Transactions (Part III of III)

Rules Regarding Musaqat and Mugharisa

Issue 2246: * Musaqat means that a person agrees with someone that for a specified time, the fruit-bearing trees owned by him, or those which are under his discretion, will be given to that person so that he cares, tends and waters them. In return, that person will have the right to take an agreed quantity of fruits. This transaction is called Musaqat.

Issue 2247: A transaction of Musaqat in respect of fruitless trees will be in order, if it has another product of substantial monetary value, like, any leaves of flowers which is sold for good gain – like, the leaves of Henna, which is in common use.

Issue 2248: While concluding a transaction of Musaqat, it is not necessary that the prescribed formula be pronounced. In fact, if the owner of the tree transfers it with the intention of Musaqat, and he who is to do the work begins doing the work with the same intention, the transaction is in order.

Issue 2249: * The owner of the trees, and the person who undertakes to tend and care for them, should both be adult and sane, and should not have been coerced by anyone. Moreover, they should not be feeble-minded persons (who have no discretion over the property), so that the property is not unnecessarily ruined. Similarly, the owner must not be a bankrupt person. But if the person who tends and waters is bankrupt, he can be engaged to do the work, provided that, in so doing, he does not use the property he is not allowed to administer or use.

Issue 2250: * The period of Musaqat should be known, and it must extend over a span of time when the harvest becomes ready. And if the beginning is specified, and its end is fixed to be the time when fruits for that year become available, the contract is in order.

Issue 2251: * It is necessary that the share of each one of them is fixed as 1/2 or 1/3 etc. of the crop, and if they stipulate, for example, that one ton of the fruits will belong to the owner of the trees and the remaining quantity will go to the person who looks after the trees, the contract is void.

Issue 2252: * It is not necessary that the contract for Musaqat be concluded before the appearance of the crop. In fact, a contract made after the appearance of the crop is valid, provided that, some work like increasing the crop, protecting the trees, is still required. But if no such work remains to be done, then a contract for merely watering the trees, plucking the fruits, and looking after them, cannot be valid.

Issue 2253: * A contract of Musaqat for creeping plants, like melon and cucumber, is also valid.

Issue 2254: * If a tree benefits from rainwater or the moisture of earth, and does not stand in need of irrigation, but needs other work as described in rule 2252, the contract of Musaqat will be in order.

Issue 2255: Two persons who have entered a contract of Musaqat can cancel it with mutual consent. Moreover, if they lay down in the contract of Musaqat, a condition that both or one of them will be entitled to cancel the contract, there will be no harm in cancelling the contract as agreed to by them. And if they lay down other conditions in the agreement, which are not followed, the person who was to benefit from that condition can cancel the contract.

Issue 2256: If the owner dies, the contract of Musaqat is not terminated, and his heirs take his place.

Issue 2257: * If a person to whom the upkeep of the trees was entrusted dies, and if it was not agreed that he would tend and care for them himself, his heirs take his place. And if they do not do the job themselves, and also do not hire a person for the work, the Mujtahid will hire a person and pay from the estate of the dead person, and divide the crop between the heirs of the deceased and the owner of the trees. And if they had agreed that the man would tend and care for the trees himself, the contract will be cancelled upon his death.

Issue 2258: * If it is agreed that the entire crop will belong to the owner, the contract of Musaqat is void, but the fruit will remain the property of the owner, and the worker cannot claim any wages, except when the contract of Musaqat is invalid because of some other reason. In that case, the owner will pay wages at the usual rate to the person who has reared the trees by watering them and doing other jobs. But if the usual amount of wages is more than the stipulated amount, and the opposite party was aware of it, it is not necessary for him to pay the excess.

Issue 2259: * If a person hands over a piece of land to another person to plant trees in it, and it is agreed that whatever is grown, will be the property of both of them, the contract is called Mugharisa, and is valid, though it should be avoided, as a precaution. However, a slight change in the method of achieving the same purpose will make the contract valid, without any objection. For example, if both the sides enter into this sort of agreement for settling and compromising their debts, or they become partners in the newly growing trees, and then the worker offers his services to the owner for tending and watering them for a specified period, against the wages equal to half the value of land.

Persons Who Have No Right of Disposal or Discretion Over Their Own Property

Issue 2260: * A child who has not reached the age of puberty, (bulugh), has no right of discretion over the property he holds or owns, even if he is able to discern and is mature, and the permission of his/her guardian does not apply in this case. However, in those cases where a Na-baligh is allowed to make a transaction, like when buying or selling things of small worth as mentioned in rule 2090, or his testament for his relatives and kinsmen, as will be explained in rule 2706, the right can be exercised. A girl becomes baligha upon completion of her nine lunar years, and a boy is baligh when stiff pubic hair grow, or when he discharges semen, or upon completion of fifteen lunar years.

Issue 2261: * Growing of stiff hair on the face and above the lips may be considered as signs of bulugh, but their growth on chest and under the armpits, and the voice becoming harsh etc. are not the signs of one's reaching the age of puberty, except that one may become sure of having reached the age of puberty due to these changes.

Issue 2262: * An insane person has no right of disposal over his property. Similarly, a bankrupt (i.e. a person who has been prohibited by the Mujtahid to dispose of or have discretion on his property because of the demands of his creditors) cannot dispose his property without the permission of the creditors. And a feeble-minded person (Safih) who squanders his property for useless purposes, has no right of disposal or discretion over his property.

Issue 2263: * If a person is sane at one time and insane at another, the right of discretion exercised by him during his lunacy will not be considered valid.

Issue 2264: * A dying man in his terminal illness can spend his own wealth on himself, on the members of his family, his guests and on other things as much as he likes, provided that, it is not considered to be extravagance on his part. Also, he can sell his property at its proper value, or hire it. But if he gives away his property as gift, or sells it at a lower price than usual, it will be valid if the property gifted or sold cheap is equal to or less than 1/3 of his estate. And if it is more, it will be valid only if the heirs allow, and if they do not, then whatever he spent in excess of 1/3 of his estate will be considered void.

Rules Regarding Agency (Wakalat)

Wakalat means that a person delegates somebody a task (like concluding a transaction), which he himself had a right to do, so that the other person may perform it on his behalf. For example, one may appoint another person to act as one's agent for the sale of a house, or for a marriage contract. Since a feeble-minded person does not have right of discretion over his property, he cannot appoint an agent (Wakil) to sell it.

Issue 2265: * In Wakalat, it is not necessary to recite a formal formula. If a person conveys to another person, by conduct, that he has made him his agent and the other person also conducts himself in a way to convey that he has accepted that position, e.g. if he places his property at Wakil's disposal so that he may sell it on his behalf, and the Wakil takes that property for that purpose, the agency is in order.

Issue 2266: If a person appoints a person in another city as his agent, and gives him power of attorney, and he accepts it, the agency is in order, even if the power of attorney reaches the agent after some time.

Issue 2267: * The Muwakkil (principal), that is, the person who appoints another person as his Wakil (agent), as well as the Wakil, should be sane, acting on his own volition and authority. And the principal should be baligh, except in cases where a discerning child can act.

Issue 2268: A person cannot become a Wakil for an act which he cannot perform, or which is haraam for him to do. For example, a person who is wearing Ehram for Hajj cannot recite the Nikah as an agent for another person.

Issue 2269: * If a person appoints another person as his agent to perform all his tasks, the agency is in order, but if he appoints him as his agent for performing a task without specifying it, the agency will be void. But if the principal gives an optional task to the agent, like, if he appoints him as a Wakil to either sell his house or give it on rent, that Wakalat will be valid.

Issue 2270: If a person removes his agent from office, he (the agent) cannot perform the task entrusted to him after the news of his dismissal has reached him. However, if he has already performed the task before the news of his dismissal reaches him, it will be in order.

Issue 2271: * An agent can relinquish the agency even if the principal is absent.

Issue 2272: An agent cannot appoint another person as agent for the performance of the task entrusted to him, except when the principal has authorised him to engage an agent. In that case, he should strictly act according to the instructions. Hence, if the principal has said to him: “Engage an agent for me”, he should engage an agent for the principal and cannot appoint the agent on his own behalf.

Issue 2273: If an agent appoints an agent for his principal, with his permission, he cannot remove that agent. And if the first agent dies or the principal dismisses him, the second agency will not be invalidated.

Issue 2274: If an agent appoints someone as his own agent with the permission of the principal, the principal and the first agent can dismiss that second agent, and if the first agent dies or is removed from office, the second agency becomes invalid.

Issue 2275: * If several persons are engaged as agents for performing a task, and everyone of them is allowed to act independently, everyone of them can perform that task, and if one of them dies the

agency of others is not invalidated. But if, they were told to work jointly, they cannot act independently, and if one of them dies, the agency of others is invalidated.

Issue 2276: * If the agent or the principal dies, the agency becomes invalid. Similarly, if the thing for the disposal of which one his appointed an agent perishes, (for example, the sheep which the agent was entrusted to sell, dies) the agency becomes invalid. And if either of them (i.e. the principal or the agent) becomes insane or unconscious, the agency is invalidated. But if either of them becomes insane or unconscious occasionally, the agency does not become void during such periods, nor after the recovery.

Issue 2277: If a person appoints someone as agent to perform a task, and promises to give him something for his services, he must give him the promised thing after the completion of the task.

Issue 2278: If an agent is not careless in looking after the property entrusted to him, nor does he exercise such discretion over it for which permission was not granted, and by chance the property is lost or destroyed, he should not compensate for it.

Issue 2279: If an agent has been careless about looking after the property entrusted to him, or treated it in a manner which was different from the one allowed by the principal, and consequently the property is lost or destroyed, he is responsible for it. For example, if he is given a dress to sell, and instead he wears it, and it is lost or damaged, he should pay compensation for it.

Issue 2280: If an agent deals with a property in a manner other than the one for which he has been granted permission, for example, he wears a dress which he has been asked to sell, and then disposes it in the authorised manner, that disposal will be in order.

Rules Regarding Debt or Loan

To give loan to Momineen, particularly the needy ones, is Mustahab, on which great stress has been laid in the Holy Qur'an and in the Traditions (Ahadith). The Holy Prophet has been reported to have said that whoever gives loan to his Muslim brother, his wealth flourishes, and the angels invoke Divine mercy for him, and if he is lenient with his debtor, he will pass over the Bridge (Sirat) swiftly. And if a Muslim denies his brethren-in-faith a loan, Paradise becomes forbidden (haraam) for him.

Issue 2281: It is not necessary to recite a specific formula in the matter of debt. If a person gives something to another person with the intention of loaning, and the other takes it with the intention of borrowing, that conduct will be in order.

Issue 2282: * Whenever a debtor pays his debt, the creditor should accept it. But if the time for repayment had been fixed at the request of the creditor, or by mutual understanding, then in this case, the creditor can refuse to accept the repayment before the termination of time.

Issue 2283: * If a period is fixed for the repayment of debt in the formal contract of debt by the debtor, or

by mutual agreement, the creditor cannot claim repayment of the debt before the expiry of that period. But if it was stipulated by the creditor, or if no such period was fixed, the creditor can demand the repayment of his debt at any time.

Issue 2284: When the creditor demands his debt, and the debtor is in a position to pay it, he should pay it immediately, and if he delays its payment, he commits a sin.

Issue 2285: * If the debtor does not possess anything other than the house he occupies, the household effects, and other things of essential needs, without which he would be facing hardship, the creditor cannot claim the repayment from him. He should wait till the debtor is in a position to repay the debt.

Issue 2286: * If a person is indebted and he is unable to repay his debt, he should take up a suitable employment if he can, and pay off his debt. This is an obligatory precaution. Especially, if employment for him is easy, or if it has been his vocation, it is obligatory upon him to do so in order to pay off the debt.

Issue 2287: * If a person has no access to his creditor, and does not hope to find him or his heirs, he should pay the amount he owes to poor on behalf of the creditor. And as a precaution, he should obtain permission for it from the Mujtahid. And if his creditor is not a Sayyid, the recommended precaution is that he should not give the sum he owes to a poor who is a Sayyid. But if he hopes to find his creditor or the heirs, he should wait and search for him. And if he does not succeed, he should make a Will stating that if he died, and if the creditor or the heirs appear, they should be paid from his estate.

Issue 2288: If the estate of a dead person does not exceed the obligatory expenses of his Kafan, burial and the payment of his debt, his estate should be utilised for these purposes and his heir will not inherit anything.

Issue 2289: * If a person takes a quantity of gold and silver currency as a loan, and then its price falls, it will be sufficient if he gives the same quantity which he had taken. And if its price rises, he must give the same quantity which he had taken. However, in either case, there is no objection if the debtor and the creditor mutually agree to some other arrangement.

Issue 2290: If the property taken on loan has not perished, and its owner demands it, the recommended precaution is that the debtor should return him the same property.

Issue 2291: If a person who advances a loan, makes a condition that he will take back more than what he gives, for example, he gives 3 kilos of wheat and stipulates that he will take back 3 1/2 kilos of wheat, or gives ten eggs and says that he will take back eleven eggs, it will be usury and therefore haraam. Rather, if he stipulates that the debtor should, apart from the repayment, do some work for him, or repay the loan along with a quantity of another commodity (for example, if he lays down the condition that the debtor will return one rupee owed along with a match box) it will be usury and haraam. Also, if he stipulates that the debtor will return the thing loaned to him in a particular shape, e.g. if he gives him a

quantity of gold, and imposes the condition that he will take it back as golden ornaments, that too, is usury and haraam. However, if no condition is made by the creditor, and the debtor himself decides to repay something more than what he borrowed, there is no harm in it. In fact, it is Mustahab to do so.

Issue 2292: To pay interest is haraam, the same way as charging interest. However, if a person takes a loan against interest, he becomes its owner, although it is better that he should not exercise his right of disposal over it. And if it is known that the creditor would have allowed him the use of money loaned, even if they would not have agreed on interest, then the debtor can exercise his would have allowed him the use of money loaned, even if they would not have agreed on interest, then the debtor can exercise his discretion over the money loaned to him without any objection.

Issue 2293: If a person takes interest bearing loan in the shape of wheat or any other similar thing, and does farming with it, he becomes the owner of the harvest, but it is better that he should not exercise his right of disposal over harvest so acquired.

Issue 2294: * If a person purchases a dress, and then pays the owner of the dress with the money earned from interest, or with lawful money mixed with interest money, there will be no harm in wearing that dress and offering prayers with it. But if he says to the seller: “I am purchasing this dress with this sort of money”, it will be haraam to wear that dress. But offering prayers with that dress has been adequately explained in the rules for the clothes worn by one who wishes to pray.

Issue 2295: If a person gives a sum of money to a merchant, so that he may get from him something less in another city, there is no harm in it. It is called 'Sarf-i-Barat'.

Issue 2296: * If a person gives some money to another person with the condition that after a few days, he will take a larger amount from him in another city, or town, (for example, he gives $990 to him, and stipulates that after ten days he will take $1000 from him in another city) and if that currency is of gold or silver, the transaction is usury which is haraam. However, if the person who is taking more amount gives some commodity against the excess amount or performs some task, there is no harm in this arrangement. As for the usual bank notes, which is classified as things to be counted, there is no harm if something more is taken in exchange, except when it is in the form of a debt and a condition for excess is laid, in which case, it will be interest and haraam. Or, if a person sells bank notes on credit basis, for more in return, and if they belong to the same classification of commodity, it is not a permissible transaction.

Issue 2297: If a person is owed by someone, and the thing owed is not in the category of gold, silver or anything measured or weighed, he can sell it to the debtor or anybody else for a lesser amount and realise the sum in cash. On this basis, in the present times, a creditor can sell the bills of exchange or the promissory notes received from the debtor, to the bank, or any other person, at a price lower than the amount due to him (which is called 'discounting' in common parlance) and can take the outstanding balance in cash, because dealings with regard to common bank notes is not by weight or measure.

Rules Regarding Hawala (Transferring the debts etc.)

Issue 2298: If a debtor directs his creditor to collect his debt from the third person, and the creditor accepts the arrangement, the third person will, on completion of all the conditions to be explained later, become the debtor. Thereafter, the creditor cannot demand his debt from the first debtor.

Issue 2299: * The debtor, the creditor and the person to whom collection is referred, should be adult and sane, and none should have coerced them, and they should not be feeble-minded, that is, those who squander their wealth. And it is also necessary that the debtor and the creditor are not bankrupt. Of course, if the debt is transferred to a person who is solvent, there is no harm even if the person assigning the transfer is bankrupt.

Issue 2300: * Transferring the debt to a person who is not a debtor will not be correct, unless he accepts it. And if a person wishes to affect a transfer to a debtor for a commodity other than that for which he is indebted, (for example, if he transfers the debt of wheat while he is indebted to him for barley) the transfer will not be in order, unless he accepts it. In fact, in all cases of such transfers and Hawalas, one to whom it is assigned should have accepted it, otherwise, the transaction will be void.

Issue 2301: * It is necessary that a person should actually be a debtor at the time he transfers the debt. Therefore, if he intends taking a loan from some one, he cannot transfer the prospective debt in advance to another party, telling the would be creditor to collect the debt from the party.

Issue 2302: * The debtor must specify exactly the category and the quantity of the debt he transfers to another party. For example, if his debt comprises of ten kilos of wheat and ten dollars owed to one person, and he tells him to go and collect either of the two debts from a certain party, that transfer will not be valid.

Issue 2303: If the debt is fully identified, but the debtor and the creditor do not know its quantity and category at the time of assigning the transfer, the transaction is in order. For example, if a person who has recorded the debt he owes to someone in his books, assigns a Hawala or transfer of debt before referring to the books, and later, after consulting his records, informs the creditors about the quantity of his debt, the transfer is in order.

Issue 2304: * The creditor may decline to accept the transfer of debt, although the person in whose name the assignment has been given may be rich, and may not fail to honour the Hawala.

Issue 2305: * If a person accepting the Hawala is not a debtor to the person giving the Hawala, he can demand the amount of the Hawala from the person who gave it, before honouring the Hawala, unless it was previously agreed that the payment would be deferred for a fixed period, and that period has not lapsed. In this case, the person receiving Hawala cannot demand payment even if he himself may have honoured the Hawala. And if the creditor compromises for a lesser amount, the person honouring the

Hawala should demand only that sum which he has paid.

Issue 2306: * When the conditions of the transfer of debt or Hawala have been fulfilled, the person affecting the Hawala and the person receiving it cannot cancel the Hawala, and if the person receiving the Hawala was not poor at the time the Hawala was issued, the creditor cannot cancel the Hawala even if the recipient becomes poor afterwards. The same will apply if the recipient of the Hawala was poor at the time it was issued, and the creditor knew about it. But if the creditor did not know that the person to whom Hawala has been issued is poor, and when he comes to know of it, the recipient is still poor, then the creditor can abrogate the Hawala transaction, and demand his money from the debtor himself. But if the recipient of Hawala has turned rich, then cancelling the Hawala cannot be substantiated.

Issue 2307: * If the debtor, the creditor, and the person to whom the Hawala is assigned agree among themselves that all of them or any one of them has a right to cancel the Hawala, they can do so in accordance with the clause of the agreement.

Issue 2308: If the person issuing a Hawala pays the creditor himself, at the request of the person in whose name the Hawala was issued, who was also his debtor, he can claim from the recipient of Hawala what he has paid to the creditor. And if he has paid without his request, or if he was not his debtor, he cannot demand from him what he has paid.

Rules Regarding Mortgage (Rahn)

Issue 2309: * Mortgage means that a person effects a conveyance of property to another person as security for money debt, or property held under responsibility, with a proviso that if that debt is not paid, the creditor may pay himself out of the proceeds of that property.

Issue 2310: * It is not necessary to pronounce a prescribed formula for effecting the mortgage. If the debtor conveyances his property to the creditor with the intention of providing security for the debt, and the creditor accepts it with the same intention, the mortgage is in order.

Issue 2311: * The mortgagor and the mortgagee should be adult and sane, and should not have been coerced by anyone. Moreover, the mortgagor should not be bankrupt and feeble-minded. The meaning of 'bankrupt' and 'feeble-minded' have been given in rule 2262. But if the property mortgaged does not belong to the bankrupt, or if he has not been prohibited to use it, there is no objection.

Issue 2312: A person can mortgage that property over which he has a right of disposal or discretion, and it is also in order if he mortgages the property of another person with his permission.

Issue 2313: The property mortgaged must be such in which trading is permissible by Shariah. Hence, if alcoholic liquor or something like it is mortgaged, the transaction will be void.

Issue 2314: * The benefit which accrues from the mortgaged property, belongs to the owner, whether

the mortgagor or any other person.

Issue 2315: * The mortgagee cannot present or sell the mortgaged property to another person without the permission of the owner, whether he is the mortgagor or any other person. However, if he presents or sells it to another person, and the owner consents to it later, there is no harm in it.

Issue 2316: * If a mortgagee sells the mortgaged property with the permission of the owner, the sale proceeds will not be considered mortgaged like the property itself. And the same will apply if the he sells it without the permission of the owner, but the owner endorses the transaction later. But if the mortgagor sells it with the permission of the mortgagee, with an understanding that its proceeds will be be mortgaged, that is, the sale proceeds of that property will get mortgaged like the property itself, then he must follow the understanding. And if he contravenes it, the transaction will be void, except when the mortgagee gives his assent.

Issue 2317: * If the creditor demands the repayment of debt when it is due, and the debtor does not repay it, the creditor can sell the mortgaged property and collect his dues, provided that he had been authorised to do so. And if he was not authorised to do so, it will be necessary to obtain permission from the debtor. And if the debtor is not available, he should obtain permission for the sale of the property from the Mujtahid. In either case, if the sale proceeds exceed the amount due to him, he should give the amount in excess of his debt to the debtor.

Issue 2318: * If the debtor does not possess anything other than his house he occupies, and the essential household effects, the creditor cannot demand the repayment of debt from him. But, if the thing mortgaged by him is his house and its household effects, the creditor can sell them, and realise his dues.

Rules Regarding Surety (Zamanat)

Issue 2319: If a person wishes to stand surety for the repayment of the debts of another person, his act in this behalf will be in order, only when he makes the creditor understand by his words in any language, or by conduct, that he undertakes the responsibility for the repayment of the debt, and the creditor also accepts the deal. It is not necessary that the debtor, too, should be agreeable.

Issue 2320: * It is necessary that the guarantor and the creditor are adult and sane, and have not been coerced by anyone. Furthermore, they should not be feeble-minded or bankrupt. However, these conditions are not applicable to the debtor. Therefore, if a person stands surety to repay the debt of a child, an insane person or a feeble-minded squanderer, the arrangement is in order.

Issue 2321: * When a person gives a guarantee with a condition, as when he says: “If the debtor does not repay your debt, I shall pay it”, it is a matter of Ishkal to accept such a conditional guarantee as valid.

Issue 2322: * A man giving guarantee should know that the person for whom he stands surety is

actually a debtor. If someone is still considering to take a loan, one cannot stand as a guarantor till such time when the loan has been taken.

Issue 2323: A person can stand surety for someone only when the creditor, the debtor, and the property given as loan, are actually specified. Therefore, if there are two creditors of a person, and a person wishing to guarantee says: “I guarantee to pay the debt of one of you” his being a guarantor is void, because he has not specified as to whose debt he would pay. Also, if a person is the creditor of two persons, and a person giving guarantee says: “I guarantee to pay you the debt of one of them”, his becoming a guarantor is void, as he has not specified which person's debt he would pay. Similarly, if a person is owed 30 kilos of wheat and $10 by another person, and a person wishing to be a guarantor says: “I guarantee to pay one of your two debts”, and does not specify whether he guarantees payment of wheat or money, the guarantee is not in order.

Issue 2324: If a creditor gifts the guarantor with the debt owed to him, the guarantor cannot claim anything from the debtor, and if the creditor gifts him with a part of his debt, the guarantor cannot demand that part from the debtor.

Issue 2325: If a person becomes a guarantor for the payment of someone's debt, he cannot withdraw from his responsibility as a guarantor.

Issue 2326: As a precaution, the guarantor and the creditor cannot stipulate an option for cancellation of the guarantee at any time they wish to do so.

Issue 2327: If a person was capable of paying the debt of the creditor at the time he stood as a surety, the creditor cannot cancel his guarantee and demand the payment of debt from the first debtor, even if the guarantor may have become poor afterwards. And the same rule will apply if the surety at the time of guaranteeing was not capable of paying the debt, yet the creditor agreed to his becoming the guarantor despite knowing it.

Issue 2328: * If at the time of standing surety, a person was incapable of paying the debt of the creditor, and the creditor not knowing the position, now wishes to cancel his guarantee, it will be a matter of Ishkal, especially if the surety becomes capable of paying the debt before the creditor takes notice of the matter.

Issue 2329: If a person guarantees the payment of the debt of a person, without obtaining his permission, he (the surety) cannot demand anything from the debtor.

Issue 2330: * If a person guarantees the payment of debt with the permission of the debtor, he can demand that amount or quantity from the debtor even before having paid anything to the creditor. But if he paid, or delivered a commodity other than the one which was owed, he cannot ask the debtor to pay or deliver to him that commodity. For example, if the debtor owed 10 tons of wheat, and the guarantor settled the debt with 10 tons of rice, he cannot demand rice from the debtor, except when the debtor

agrees to the arrangement, in which case, there is no objection.

Rules Regarding Personal Guarantee For Bail (Kafalat)

Issue 2331: Personal surety or security means that a person takes the responsibility for the appearance of a debtor, as and when the creditor asks for him. A person who accepts such a responsibility is called Kafil (guarantor).

Issue 2332: * A personal surety will be valid only when the guarantor makes the creditor understand by words (in any language), or conduct, that he undertakes to produce the debtor in person as and when demanded by the creditor, and the creditor also accepts the arrangement. As a precaution, the debtor's consent is also necessary for the validity of such a guarantee; in fact, as a matter of precaution, both the debtor and the creditor must accept the Kafalat.

Issue 2333: It is necessary for a guarantor (Kafil) to be adult and sane, and he should not have been under any coercion or pressure, and he should be able to produce the person whose guarantor he becomes. Similarly, he should not be a feeble-minded squanderer or a bankrupt, particularly if he has to spend his wealth in order to be able to produce the debtor before the creditor.

Issue 2334: * Anyone of the following five things will terminate the personal surety (bail guarantee):

(i) When the guarantor hands over the debtor to the creditor, or if the debtor himself surrenders to the creditor.

(ii) When the debt of the creditor has been discharged.

(iii) When the creditor himself forgives the debt, or transfers it to someone else.

(iv) When the debtor or the guarantor dies.

(v). When the creditor absolves the guarantor from his personal surety.

Issue 2335: If a person forcefully releases a debtor from the hands of his creditor, and if the creditor does not have access to the debtor, the person who got the debtor released should hand him over to the creditor, or pay his debt.

Rules Regarding Deposit Or Custody Or Trust (Amanat)

Issue 2336: * When a person gives his property to another person, and tells him that it is deposited in trust, and the latter accepts it, or, without uttering a word, by a simple conduct, the depositor and the receiver both understand and accept the intention, then they must follow the rules of Amanat as will be explained later.

Issue 2337: * Both the trustee and the depositor should be baligh and sane, and should not have been forced by anyone. Therefore, if a person deposits some property with an insane person, or a minor, or if an insane or a minor deposits some property with someone, their action will not be in order. Of course, it is permissible for a discerning child to deposit someone else's property with that person's consent. Similarly, a depositor must not be a feeble-minded squanderer or a bankrupt. But if the bankrupt person deposits a property from which he has not been debarred, there is no objection. Also, the trustee must not be a feeble-minded squanderer or a bankrupt, if the protection of the property under his care involves spending from the wealth from which he is debarred.

Issue 2338: * If a person accepts a deposit from a child without the permission of its owner, he should return it to its owner. And if that deposit belongs to the child himself, it is necessary that it is delivered to his guardian; and if it gets lost or destroyed before the delivery, the person who accepted the deposit must compensate for it. But if he had secured it from the child with the intention of delivering it to the guardian, and if he had not been careless in its safekeeping, he will not be responsible for a loss or a damage. The same rule will apply in the case of an insane depositor.

Issue 2339: * If a person cannot look after the deposit, and the person making the deposit is not aware of his incapability, he should decline to accept the deposit.

Issue 2340: * If a person tells the owner of the property that he is not prepared to look after his property, and does not accept it, yet the owner leaves it there and goes away, and then the property perishes, the person who has declined to accept the deposit will not be responsible for it. However, the recommended precaution is that, if possible, he should look after that property.

Issue 2341: * A person who gives something to another person as a deposit, can abrogate the arrangement as and when he likes, and similarly, one who accepts the deposit can do the same as and when he likes.

Issue 2342: If a person renounces the custody of the property deposited with him and abrogates the arrangement, he should deliver the property to its owner or to the agent or guardian of its owner, as quickly as possible, or inform them that he is not prepared to continue as a custodian. But if he does not, without any justifiable excuse, deliver the property to them and also does not inform them, and if the property perishes, he should give its substitute.

Issue 2343: * If a person who accepts a deposit does not have a suitable place for its safe keeping, he should acquire such a place, and should take care of the deposit in a manner that he would not be accused of negligence. But if he acts carelessly in this regard, and the property is lost or damaged, he will have to compensate for it.

Issue 2344: * If a person who accepts a deposit has not been negligent in looking after it, nor has he gone beyond moderation, and then the property unexpectedly perishes, he will not be responsible for it. But if he has been careless about its security, say, by keeping it at a place which is vulnerable to theft, or

if he commits such excesses like using those articles of deposit without the owner's permission (like wearing the dress or riding the vehicle or the animal etc) and then the deposited property is lost or damaged, he should pay the owner its compensation.

Issue 2345: If the owner of a property specifies a place for its safe keeping, telling the person who has accepted the deposit: "You will secure the property here, and even if you suspect that it might get lost here, you must not take it elsewhere", in such case, he cannot transfer it to another place, and if he does, and it is lost, he is responsible.

Issue 2346: * If the owner indicated a place for the security of his deposit, but he did not mean to specify it to the exclusion of other suitable places, the person accepting the deposit can transfer it to a place which is equally safe, or safer than the first place, and if it is lost or damaged there, he will not be responsible.

Issue 2347: If the owner of a deposit becomes permanently insane or unconscious, the deposit is automatically abrogated, and the person who had the deposit as trust, should return it immediately to his guardian, or inform him. And if he does not deliver the property to his guardian without a justifiable excuse, and is also negligent in informing him, and the property perishes, he should give him its substitute. But if the insanity or being unconscious is intermittent, than the deposit cannot be considered as automatically abrogated.

Issue 2348: * If the owner of the deposit dies, the transaction is nullified; and if the deposit is transferable to the heirs without any liability, the trustee should deliver the deposit to the heirs, or inform them about it. And if he fails to do so, without any justifiable excuse, he will be responsible for its loss or damage. However, if he delayed to investigate whether the claimants were the right heirs or not, or whether there were other heirs besides them, and showed no negligence on his part in parting with the deposit or informing the heirs, he will not be responsible for any loss or damage.

Issue 2349: * If the owner of the deposit dies, and it devolves upon his heirs, the trustee of the deposit should give the property to all the heirs, or to the person who has been authorised by all of them to receive the property. Hence, if he gives the entire property to one heir without the consent of others, he will be responsible for the shares of the remaining heirs.

Issue 2350: * If the trustee of the deposit dies, or becomes permanently insane or unconscious, his heir or guardian should inform the depositor of the property, or deliver the property to him as quickly as possible. But if insanity or unconsciousness is intermittent, the deposit cannot be termed as void.

Issue 2351: * If a person with whom a property has been deposited, observes in himself the signs of approaching death, as a precaution he should, if possible, deliver the deposit entrusted to him to its owner, his guardian or his agent, or inform him. And if it is not possible to do so, he should make such arrangement which would satisfy him that the deposit would reach its rightful owner after his death. For example, he should make a Will about it, attested by witnesses, and give the name of the depositor to

the executor of his Will and to the witness, describing fully the nature of the deposit, and the place where it is kept.

Issue 2352: * If a person with whom a property has been deposited, sees in himself the signs of approaching death, and does not act according to his obligation as mentioned in the foregoing rule, and the property suffers loss or damage, he will be responsible for the deposit, and should make amends for it. But if he recovers from his illness, or after some time repents and acts according to his obligations, then he will not remain responsible.

Rules Regarding Borrowing, Lending (Ariyat)

Issue 2353: *Ariyat* means that a person gives his property to another person for use without asking anything in exchange.

Issue 2354: It is not necessary in the case of *Ariyat* that a formal formula be pronounced. So, for example, a person gives a dress to someone with the intention of lending, and he takes it with the intention of borrowing, it is in order.

Issue 2355: Lending a thing which has been usurped, and a thing which belongs to the lender but its benefit has been assigned to some other person, like, if it has been given on lease, will be valid only when the owner of the usurped thing, or the assignee is agreeable to its being lent.

Issue 2356: * The assignee of any benefit, like a lessee, can lend the object or property he has leased, to others. But, as a precaution, he cannot give it into the possession of the borrower without the owner's permission.

Issue 2357: * If an insane person, or a minor child, or one who is bankrupt, or a feeble-minded squanderer, lends his property it is not valid. But if, the guardian of such persons considers it expedient to lend the property under his guardianship, there is no harm in it. Similarly, if a minor acts as an intermediary in delivering the lent article to the borrower, there is no objection.

Issue 2358: If a person who has borrowed something is not negligent in its keep, nor does he go beyond moderation in its use, he will not be responsible if it is lost or damaged by chance. However, if the two parties stipulate that, the borrower would be responsible for loss or damage, or if the thing borrowed is gold or silver and it is lost or damaged, the borrower should compensate for it.

Issue 2359: If a person borrows gold or silver and stipulates that if it is lost or damaged, he will not be responsible, he is not responsible if it is lost.

Issue 2360: * If the lender dies, the borrower should give it to the former' heirs, acting according to rule 2348 in respect of the deposits.

Issue 2361: * If the lender is incapacitated in such a way that he does not have any right of disposal or discretion over his property, like, if he becomes insane or unconscious, the borrower must act in the manner explained in rule 2348 in respect of deposits.

Issue 2362: * A lender can rescind the transaction as and when he likes, and the borrower can also do so at any time he wishes.

Issue 2363: * Lending something which is not halal to use, like, instruments of amusement and gambling, and utensils of gold and silver for eating or drinking, or for any other purposes, is void. However, giving them on loan for the purpose of decoration is permissible, although precaution is that they should not be given on loan even for this purpose.

Issue 2364: Giving on loan a sheep for the use of its milk and wool, and lending a male animal for mating, is in order.

Issue 2365: If a borrower gives the borrowed property to the owner, or to his agent, or guardian, and thereafter that thing is lost or damaged, the borrower is not responsible. But if he takes it to a place without the permission of its owner, or his agent, or guardian, although it may be a usual place where the owner usually kept it – for example, if he takes the borrowed horse to the stable which has been prepared for it by its owner, and ties it there, and it is lost or destroyed later, or some one destroys it, the borrower is responsible for it.

Issue 2366: * If a person lends a Najis thing, and if the situation is like the one explained in rule 2065, he must inform the borrower about it being Najis.

Issue 2367: If a person has borrowed a thing, he cannot give it to another person on hire or loan, without the permission of its owner.

Issue 2368: If a thing is borrowed, and is then lent to another person with the permission of its owner, and the first borrower dies or becomes insane, the second lending does not become invalid.

Issue 2369: If a borrower knows that the borrowed property has been usurped, he should deliver it to its rightful owner, and he cannot give it to the lender.

Issue 2370: If a person borrows something about which he knows that it has been usurped, and utilises it, and then it is lost or damaged while in his possession, the rightful owner can demand compensation for that thing, and the benefit derived from it, from him, or from the lender who usurped it. And if he takes that compensation from the borrower, the borrower cannot claim from the lender what he has paid to the rightful owner.

Issue 2371: If the borrower does not know that the property which he has borrowed is a usurped one, and it is lost or damaged while it is with him, and if its owner receives compensation from him, he too, can demand from the lender what he has paid to the owner. But if the thing borrowed is gold or silver, or

if the person who lent him the property stipulated that if it is lost or damaged he will have to give him compensation for it, he cannot demand from the lender the compensation which he gives to the rightful owner of the property.
