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Transactions (Part II of III)

Laws of Partnership

Issue 2150: * If two persons make an agreement that they would trade with the goods jointly owned by them, and would divide the profit between themselves, and if they pronounce a formula declaring partnership, in Arabic or in any other language, or express their intention of becoming each other's partner by conduct, the partnership will be valid.

Issue 2151: * If some persons enter into a partnership to share the wages from their labour, like, if a few barbers or labourers agree mutually that they would divide between themselves whatever wages they earn, that partnership is not in order. But if they enter into a mutual compromise that, say, half of what one earns will be given to the other, for a fixed period, in exchange of half of what the other earns, this transaction will be valid, and thus each will be a partner in the wages of the other.

Issue 2152: * If two persons enter into a partnership, on the terms that each of them would purchase the commodity on his own responsibility, and each would be responsible for the payment of its price, but would share the profit which they earn from that commodity, that partnership is not valid. However, if each of them makes the other his agent, authorising that whatever one purchases on credit, the other will be a partner in it, which means that he and his partner are responsible for the debt, then they will be considered partners in that commodity.

Issue 2153: * The persons who become partners under the rules of partnership, must be adult and sane, and should have intention and free volition for becoming partners. They should also be able to exercise discretion over their properties. Hence, if a feeble-minded person who spends his wealth impudently, enters into partnership, it is not in order, because such a person has no right of disposal over his property.

Issue 2154: * If a condition is laid down in an agreement of partnership, that the partner who manages, or does more work than the other partner, or does more important work than the other, will get larger share of the profit, it is necessary that he should be given his share as agreed upon. Similarly, if it is

agreed that the person who does not manage, or does not do more work, or does not do more important work, will get larger share of the profit, that condition is also valid and it must be fulfilled.

Issue 2155: * If it is agreed that the entire profit will be appropriated by one person, or the entire loss will be borne by one of them, that sort of partnership is a matter of Ishkal.

Issue 2156: If it is not agreed that one of the partners will receive more profit, and if the investment of each of them is equal, they must share profit and loss equally. And if their investment is not equal, they should divide the profit and loss in proportion to their capital. For example, if two persons become partners, and the capital of one of them is double the capital of the other, his share in the profit and loss will also be double of the other, irrespective of whether both of them do equal work, or one of them does less work, or does not work at all.

Issue 2157: * If it is laid down in the agreement of partnership, that both the partners will buy and sell together, or each of them will conclude transactions individually, or only one of them will conclude transactions, or a third party will be hired to conclude the transaction, they should act as agreed upon.

Issue 2158: If it is not specified as to which of the partners will buy and sell with the capital, neither of them can conclude any transactions with that capital without the permission of the other.

Issue 2159: * The partner who has been given the right of discretion over the capital, should act according to the agreement of partnership. For example, if it is agreed that he will purchase on credit, or will sell against cash payment, or will purchase the property from a particular place, he should act according to the agreement. However, if no such agreement is made with him, he should conclude transactions in the usual manner, and carry on in such a way that no loss is suffered in the partnership. He should not carry any property belonging to the partnership, with him while he is travelling, if that is unusual.

Issue 2160: * If a partner who transacts business with the capital of the partnership, sells and purchases things contrary to the agreement made with him, or concludes transactions in a manner which is not normal, because of the absence of any agreement, the transaction made by him in both the cases will be correct and valid; but if such a transaction results in a loss, or a part of wealth is squandered, then the partner who has acted against the agreement, or the usual norm, will be responsible for the loss.

Issue 2161: If a partner who trades with the capital of the partnership, does not go beyond the bounds of his authority, nor is he negligent in looking after the capital, yet unexpectedly the entire capital or a part of it perishes, he is not responsible.

Issue 2162: * If a partner who trades with the capital of the partnership, declares that the capital has perished, and if other partners trust him, they should accept his word. But if they do not trust him, they can complain against him before the Mujtahid, who will decide the case according to Islamic laws.

Issue 2163: If all the partners withdraw the permission, given by them to one another, for the right of discretion over their respective shares held in partnership, none of them will be allowed the right of discretion over them. And if one of them withdraws the permission accorded by him, the other partners do not have the right of discretion; but one who has withdrawn his permission can exercise his right of discretion over the property of the partnership.

Issue 2164: * If one of the partners demands that the capital invested in the partnership should be divided, others should accept his demand even if the period fixed for the partnership may not have expired yet, except when the division of the capital entails considerable loss to the partners.

Issue 2165: If one of the partners dies, or becomes insane, or unconscious, other partners cannot continue to exercise right of discretion over investment held in the partnership. And the same rule applies when one of them becomes feeble-minded that is, spends his property without any consideration.

Issue 2166: * If a partner purchases a thing on credit for himself, its profit and loss belongs to him. However, if he purchases it for partnership, and if the agreement allows credit dealings, its profit and loss belongs to both of them.

Issue 2167: * If the partners conclude a transaction with a joint capital investment, and it transpires later that the partnership was invalid, if the validity of the transaction was not dependent on mutual consent, meaning that, if they had known that the partnership was not valid, they would have still been agreeable to having the right of discretion over the property or stock of each other, the transaction will be considered valid, and whatever is gained or lost from the transaction will be shared by them. But if the partners would not have been disposed to agree to exercise discretion over each others' stock or

property had they known that the partnership was not valid, yet they approve the particular transaction, it will be valid – and if they do not, it will be invalid. And in either case, if any partner has worked for the partnership without the previous intention to work gratis, he can collect the wages for his services at the usual rate, considering the percentage of other partners. But if the usual wage is more than his share of dividend, after having agreed to the validity of the transaction, he should take the dividend only.

Orders Regarding Compromise

Issue 2168: * Compromise means that a person agrees to give to another person his own property or a part of the profit gained from it, or waives or forgoes a debt, or some right, and that other person also gives him in return, some property or profit from it, or waives his debt or right in consideration of it; and even if a person gives to another person his property or profit from it, or waives his debt or right without claiming any consideration, the compromise will be in order.

Issue 2169: * It is necessary that the person who gives his property to another person by way of

compromise, should be adult and sane, and should have the intention of making compromise, and none should have compelled him to make the compromise, and he should not also be feeble-minded from whom his own wealth is made inaccessible, or a bankrupt who has no right to dispose of his property.

Issue 2170: It is not necessary that a formula of compromise be recited in Arabic. Rather, it is sufficient to convey the intention by uttering any words.

Issue 2171: * If a person gives his sheep to a shepherd so that, for example, he may look after them for one year, and use their milk and give him a quantity of ghee, and in this manner compromise with the shepherd for his labour, and a quantity of ghee against the milk of the sheep, the transaction is valid. Rather, if he gives the sheep to the shepherd for one year on lease, so that he may utilise their milk and give him a quantity of ghee, not necessarily churned from the milk of the leased sheep, this transaction is also in order.

Issue 2172: If a person wants to make a compromise with another person in respect of the debt which he owes, or in respect of his right, the compromise will be valid only if the opposite person agrees to it. But, if he wants to forgo the debt or right owed to him, the acceptance by the opposite person is not necessary.

Issue 2173: If a debtor knows the amount he owes, but the creditor does not know and makes compromise with the debtor for an amount less than what is owed to him, like, if the creditor has to receive $50 but he unknowingly makes a compromise for $10, the balance of $40 is not halal for the debtor, except that he himself tells the creditor what he actually owes him, and seeks his agreement. Alternatively, the debtor should be sure that even if the creditors had known the exact amount of the debt, he would have still settled for that lesser amount.

Issue 2174: * If two persons owe each other some property, ready or on credit, and they know that one of them is more in quantity or value then the other, they cannot sell their properties in exchange of each other because it will be a transaction involving usury, and similarly, it is haraam to conclude a compromise between them. In fact, if it is not known that one is more in quantity or value than the other, but there is a strong probability, as an obligatory precaution, no compromise should be made.

Issue 2175: * If two persons are the creditors of one or two persons and they, as creditors, wish to settle their debts between themselves, if as previously mentioned, no aspect of interest is involved in the transaction, there will be no objection. For example, if both of them are owed 10 kilos of wheat, one of superior quality and the other inferior, and the debt has become due for payment, the compromise will be in order between the creditors.

Issue 2176: If a person lent something to another for a stipulated period, and now he, as a creditor, wishes to compromise on something lesser in value, with an intention to collect what he gets and forgo the balance, there is no harm in it. This rule applies when the debt consists of gold or silver or another commodity which is sold by weight or by measure. As for other things, however, it is permissible for the

creditor to compromise with the debtor, or with someone else for a lower amount, or to sell that debt, as will be explained in note no. 2297.

Issue 2177: If two persons make a compromise in respect of something, they can cancel the compromise with mutual consent. Similarly, if while concluding the agreement one or both of them is given the option to cancel the compromise, the person who possesses that option can cancel the compromise.

Issue 2178: * As long as the buyer and the seller do not leave the place where a transaction was concluded, they can cancel the transaction. Also, if a buyer purchases an animal, he has the right to cancel the transaction within three days. And similarly, if the buyer does not pay within three days for the commodity purchased by him, and does not take delivery of the commodity, the seller can cancel the transaction, as stated in rule no. 2132. However, one who makes a compromise in respect of some property, does not possess the right to cancel the compromise in these three cases. However, if the other party in the compromise makes unusual delay in delivering the property over which the compromise was reached, or if it has been stipulated that the property will be delivered immediately, and the opposite party does not act according to this condition, the compromise can be cancelled. And similarly, compromise can also be cancelled in other cases which have been mentioned in connection with the rules relating to purchase and sale, except in the case when one of the two parties in compromise has been defrauded, for which the law is not ascertained.

Issue 2179: A compromise can be cancelled if the thing received by means of compromise is defective. However, it is a matter of Ishkal, if the person concerned desires to take the difference of the price between the defective thing and the one without defect.

Issue 2180: If a person makes a compromise with another person with his property and imposes the condition that after his death the other person will, for example, waqf that property, and that person also accepts this condition, he should carry it out.

Rules Regarding Lease/Rent

Issue 2181: * The person who gives something on lease, as well as the person who takes it on lease, should be adult and sane, and should be acting on their free will. It is also necessary that they should have the right of discretion over the property. Hence, a feeble-minded person who does not have the right of disposal or discretion over his property, his leasing out anything or taking anything on lease is not valid. The same applies to a bankrupt person, in the wealth over which he has no right of discretion. Of course, such a person can give himself for hire.

Issue 2182: A person can become the agent of another person and give his property on lease, or take some property on lease, on his behalf.

Issue 2183: * If the guardian of a minor gives his property on lease, or makes him the lessee of another person, there is no harm in it. And if some period after the child's Bulugh is also included in the period of lease, the child can cancel that included part of the lease after his becoming baligh, even if the inclusion of that period after the child's Bulugh was in his interest. But if the inclusion was based on some religious grounds, and excluding it would be against Shariah, and if the leasing was done with the permission of the Mujtahid, then the child cannot cancel the lease after becoming baligh.

Issue 2184: A minor child who has no guardian, cannot be hired without the permission of a Mujtahid. And if a person does not have access to a Mujtahid, he can hire the child after obtaining permission from a M'omin who is 'Adil.

Issue 2185: * It is not necessary for the lessor and the lessee to recite the formula in Arabic. In fact, if the owner says to a person: "I have leased out my property to you", and the other replies: "I accept it", the lease contract is in order. Also, if they do not utter any words, and the owner hands over his property to the lessee with the object of leasing it out, and lessee also takes it with the intention of taking it on lease, the lease contract by such conduct is in order.

Issue 2186: If a person wants to be hired for doing some work without reciting the formula, the hire contract will be in order, as soon as he starts doing that work.

Issue 2187: If a dumb person makes it known with signs that he has taken or given a property on lease, the lease contract is in order.

Issue 2188: * If a person takes a house, shop or room on lease, and the owner of the property imposed the condition that only he (the lessee) can utilise it, the lessee cannot sublet it to any other person for his use, except that the new lease is such that its advantage devolves on the lessee himself, like, if a woman takes a house or a room on lease, and later marries, and gives the room or house on lease for her own residence to her husband. And if the owner of the property does not impose any such condition, the lessee can lease it out to another person, but, as a precaution, he should seek the permission of the owner before giving it on lease. And if he wishes to lease it out for a higher amount in cash or kind, he can do so, if he has carried out some work on it, like, white washing or renovation, or if he has suffered some expenses in looking after the property.

Issue 2189: * If a person who is hired on wages, lays down a condition that he will work for the hirer only, he (the hirer) cannot lease out his service to another person, except in the manner mentioned in the foregoing rule. And if the hired person does not lay down any such condition, the hirer can lease out his services to another, but he cannot charge more than the agreed wage for the hired person. Similarly, if he himself accepts employment and then hires someone to do the task, he cannot pay him less than what he will receive himself, unless he joins that hired person in completing some of his work.

Issue 2190: * If a person takes or hires something other than a house, a shop, a room a ship, and a hired person, say, he hires a land on lease, and its owner does not lay down the condition that only he

himself can utilise it, and if the lessee leases it out to another person on a higher rent, it will be a matter of Ishkal.

Issue 2191: If a person takes for example, a house or a shop on lease for one year, on a rent of one hundred rupees, and uses half portion of it himself, he can lease out the remaining half for one hundred rupees. However, if he wishes to lease out the half portion on a rent higher than that on which he has taken the house, or shop on lease, like, if he wishes to lease it out for hundred and twenty rupees, he can do it only if he has carried out repairs etc. in it.

Conditions Regarding the Property Given on Lease

Issue 2192: * The property which is given on lease, should fulfil certain conditions:

(i) It should be specific. Hence, if a person says to another: "I have given you one of my houses on lease", it is not in order.

(ii) The person taking the property on lease should see it, or the lessor should give its particulars in a manner which gives full information about it.

(iii) It should be possible to deliver it. Hence, leasing out a horse which has run away, and the hirer can not possess it, will be void. However, if the hirer can manage to get it, the lease will be valid.

(iv) Utilisation of the property should not be by way of its destruction or consumption. Hence, it is not correct to give bread, fruits and other edibles on lease for the purpose of eating.

(v) It should be possible to utilise the property for the purpose for which it is given on lease. Hence, it is not correct to give a piece of land on lease for farming, when it does not get sufficient rain water, and is also not irrigated by canal water.

(vi) The thing which a person gives on lease should be his own property, and if he gives the property of another person on lease, it will be correct only if its owner agrees to it.

Issue 2193: It is permissible to give a tree on lease for utilising its fruit, although fruit may not have appeared on it yet. The same rule applies if an animal is given on lease for its milk.

Issue 2194: A woman can be hired for her milk, and it is not necessary for her to obtain her husband's permission. However, if her husband's right suffers owing to her giving milk (to the child of another person), she cannot take up the job without his permission.

Conditions for the Utilisation of the Property Given on Lease

Issue 2195: * The utilisation of the property given on lease carries four conditions:

(i) That it should be halal. Hence, leasing out a shop for the sale or storage of Alcoholic drinks, or providing transportation by leasing for it, is void.

(ii) That doing the act or giving that service free of charge should not be obligatory in the eyes of Shariah. Therefore, as a precaution, it is not permissible to receive wages for teaching the rules of halal and haraam, or for the last ritual services to the dead, like washing it, shrouding etc. And as a precaution, money should not be paid in lieu of any services which is deemed futile .

(iii) If the thing which is being leased out can be put to several uses, then the use permissible to the lessee should be specified. For example, if an animal, which can be used for riding or for carrying a load is given on hire, it should be specified at the time of concluding the lease contract, whether the lessee may use it for riding or for carrying a load, or may use it for all other purposes.

(iv) The nature and extent of utilisation should be specified. In the case of hiring a house or a shop, it can be done by fixing the period, and in the case of labour, like that of a tailor, it can be specified that he will sew and stitch a particular dress in a particular fashion.

Issue 2196: If the time of commencement of a lease is not fixed, it will be reckoned to have commenced after the recitation of the formula of lease.

Issue 2197: If, for example, a house is leased out for one year, and it is stipulated that the period of lease will commence one month after the recitation of the formula, the lease contract is in order, even if the house had been leased out to another person at the time of reciting the formula.

Issue 2198: If the period of lease is not specified, and the lessor says to the lessee: "At any time you stay in the house you will have to pay rent at the rate of $10 per month", the lease contract is not in order.

Issue 2199: If the owner of a house says to the lessee: "I have leased out this house to you for £10 per month" or says: "I hereby lease out this house to you for one month on a rent of $10, and as long as you stay in it thereafter the rent will be $10 per month", if the time of the commencement of the period of lease was specified or it was known the lease for the first month will be proper.

Issue 2200: If travellers and pilgrims stay in a house not knowing how long they will stay there, and if they settle with the landlord that they will, for example, pay $1 per night as rent, and the landlord also agrees to it, there is no harm in using that house. However, as the period of lease has not been specified, the lease will not be proper except for the first night, and after the first night the landlord can eject them as and when he so wishes.

Miscellaneous Rules Relating to Lease/Rent

Issue 2201: The property which the lessor gives on lease should be identified. Hence if it is one of the

things whose transaction is made by weight (e.g. wheat), its weight should be specified. And if it is one of those things whose transaction is made by counting (e.g. currency coins), the amount should be specified. And if it is like a horse or a sheep, the lessor should have a sight of it, or the lesser should inform him of its particulars.

Issue 2202: * If land is given on lease for farming, and the produce of that very land which does not presently exist, is treated as its rent, the lease contract will not be valid. And the same applies if he assumes a general responsibility to pay the rent on the condition that it will be paid from the harvest. But if the source from which rent will be paid exists, there is no objection.

Issue 2203: * If a person has leased out something, he cannot claim its rent until he has delivered it. And if a person is hired to perform an act, he cannot claim wages until he has performed that act, except in the cases where advance payment of wages is an accepted norm, like Niyabat for Hajj.

Issue 2204: If a lessor delivers the leased property, the lessee should pay the rent, even if he may not take the delivery, or may take its delivery but may not utilise it till the end of the period of lease.

Issue 2205: If a person agrees to perform a task on a particular day against wages, and appears on that day to perform the task, the person who has hired him should pay him the wages, even if he may not assign that task to him. For example, if a tailor is hired to sew a dress on a particular day, and he appears to do the work, the hirer should pay him the wages even if he may not provide him with the cloth to sew, irrespective of whether the tailor remains without work on that day or alternatively does his own or somebody else's work.

Issue 2206: If it transpires after the expiry of the period of lease, that the lease contract was void, the lessee should give the usual rent of that thing to the owner of the property. For example, if a person takes a house on lease for one year on a rent of $100, and learns later that the lease contract was void, and if the normal current rent of the house is $50, he should pay $50. And if its normal current rent is $200, and the person who leased it out was its owner, or his agent, and was aware of the current rate of rental, it is not necessary for the lessee to give him more than $100. But if a person other than these gave it on lease, the lessee should pay $200. And the same order applies, if it is known during the period of lease, that the lease contract is void in relation to the outstanding rent for the past period.

Issue 2207: * If a thing taken by a person on lease is lost, and if he has not been negligent in looking after it nor extravagant in its use, he is not responsible for the loss. Also, if, for example, a cloth given to a tailor is damaged or destroyed, when the tailor has not been extravagant, and has also not shown negligence in taking care of it, he need not make any replacement.

Issue 2208: If an artisan loses the thing taken by him, he is responsible for it.

Issue 2209: If a butcher cuts off the head of an animal, and makes it haraam, he must pay its price to its owner, regardless of whether he charged for slaughtering the animal or did it gratis.

Issue 2210: If a person takes an animal on hire, and specifies as to how much he will load on it, and if he puts a heavier load on it, and as a result, the animal dies or becomes defective, he is responsible for it. And even if the quantity of the load is not specified, and he puts an unusually heavier load on it with the result that the animal dies or becomes defective, the person concerned is responsible. And in both the cases, he must pay extra rent than is usual.

Issue 2211: * If a person gives an animal on hire so that fragile goods may be loaded on it, and the animal slips or trots and breaks the things, the owner of the animal is not responsible for it. However, if the owner beats the animal severely, or does something like it, as a result of which the animal falls down on the ground, and breaks the goods he (the owner of the animal) is responsible.

Issue 2212: * If a person circumcises a child, and as a consequence of it the child dies, or is injured, the person who circumcises is responsible if he has been careless or made a mistake, like having cut the flesh more than usual. However, if he was not careless, or did not make any mistake, and the child dies due to circumcision, or sustains an injury, he will not be responsible, provided that, he had not been consulted earlier about the possible injury, nor was he aware that the child would be injured.

Issue 2213: * If a doctor gives medicines to a patient with his own hands, or prescribes a medicine for him, and if the patient sustains harm or dies because of taking that medicine, the doctor is responsible, even if he had not been careless in treating the patient.

Issue 2214: * If a doctor tells a patient: “If you sustain harm I am not responsible” and then exercises due precaution and care in the treatment, but the patient sustains harm or dies, the doctor is not responsible.

Issue 2215: The lessee and the lessor can cancel the lease contract with mutual consent. Also if a condition was laid down in the lease contract that one or both of them would have the option to cancel the contract, they can cancel the contract as agreed.

Issue 2216: * If the lessor or the lessee realises that he has been cheated, if he did not notice at the time of making the lease contract that he was being cheated, he can cancel the lease contract. However, if a condition is laid down in the contract of lease, that even if the parties are cheated, they will not be entitled to cancel the contract, they cannot cancel it.

Issue 2217: If a person gives something on lease, and before he delivers it to the other party, it is usurped, the lessee can cancel the lease contract and take back whatever he has given to the lessor, or he may not cancel the lease contract, and take from the usurper rent at the usual rate, for the period the thing remained in his possession. Therefore, if a person takes an animal on lease for one month for $10, and someone usurps if for ten days, and the usual rent for ten days is $15, the lessee can take $15 from the usurper.

Issue 2218: * If a lessee hires something and someone prevents him from taking its delivery, or usurps it

from him, after he has taken the possession, or prevents him from using it, he cannot cancel the lease. He is entitled only to take rent of that thing from the usurper at the usual rate.

Issue 2219: If the lessor sells the property to the lessee before the expiry of the period of lease, the lease contract does not get cancelled, and the lessee should give the rent of the property to the lessor. The same rule will apply if the lessor sells the leased property to someone else.

Issue 2220: * If before the commencement of the period of lease, the leased property gets so impaired that it cannot be utilised in the manner agreed upon, the lease contract becomes void, and the money paid by the lessee will revert back to him. And if it is possible to utilise the property partly, the lessee can cancel the lease contract.

Issue 2221: * If a person takes something on lease, and during the period of lease it becomes so impaired that it is not fit for the required use, the remaining lease contract will be void, and the lessee can cancel the lease for the past period also. And for that period, he may pay usual rent.

Issue 2222: * If a person leases out a house which has, for example, two rooms, and one of those rooms is ruined and he gets it repaired, but it does not match the standard of the previous room, the rule mentioned in 2221, will apply in this case also. But if it is repaired by the hirer at once, and its use does not get interrupted, then the lease does not become void, and the lessee cannot cancel the lease. However, if the repair takes too long, and its use is interrupted, then the lease will be invalid for that much period, and in this case, the lessee can cancel the whole lease, and in exchange of whatever use he may have made, he should pay a usual rent.

Issue 2223: * If the lessor or the lessee dies, the lease contract does not become void. But if the house is not the property of the lessor – for example, another person made a will that as long as he (the lessor) is alive, the income derived from the house will be his property, and if he gives that house on lease, and dies before the expiry of the lease period, the lease contract becomes void from the time of his death. It can become valid again if the owner of the house endorses the contract, and the rent for the remaining period of lease, after the death of the lessor, will accrue to the present owner.

Issue 2224: * If an employer appoints a contractor to recruit labourers for him, and if the contractor pays the labourers less than what he receives for them from the employer, the excess he keeps is haraam for him, and he should return it to the employer. And if the contractor is given a full contract by the employer, to complete a building, and is authorised to either construct it himself or give a sub–contract to another party, if he joins with the other party in doing some work, and then entrusting him to do the remaining work against lower payment than what he has collected from the employer, the surplus with him will be halal for him.

Issue 2225: If a person who dyes the clothes, agrees to dye a cloth with indigo, he has no right to claim any charges if he dyes it with something else.

Rules Regarding Ju'ala (Payment of Reward)

Issue 2226: * Ju'ala means that a person promises that if a particular work is completed for him, he will give a specified amount for it. For example, he declares that if anyone recovers his lost property, he will give him $10. One who makes such a declaration is called Ja'il, and the person who carries out that work is called 'Amil. One of the differences between Ju'ala and Ijara (hire) is that, in the case of “hire”, the hired person is bound to do the job after the agreement, and the hirer becomes indebted to the hired person for his wages, whereas in the case of Ju'ala, the person who agrees to do the job is at liberty to abandon it if he so wishes; and until he completes the job assigned, the person who declared the reward or payment does not become indebted to him.

Issue 2227: * A person who declares the payment or reward should be adult and sane, and should have made it with his free will and intention, and should have the right of disposal and discretion over his property. Therefore, the declaration by a feeble minded person who squanders his property indiscreetly is not in order. Similarly, a bankrupt cannot declare any reward or payment from that part of wealth over which he has not right of discretion.

Issue 2228: * The task for which the declaration was made by the employer should not be haraam, futile, or one of those obligatory acts which should necessarily be performed free according to Shariah. Hence, if a person declares that he will give $10 to a person who drinks alcohol, or traverses a dark passage at night without any sensible purpose, or offers his obligatory prayers, the employment will not be in order.

Issue 2229: * It is not necessary for the employer for Ju'ala to specify the reward he would give with all its particulars. If the employee, in this case, is certain that he would not be taken for a stupid or foolish person if he undertook the assignment, it is sufficient. For example, if the employer in Ju'ala tells a person that if he sells a particular stock or goods for more than, say, ten dollars, whatever is the excess will be his. This form of Ju'ala is valid. Similarly, if he says that who soever finds his horse, that person will own half of it, or that person will be awarded ten kilos of wheat, Ju'ala will be in order.

Issue 2230: * If a person does not at all mention the amount of reward which he would give for his work – for example, if he says: “I shall give money to the person who finds out my son”, and does not specify the amount of money, and if some one performs the task, he should pay him according to what is customarily paid for such tasks.

Issue 2231: If the employee in Ju'ala performs the task before the agreement is made, or performs it after the agreement, but with the intention that he will not take any money, he is not entitled to demand wages.

Issue 2232: The person who makes a Ju'ala agreement can cancel it before the person employed starts to work.

Issue 2233: If the person wishes to cancel the Ju'ala agreement after the employee has started work, it is a matter of Ishkal.

Issue 2234: * A person appointed to work in Ju'ala can leave the task incomplete. However, if his failure to complete the task causes harm to the person who appointed him, he must complete it. For example, if a person says: “If someone operates upon my eye I shall give him so much money” and a surgeon commences the operation. If by not completing the operation, the eye will be defective, he must complete it. And if he leaves it half way, he has no claim, whatsoever, over the person who employed him.

Rules Regarding Muzari'ah (Temporary Sharecropping Contract)

Issue 2236: * One of the many types of Muzari'ah means that the owner of a land agrees to hand over his land to a farmer, so that he would cultivate it, and give a share of the crop to the landowner.

Issue 2237: * Muzari'ah has certain conditions:

(i) That the owner of land confirms to the farmer that he has given him the land for farming, and the farmer also asserts that he has accepted it. Alternatively, without their uttering anything, the owner of the land keeps the land at the farmer's disposal with the intention that he would do farming in it, and the farmer accepts it.

(ii) Both the owner of the land and the farmer should be adult and sane, and should conclude the agreement of Muzari'ah with their intention and free will. They should also not be feeble minded persons, who squander their wealth on useless things. Similarly, the owner of the land should not be a bankrupt person. But if the agreement in which he enters with the farmer does not in any way involve any property over which the bankrupt person has no right of discretion, then there will be no objection.

(iii) As a precaution, the owner and the farmer should each share the entire produce of the land. But this condition does not appear to be necessary. Hence, if they, for example, agree to the condition that the harvest in the first half or at the end, will belong to one of them, the agreement of Muzari'ah will be valid.

(iv) The share of each of them should be fixed, like, 1/2 or 1/3 etc. of the crop. If no share is fixed, and the owner of the land simply says: “Cultivate this land and give me whatever you like”, it will not be in order. Similarly, if instead of fixing a share, a fixed quantity of the crop is offered for the farmer or the landowner, the Muzari'ah will not be valid.

(v) The period for which the land is to remain in possession of the farmer should be specified, and it is necessary that the period should be long enough to make a harvest possible from the land. And if this period is made to commence from a specified day, and to end with the harvest time, it will be sufficient.

(vi) The land should be arable, and if it is barren but can be made fit for farming by some improvements

being done on it, the contract of muzari'ah is in order.

(vii) If the farmer is supposed to sow seeds for a particular crop, then that crop must be specified. For example, it must be specified whether it will be rice or wheat, and if it is rice, for example, which type of rice will be sown. However, if they do not have any particular crop in view, or the crop which both of them have in view is known, it is not necessary that they should define it.

(viii) The owner should specify the land, if he has several tracts of land which differ from one another in their requirements. But if they do not differ in their requirements, it is not necessary to specify. For example, if he tells the farmer to till and cultivate any of those lands, without specifying any one, muzari'ah will be valid.

(ix) The expenses which each of them will incur should be specified. However, if the expenditure which each of them should incur is known, it is not necessary to declare it.

Issue 2238: * If the owner settles with the farmer that a certain quantity of the crop will belong to one of them, and the remaining quantity will be divided between them, that muzari'ah is void, even if they know that something will remain after deducting that quantity. Of course, if they agree between themselves that some of the seeds sown, or the tax payable to the government, will be deducted from the harvest, and the rest will be divided between them, this muzari'ah is in order.

Issue 2239: * If the agreed period of muzari'ah (tenancy) comes to end, and the usual crop is not obtained, there will be no objection if the owner of the land agrees that the crop may remain on his land on payment of rent, or without it, and if the farmer is also agreeable to it, provided that, both of them had agreed at the time of fixing that muzari'ah will end regardless of any crop becoming available. But if the owner does not agree to such an arrangement, he can ask the farmer to remove the crop from there. And if the farmer sustains a loss by removing the crop, it will not be necessary for the owner to compensate the farmer for it. And the farmer who is willing to pay something to the owner, to allow the crop to stand on his land, cannot compel him to agree.

Issue 2240: * If farming becomes impossible on the land due to some eventuality, for example, if water supply is cut off from the land – the contract of muzari'ah is annulled. But if the farmer does not cultivate the land without any justifiable excuse, while the land remains in his occupation, and the owner has no discretion over it, he should pay the rent for that period to the owner at the usual rate.

Issue 2241: * The owner of land and the farmer cannot cancel the contract of muzari'ah without the consent of each other, unless they had agreed in the contract to grant that option to one or both of them. In that case, they will cancel the contract according to the conditions laid in the agreement. Similarly, if any one of them acts contrary to the agreed conditions of the contracts, the other party in the contract will have the right to cancel the transaction.

Issue 2242: * If the landowner or the farmer dies after concluding the contract of muzari'ah, the contract

is not terminated, and their heirs take their place. However, if the farmer dies, and if they had stipulated that the farmer himself would do the farming, the contract of muzari'ah will become cancelled. But if the farmer had completed his task, and fulfilled his assignment, then the muzari'ah will remain valid, and the heirs will be given his share together with all his rights or accruals which were due to him. However, the heirs cannot compel the landowner to allow the crop to stand on his land.

Issue 2243: * If it becomes known after cultivation, that the contract of muzari'ah had been void, and if the seeds have been the property of the landowner, the produce will belong to him and he will pay the farmer his wages and the expenses incurred by him, and the rent for the cow and other animals belonging to the farmer, which may have worked on the farm. And if the seeds were the property of the farmer, the crop will belong to him, and he should pay the landowner the rent of the land and the expenses incurred by him, and rent for the cow and other animals belonging to the landowner which may have worked on the farm. And in both the cases, it will be obligatory to pay the agreed amount only, even if the other party is aware that the usual entitlement is more than that.

Issue 2244: * If the seeds belong to the farmer, and if it becomes known after cultivation that the contract of muzari'ah had been void, there will be no objection if the landowner and the farmer agree that the crop may remain on the land against payment or otherwise. Some Fuqaha have said that if the landowner is not agreeable, he can ask the farmer to remove the crop from the land, even before it is ready, and that even if the farmer is willing to pay something to the landowner, he cannot compel him to allow the crop to remain on his land. But this is not free from Ishkal. And in any case, the landowner cannot compel the farmer to pay rent and let the crop remain on his land, or even without any rent.

Issue 2245: * If roots of the crop remain in the land after harvesting the crop, and if after the expiry of the contract of muzari'ah they grow again in the next year, if the landowner had not made an agreement with the farmer regarding his share in the remaining roots, the crop of the second year will belong to the landowner.

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