 2. It should be **distributable**
      - a) Meaning it should **not** be so **small** that it **cannot** be divided
    - 3. Any **plants** and **buildings** on the land will be **included** in the preemption contract but **not** its grown fruits or vegetables
      - a) The **selling partner** has an **option** to sell the fruits or vegetables at an **extra** cost with his portion of the land to the partner seeking preemption
  - G. The partner **requesting** preemption must take the **whole** of the sold share and **not** just part of it
    - 1. Ex: Ahmad and Zayd own a business together with 50 percent each. Ahmad wants to sell his share. Zayd offers to buy it from him first but requests only a quarter of his 50 percent
      - a) This is **not** allowed because he **must** either take it all or leave it all
- III. The following **invalidates** and **drops** the right of preemption
  - A. The one **seeking** preemption wants **part** of the share and not all of it
    - 1. This was discussed in the previous section under II. G.

- B. The one **seeking** preemption is **unable** to pay all of it after **three days**
  - 1. Ex: Ahmad and Zayd are partners in a business. Zayd wants to sell his portion and Ahmad requests to buy him out. Ahmad agrees to pay half now and the rest in three days. If he does not pay within that time, then Ahmad will lose his right of preemption
- C. If the one **seeking** preemption goes to the **new buyer** to buy it from him **directly**
  - 1. Ex: Ahmad and Zayd own a business together. Zayd wants to sell his portion of the share(s) but Ahmad does not show any interest nor request right of preemption. Zayd then sells it to Bilal but now Ahmad goes to Bilal and seeks right of preemption to buy it from him, because he claims that he has more right to it due to the law of preemption. This is **not** allowed
- D. If a **just person** informed someone that his business partner had **sold** his share(s) to someone else but he did **not** believe him, then this will cause the right of preemption to be **dropped** from the **unbelieving** partner
  - 1. Ex: Ahmad informs Zayd that his business partner Bilal has sold his own share of the land to Muhammad. However, Zayd does not believe him even though Ahmad is just and reliable. If later on Zayd learns that it was the truth, he will **not** have the right to request preemption
  - 2. If the informer is **not** a just person, then right of preemption **still remains**
    - a) Ex: Waqas informs Zayd that his partner Bilal has sold his share of the land to Muhammad. However, Zayd does not believe him because Waqas is unjust and unreliable. If later on Zayd learns that it was the truth, he will **still** have the right to request preemption
- IV. If **not** all partners want the selling partner's share, then the **one** that wants it must **either** take it all or leave it all
  - A. Ex: Ahmad, Zayd, and Muhammad own a piece of land. They each own a third of it. Zayd decides to sell his share of the land and since Ahmad and Muhammad have more right to it, he offers it to them first by splitting his portion half between each. Muhammad decides that he is not interested, however, Ahmad does want to purchase it but only  $\frac{1}{2}$  of it. This is not allowed. He must either take it all or leave it all
- V. If a partner **requests** to purchase the shares through right of preemption from the selling partner, however, the former dies **before** obtaining them, then it will go to his **inheritors**
  - A. Ex: Ahmad and Zayd own a business together. Zayd wants to sell his share of the business and Ahmad requests to buy it through right of preemption, but dies before the sale goes through. In this case, Ahmad's inheritors have the right to buy the share from Zayd first before others
  - B. If he died **before** officially **requesting** to purchase them, then the preemption does **not** apply **even** if he wanted the selling partner's portion, thus, his inheritors **cannot** demand it either
- VI. If a person wants to buy his selling partner's shares on **credit**, then he can do so **provided** he is **financially stable**
  - A. If the person is **not** financially stable, then he **must** bring a **guarantor** that is **financially stable** to back him up. This means the guarantor will **cover** the cost in case the person is unable to pay
    - 1. If the person does **not** bring a guarantor, then he can **only** buy the shares if the selling partner **agrees**
- VII. If the selling partner **acknowledges** selling his portion to an **outsider** but the latter **denies** it, then this **secures** the right to preemption for the **remaining partner** if he chooses to buy it from him
  - A. Ex: Muhammad and Zayd own a land together. Zayd sells his portion of the land to an outsider without telling Muhammad. When Muhammad finds out, he demands right of preemption,

however, the outsider denies the purchase ever took place. In this case, Muhammad will buy Zayd's portion of the land from him

- B. If the **selling partner** claimed that the **outsider** has **already** given him the money, then that money will be considered a **security** under him to give **back** to the outsider **whenever** he requests it back from him

## Trusts

- I. Def: when someone is **authorized** to **safeguard** another's **wealth**
- A. That someone is called a **wakeel** and the protected wealth is called a **trust**
1. The **wakeel** must be pubescent, sane, and mature
- B. Ex: Muhammad asks his friend Abdullah to hold onto his money until he returns from his trip
- II. It is **recommended** to **accept** holding onto someone's property as a **trust**
- A. This is for the one who **knows** that he is **capable** of fulfilling the trust. If **not**, then he **cannot** take it as a trust
- B. Once **accepted**, it is **obligatory** to **preserve** it in a **safe place** of its **types**
1. Ex: if it is jewelry, then it is usually kept in a chest hidden somewhere and not displayed out in the open
- III. If the **owner** of the property **specified** a particular location for the trust to be held but the **wakeel** did **not** abide by it, then he will be **responsible** to **compensate** for it if something happened to it
- A. Same ruling applies in following cases:
1. Exceeding the limit
    - a) Ex: someone gives Ahmad \$1000 to hold onto and he agrees but then starts loaning it to others and ends up losing some of it
  2. Being neglectful
    - a) Ex: leaving an entrusted car's doors unlocked so it gets stolen or not feeding or watering an entrusted animal that causes it to die
    - b) However, if proper **precautions** were taken but the entrusted wealth was **still** damaged or destroyed, then the **wakeel** is **not** responsible
- IV. In a case of **disagreement**, the statement of the **wakeel** is **accepted** and given **preference** in the following cases:
- A. If the **wakeel** says that he returned the trust **back to the owner** or to **another** with the owner's **permission**
1. Ex: Ahmad gives Zayd \$1000 as a trust to keep. After a month, Ahmad requests his money back but Zayd says that he already returned it to him. In this case, Zayd will be believed because Ahmad considered him trustworthy, which is a condition for Ahmad to entrust him with the wealth in the first place
    - a) The **same rule** applies if Zayd told him that he gave it to Muhammad because Ahmad had **told** him to do so
  2. However, if the **owner** of the wealth **dies** and his **inheritors** come to the **wakeel** to obtain the trust and he claims to have already given it to them after his death, then in this case the **inheritors** will be believed because they are **not** the ones who trusted him with the wealth
    - a) Ex: Ahmad gives Zayd \$3000 as a trust. Two weeks later Ahmad dies. Then his inheritors come to Zayd to obtain the money, however, Zayd tells them that he has already given it back to them. The inheritors disagree

- (1) In this case, the inheritors will be believed because Zayd being trustworthy is **connected** to Ahmad and **not** his inheritors
- B. If there is a **dispute** as to who **damaged** it, then the **wakeel** will be believed
1. Ex: Ahmad gives Zayd his car to keep as a trust for one month. When Ahmad arrives to pick it up, he finds it partially damaged but Zayd tells him that it was already damaged when he gave it to him. In this case, Zayd will be believed for the same reason stated before
- C. **Absence** of any **excessiveness** or **neglect**
1. Meaning if there is **no evidence** that the *wakeel* was excessive or neglected the trust in any way, then he **will** be believed
  2. Ex: Ahmad gives Zayd his car to keep as a trust for one month. When Ahmad arrives to pick it up, he finds it partially damaged but Zayd tells him that he did his best to take care of it but it still got damaged due to circumstances not in his control. In this case, Zayd will be believed
- V. If **two partners** entrust something **measured** or **weighed** to a *wakeel* to keep as a trust and then **one** of them goes to him later **alone** to request his portion back, then he **will** be given it
- A. Meaning as long as the trust is a type of property that can be **divided**, it will be **separated** and handed over
  - B. Ex: Ahmad and Zayd come to Muhammad and give him \$1000 to keep as a trust for one month. Then after two days, Zayd comes to Muhammad and requests his portion back. In this case, Muhammad can give him \$500 from the trust
    1. The same goes if they gave him a bag of rice that they both own 50/50. If one of them came to the *wakeel* requesting his portion back, then he can pour out half of the bag of rice and give it back to that one requesting partner
- VI. The following have the **right** to **take back** the **usurped** property on **behalf** of the **owner**
- A. The one entrusted with his wealth (*wakeel*)
  - B. The one who is given wealth to purchase something on the owner's behalf
  - C. Pledgee
    1. A pledge is a thing that is given as security for the fulfillment of a contract or the payment of a debt
  - D. Lessee

## Revival of Uncultivated Lands

- I. Whoever **revives** the following **two types** of uncultivated **dead** lands or **builds** something on them, then he **becomes** their owner:
  - A. Land **not** owned by anyone
    1. It is **not** allowed to do so if it is owned by a Muslim or a *Dhimmi*
  - B. Land **not** designated for **public benefit** even if it is not owned by anyone
    1. Examples of lands designated for public benefit: streets and roads
- II. There are **many** ways to revive a dead land and it is **generally** dependent on the **custom** of the people. However, some of the below are examples:
  - A. Making a well-fortified **fence/wall** around it
  - B. Connecting a **water source** on the land and this source is the **only connection** to the cultivation of the land
  - C. If the land is a **swamp**, then **clearing** it out in order to prepare it for cultivation

- D. Digging a **well** in it
- E. Planting **trees** on it
- III. If a merchant **preceded** others at a spot on a **wide road** designated for setting up shops, then he has **more right** to sit on the spot and use it than others as long as his **belongings** have **remained** on it and it is **not** harming anyone
  - A. In other words, it is a first-come-first-serve basis
  - B. Examples of **places** that would be considered **harmful** to others if a merchant set up shop:
    1. Places **not** designated for buying and selling
    2. A **narrow** street that would cause **difficulty** for people

## Reward for Performing a Task (Ju'alah)

- I. Def: a contract in which one of the parties (the *jaa'il*) offers **specified compensation/reward** (the *ju'l*) to the **performer** of a **specific task**
  - A. The task to be **done** or its **duration** do **not** need to be **known**
    1. So it is more **flexible** and **broader** than *ijarah* (rental/hire contract)
    2. However, the compensation/reward **must** be known
  - B. Ex: a person announces a reward for finding a lost item/person
- II. It is **permissible** to take compensation for it if the performer **knew** about the compensation
  - A. Meaning if he did it with **knowledge** of the compensation/reward, then he **deserves** it after completing the task
    1. If he did **not** know of it, then he does **not** deserve it because he did it as a **volunteer**
- III. They **both** have the right to **cancel** the contract anytime
  - A. If the **performer** cancelled, then he does **not** deserve anything
    1. Ex: Ahmad announces that whoever builds a wall in front of his house, he will give him \$1000. Zayd accepts and starts to build a wall, however, after completing half of it, Zayd decides to cancel the deal and not finish it
      - a) This is **allowed** but Zayd will **not** deserve anything to compensate him
  - B. If the **one giving the compensation/reward** cancelled, then he **must** give the performer compensation **according** to the work he performed
    1. Ex: Ahmad announces that whoever builds a wall in front of his house, he will give him \$1000. Zayd accepts and starts to build a wall, however, after completing half of it, Ahmad decides to cancel the deal and not go forward with it
      - a) In this case, Ahmad **must** compensate him for the work that he has done
- IV. Whoever did the work **without** intending to **take** the **compensation** or did it without **permission** of the one giving the compensation/reward, even if intending to take the money, then he gets **nothing**
  - A. Therefore, in order to **qualify** to get the *ju'alah*, one **must**:
    1. **Not** intend to do it as a **volunteer** but complete the task with the **intention** of **getting** the compensation/reward
    2. Seek **permission** from the one **giving** the compensation/reward **before** taking on the task
  - B. Exceptions
    1. He **rescues** property from the **sea** or **desert**, then he **gets** according to what he deserves. This is because there is **urgency** at play here
      - a) Ex: a ship is sinking into the ocean and a man jumps into the water to retrieve someone's belongings

2. If he catches a runaway **slave**, then he gets a **dinar** (12 dirhams)
  - a) This is based on a *hadith*. In the old days, 12 dirhams **equalled** one dinar

## Finding Lost Property (Luqatah)

- I. Def: Property that the owner **loses** and **another** person finds
- II. They fall into **three** types:
  - A. Things people do **not** care about
    1. Ex: loaf of bread, shoelace, a few cents, etc.
    2. He can **keep** it for himself and does **not** need to announce it
    3. However, this **varies** based on time, place, and custom
      - a) Ex: a loaf of bread may be insignificant in a prosperous time but may be very valuable during famine. Similarly, one culture may find an item to be valuable but another not
  - B. Lost **animals** that can **defend** themselves from **small predatory animals**
    1. This may be either through their strength or their speed
    2. Ex: cows, camels, horses, etc.
    3. They are **not** allowed to be taken at all, rather, they should be **left alone**
  - C. Remaining types of wealth
    1. Ex: baby camels, baby cows, sheep, jewelry, cash, etc.
    2. He can take it if he can **trust** himself with the **responsibilities** that come along with it:
      - a) It is **obligatory** to **safeguard** it for the owner
        - (1) Meaning he keeps it like a **trust**
      - b) He must **announce** it before the people as much as he is able **except** inside of mosques because the Prophet (pbuh) **forbade** it
        - (1) Ex: Markets, newspapers, lost and found, etc.
        - (a) There is **no** one way, rather, he should adopt **whatever** is **customary** in the region to announce lost items
      - c) He should announce it as much as possible for a **whole year**
        - (1) Ex: Everyday for a week, then once a week, then once a month, etc.
        - (2) If **nobody** claims it **after** a year, then he can **keep** it for **himself**
          - (a) It is **now** considered to have come under the **finder's** ownership even **without** the finder's permission just like inheritance
- III. It is **prohibited** to do anything with the found item **before** having a good **understanding** of its various **descriptive properties**
  - A. Meaning the finder should **note down** its type, model, size, color, and other features
    1. All such details need to be **collected**
  - B. This is so if the **original owner** ever comes forward, the finder can **verify** it is his and give it back to him **even** if he comes looking for it **after** a year
    1. It is **obligatory** to give it back if the seeker claims to be the original owner and provides the correct description
      - a) If the seeker does **not** provide the correct description, then it is **not** his right to take it
    2. If the owner comes looking for it but the item is **not** in its original form anymore due to **use** by the finder, then the latter can either **replace** it with something similar or **pay** him its value

- IV. If someone's **shoes** are taken and he find's **another's shoes** in its place, it will take on the rulings of a lost item
- A. Meaning he will announce it for a year **if** the newly found shoes are **expensive**, otherwise, he can just keep them
  - B. This happens a lot in mosques where people accidentally take each other's shoes especially if they are similar in features
- V. Finding a foundling (*laqeet*)
- A. Def: a **lost** or **discarded** child **below** the age of 7 whose lineage is **unknown**
    1. It is **also** unknown whether the child is a slave or not
    2. If the child is **7 years old or older**, then he/she is **not** considered a foundling (*laqeet*)
  - B. It is a **communal obligation** (*fardh kifayah*) for someone to **take** the child in and look after it. The child **cannot** be left alone to die
    1. Meaning if **one** of them does it, then rest of the community will **not** be sinful
    2. It is also an **individual obligation** (*fardh 'ayn*) for one person from the community to look after the child
  - C. How does the one who looks after the child **spend** on it? There are **three** options:
    1. If the child has some money, then the finder **uses it** to care for the child
    2. If the child does **not** have money, then the **public treasury** (*bayt al-maal*) of the Muslims will be used to look after the child
    3. If there is **no** public treasury or it **cannot** afford it, then the person who is looking after the child will use his **own money** to take care of the child
      - a) It will actually be an **obligation** on him to use his **own money** to take care of the child
      - b) In addition, he **cannot** intend to seek **compensation** for it later because it is considered a form of **charity**
  - D. If the child was found in a **Muslim country** or **majority Muslim**, then the child should be considered a Muslim as well
    1. If found in a **non-Muslim country** or **majority non-Muslim**, then the child will be considered non-Muslim as well **unless** there is some **possibility** that the child may be Muslim
      - a) Ex: speaks Arabic, Urdu, has a Muslim sounding name, or looks like someone whose parents are from a Muslim country, etc.
  - E. As for whether the child is a **slave** or not, then the child is considered **free** in the **absence** of any **proof** or **indication** that the child is a slave
    1. This will **no longer** be considered nowadays since the institution of slavery has been **abolished** around the world, thus, the foundling will **always** be considered **free**
  - F. If someone **comes** to claim him, we can hand the child over to him **provided** there is some **indication** to connect the two
    1. They should **link** somehow

## Endowments (Waqf)

- I. Def: putting **aside** the **original property** and donating its **benefits** for the sake of Allah
  - A. It **cannot** be sold, bought, or given away as a gift. It becomes **locked** as a *waqf* and can **only** be used for its intended purpose based on the **intention** of the **donor**

- B. Ex: someone leaves a building to be used for the benefit of the poor in the community, someone leaves a plantation to distribute its produce to the poor, someone leaves Islamic books in a mosque for the benefit of the worshippers, etc.

II. It is **recommended**

III. How can we know if something is a *waqf* or not?

A. The following **two** ways are **valid** to determine it

1. **Statement** of the donor

- a) It could be an **explicit statement** in which case **no clarification** is needed

(1) Ex: someone says, "I give this land of mine as a *waqf* for the benefit of the poor"

- b) It could be **alluded** to in **some way** in which case a **clarification is needed**

(1) The donor needs to **clarify** whether the intention for *waqf* was there or not

(2) Ex: someone says, "I donate such and such for the benefit of the poor"

(a) This is **not** clear because a general donation has different rulings than a *waqf* so we need to clarify

2. **Action** of the donor which points to it being a *waqf* based on custom

- a) Ex: someone builds a mosque on his land and allows people to pray in it, someone builds a graveyard on his land and allows people to be buried in it at no cost, someone puts free Qur'ans in a mosque, etc.

IV. Conditions

A. It needs to be something **specifically known**, valid to **sell**, and others should be able to **continuously benefit** from it

1. Specifically known: meaning we need to know whether it's a land, house, item, building, etc.
2. Valid to sell: it **cannot** be something that is **invalid** to sell
  - a) The only **exception** is the *mushaf* (Qur'an). It is **not** valid to sell it, however, it can be given as a *waqf*
3. Continuous benefit: meaning it should be something that can continuously be used over and over again

B. It should be used for some **righteous** action

1. It is **valid** for both a Muslim or a *Dhimmi* to benefit from it **regardless** of who left the *waqf*
  - a) A Muslim can benefit from a *waqf* left by a *Dhimmi* and vice versa
  - b) The **exception** is the **mosque**, which **only** Muslims can benefit from

C. The **beneficiaries** of the *waqf* must be **specified** so that there is no dispute as to who can benefit from it

1. Meaning we need to know **who** can use it
2. Slaves **cannot** be named as beneficiaries
3. In some situations, the beneficiaries do **not** need to be specified, such as, mosques or the poor in general because it is understood

D. The **donor** should be among those for whom it is **valid** to do what he wants with his wealth

1. This basically means that the donor should be:
  - a) Free
  - b) Sane and pubescent (*mukallaf*)
  - c) Mature (*rasheed*)

E. It must be **completely** and **immediately** carried out

1. Meaning the donor **cannot** say, "I give such and such as a *waqf* provided such and such takes place." Similarly, he **cannot** say, "I give such and such as a *waqf* for x amount of time and then it will return back to me"
- V. If the **donor** puts a **condition**
- A. If it **agrees** with Islamic law, we will **accept**, otherwise, no
  - B. If he makes its beneficiaries **unrestricted**, then **anyone** who **fits** into it can use it whether the person is rich, poor, man, woman, etc.
    1. Ex: the donor says, "I give this building as a *waqf* for the children of Ahmad ibn Salih." In this case, any of the children of Ahmad ibn Salih can benefit from it
- VI. Who is **responsible** to take care of the *waqf*?
- A. If the donor **specifies** a particular **beneficiary** for it, then that person is responsible
    1. Ex: Ahmad says, "I give this as a *waqf* to my son Hassan." In this case, Hassan is responsible for it
  - B. If the donor specifies **multiple beneficiaries** that are **not** too large, then they are **all** responsible in their **own shares**
    1. Ex: Ahmad says, "I give this as a *waqf* to all my four sons." In this case, all four sons are responsible in proportion to their shares
  - C. If the donor does **not** specify particular beneficiaries and the number is **too large** who fit into it, then the **ruler** is responsible
    1. Ex: Ahmad says, "I give this as a *waqf* to the poor in the community." This number is too large and they **cannot** all be responsible, therefore, the **ruler** will become responsible
    2. The same goes for *waqf* like a mosque
- VII. If the donor leaves a *waqf* for his **walad** or the **walad of another**, then it includes **both** male and female children **equally**
- A. *Walad* is an Arabic term which refers to **both** male and female children
  - B. However, after these children die, then it **only** includes the **descendents** of the **male children** because progeny is **attributed** through the male line
- VIII. If the donor leaves a *waqf* to the **descendents** of a **particular individual** by saying, "I leave this as a *waqf* for **bani Ahmad**," then it **only** includes Ahmad's **sons**
- A. *Bani* is an Arabic terms which means **male** children
  - B. Similarly, if the donor leaves a *waqf* to the descendents of a particular individual by saying, "I leave this as a *waqf* for **banaat Ahmad**," then it **only** includes Ahmad's **daughters**
    1. *Banaat* is an Arabic terms which means **female** children
  - C. If the *Bani of so and so* is in **reference** to a **tribe** and **not** a particular individual, then it includes **both** males and females of that tribe **and** their descendants
    1. However, if the females marry **outside** of the tribe, then their children will **not** be included in the *waqf* because progeny is **attributed** through the **male** line
- IX. If the donor leaves *waqf* to his family (*quraabah*), household (*ahl*), or nation (*qawm*), then it **includes** the following provided they are of the **same religion** as the **donor**:
1. Children of the father
    - a) Meaning the donor's own children and his siblings and their children
  2. Children of the grandfather
    - a) Meaning the donor's father, aunts, and uncles
  3. Children of the great grandfather
    - a) Meaning the donor's grandfather and his siblings
- B. If there is some **linkage** or **context** to indicate that the donor **intended** to include those of a different religion than his own as well, then they will be included also

- X. If the donor leaves a *waqf* for a **group of people**
  - A. If their restriction is **possible**, then it is **obligatory** to spread it among them **equally**
    - 1. Ex: someone says, "I leave this as a *waqf* for the sons of my brother"
      - a) We can count the sons so we will spread it among them equally
  - B. If their restriction is **not possible** due to their large number, then it is **allowed** to give **preference** to some over others
    - 1. Meaning they will all **not** be given equally. Some may be given **more** than others while some may **not** be given anything
      - a) This is because it is **not** feasible to spread it among all

## Gifts (Hibah)

- I. Def: **transfer of ownership** of one's available **wealth** to another in the **former's lifetime** without exchange
  - A. Without exchange means that it is done for **free** without requesting anything in return (i.e. gift or donation)
  - B. A gift which is given **after** one's death is called a **will** or a **bequest**
    - 1. Rulings concerning them are discussed in a separate chapter
- II. It is **recommended**
- III. **Anything** that is **valid** to **sell** in the religion can also be given as a gift **including** a *mushaf* (Qur'an)
- IV. It will **occur** with **any** act that **customarily** indicates that the person is **giving** a gift
  - A. Meaning there are **no** specific words required to be said to consider something a gift, rather, **any** action which is **customarily** taken to mean that it is a gift will **suffice**
- V. Gift is **considered** a form of **contract** and it has **two** phases
  - A. **Before** it is **possessed** by the **receiver**
    - 1. In this stage, the contract is considered *jaa'iz*, which means the giver is **permitted** to **cancel** it and can decide **not** to go forward with giving the gift
  - B. **After** it is **possessed** by the **receiver** with **permission** from the **giver**
    - 1. In this stage, the contract is considered *laazim*, which means the giver is **prohibited** to cancel it and request it **back** from the receiver
    - 2. **Permission** from the **giver** means that the receiver **cannot** take it **without** the giver's **authorization** just because the latter agreed to give it to him
      - a) Ex: Ahmad tells Zayd that he would like to gift him \$500. Zayd accepts but fears that Ahmad may change his mind so he takes it out of his wallet without permission
        - (1) This is **not** allowed and will **not** make the gift contract *laazim*
- VI. If the **creditor** gifts what he is **owed** to the **debtor**, then it will **free** the latter of the debt **even** if he does not accept
  - A. Ex: Ahmad owes Zayd \$2000. Then one day Zayd tells Ahmad, "I free you of the \$2000 that you owe me." In this case, Ahmad will be considered debt free
- VII. It is **obligatory** to give **each inheritor** a gift according to their **assigned shares** in Islamic inheritance law
  - A. Ex: If someone gave one of their kids a gift, then he must give all who would inherit from him according to their shares. For example, if he gave his son \$1000, then he must give his daughter \$500 and the rest of the inheritors their assigned shares as a gift as well unless they agree to forgo it

- B. If the **giver** gives a specific inheritor **more** out of **preference** without the permission of the rest of the inheritors, then it will be **reclaimed** or **adjusted** according to the **assigned shares** in Islamic inheritance law **provided** it is done **while** the giver is still **alive**
  - 1. If the giver died **before** it could be **reclaimed** or **adjusted**, then he would have **sinned** and the property will **remain** with the preferred inheritor
    - a) Ex: If a father gave his son a gift of \$1000, then he must either give his daughter \$500 or reclaim the gift from his son. If he did **not** do so and **died** on that, then the father would incur a **sin** and the money would **remain** with the son
  - 2. However, **only** a **father** can reclaim from his children as will be discussed later in this chapter *insha'Allah*

VIII. It is **prohibited** for the **giver** to **reclaim** the gift **after** it is in **possession** of the **receiver**

- A. It is **disliked** to reclaim it **before** it is in **possession** of the **receiver**
- B. However, the **father** is **excluded** from this rule
  - 1. Meaning if the **father** gives his kid(s) a gift, then he is **permitted** to reclaim it **even** after the kid(s) has taken possession of it. This is because the father **owns** his children and their wealth
  - 2. The father can **acquire** his children's wealth by **possessing** it with a **statement** or **intention** of taking his child's wealth
    - a) Meaning the father must either **verbalize** it or **intend** it
      - (1) Verbal example: Father says to his son, "I am taking your car" or "I am transferring ownership of your car to me"
      - (2) Intention example: Father takes his son's car with the intention of transferring its ownership to himself
    - b) However, there are some **conditions** that **must** be met for it to be **valid**
      - (1) He **cannot** take his son's **slave girl** with whom the son has had sexual relations
      - (2) Taking it should **not** harm the son
        - (a) Meaning it does not put the son in some sort of difficulty
      - (3) He does **not** take it to give it to **another** child
      - (4) It **cannot** be in a situation where one of them has a **disease** that will **soon** lead to **death**
        - (a) This is because in this situation **restriction** is put on the dying person's wealth so that inheritors' **rights** are **not** violated
      - (5) If the father is a **non-Muslim** and the son a Muslim, then the father **cannot** take his wealth

IX. A child or his descendents **cannot** request the former's **father** to pay back his **debt**

- A. Ex: Ahmad loaned \$3000 to his father. Ahmad's kids or him can **never** go to his father and request it back because the father **owns** whatever wealth the child has
- B. **Exception:** if the child **needs** money to spend on **basic necessities**, then he can ask his father to spend on him because this is **obligatory** on the father when the child is in need
  - 1. Ex: the son loses his job and cannot pay for basic necessities any longer

X. Rulings on the one who is **afflicted** with an **illness**

- A. Illnesses are of **two** types
  - 1. It is **not** a serious illness
    - a) Meaning the person does **not** think he will **die** from it
    - b) This person will be treated just like a **healthy** person, thus, he can do what he wants with his wealth

2. It **is** a serious illness
  - a) Meaning the person thinks he will **likely** die from it
  - b) Ex: stage 4 cancer
  - c) In this situation, we will seek **opinions** of **two** just Muslim **doctors** and if they **confirm** that it is indeed serious, then the following **two** rules will apply on the afflicted individual:
    - (1) He will be **prevented** from giving **anything** voluntarily to any of his **inheritors**
      - (a) This is to **safeguard** the **rights** of the inheritors
    - (2) He will be **allowed** to give up to **one-third only** to someone who is **not** an inheritor. If he wants to give more than that, then it can **only** be done with the **permission** of all his inheritors
- B. If it is an **extended chronic illness**, then it falls into **two** types
  1. Type which does **not** restrict the person to a **bed**
    - a) He will be treated just like a **healthy person**
  2. Type which **does** restrict the person to a **bed**
    - a) We **treat** him like the one afflicted with a **serious illness**

XI. Whether someone is considered an inheritor or not is **determined** based on the situation **at the time of death**

- A. Meaning there are situations where someone could be an inheritor one day but not another depending on the situation, therefore, we will determine at the time of death whether someone is an inheritor or not to the deceased
  1. Ex: If a person does **not** have a son, then his siblings inherit from him. However, if the person **does** have a son, then the son **blocks** the siblings from inheriting. Therefore, we will determine at the time of death whether someone qualifies as an inheritor or not
    - a) Ex: Ahmad has a son named Zayd and also a brother named Muhammad. Muhammad is not considered an inheritor because Zayd blocks him. If Zayd died before his father, then Muhammad would inherit from his brother Ahmad
  2. These rules are discussed in more details under the chapter related to Islamic inheritance law

XII. **Difference** between a **gift**, which is given in one's lifetime, and a **will** (*wasiyyah*), which is a gift given after one's death. Depending on whether the giver **intends** a gift or will, the rules regarding each differ

- A. If the gift was given to multiple people but it was not enough, then the first one will get it only
  1. Ex: Ahmad announces to give three of his friends a gift of \$1000 each in his lifetime on three separate days. Then he dies in a car accident before giving them anything. After measuring his estate, it is found that one third of his wealth is equal to \$1000 only, which is the max he can give. In this case, we will only give it to the first one and the other two will get nothing
  2. If it is a will, then we distribute it equally
    - a) Ex: Ahmad writes in his will that after his death three of his friends be given \$1000 each. However, it is found that he only has \$1000 to give because his estate's one third equals to only \$1000. In this case, we will equally divide the \$1000 between his three friends
- B. It is **not** valid to request to take **back** a gift once it is possessed
  1. If it is a will, giver **can** take it back **anytime** before death
    - a) Because it only becomes **binding** (*laazim*) **after** death
- C. Gift can be **accepted/rejected** by the **receiver** in the giver's **lifetime**

1. If it is a will, the receiver can **only** accept/reject it **after** the giver **dies**
- D. The gift becomes **owned** in the giver's **lifetime**
1. If it is a will, it will **only** become owned **after** the giver's death