

Subjects of Jurisprudence

The jurisprudential subjects are divided into two categories: acts of worship and dealings or transactions. Dealings are further divided into: contracts, one-party contracts and miscellaneous rulings.

Al-Shahīd al-Awwal divided jurisprudence into these subjects along the mentioned foundations when he said: “All of this is divided into four parts; worship, contracts, one-party contracts and miscellaneous rulings.”

This classification is found in the books early day such as *Sharḥ al-Islām* by Muhaqiq al-Hillī.

The subject of *taqlīd* or imitation (following a specific scholar) is mentioned in the books of jurisprudence, along with subjects relating to it, in the introduction section. They say that it is obligatory for every *mukallaf* who has not reached the knowledge level of *ijtihād* to either follow someone in *taqlīd* or practice precaution in worship and transactions, even if these are regarded recommended or permissible actions, except where the ruling is self-evident.

The condition for practicing precaution is that one is knowledgeable of the situations where precaution is applicable (only a few people actually do). Without practicing *taqlīd*, the acts of worship and daily dealings of an individual – unless he or she is capable of precaution– are considered invalid.¹

Then the section of worship is mentioned:

Worship is an action that depends on having the intention of being close to Allah, for example, performing *salat* prayer.

Muhaqiq al-Hillī mentioned ten different subjects under the acts of worship category:

1. Spiritual purification (*tahḥārah*): Spiritual purification is the use of a pure substance conditional upon an intention.² There are two types of spiritual purification; spiritual purification from physical impurities that stem from the body (*khābath*) and spiritual purification from spiritual impurities (*hadath*).

Spiritual purification from a physical impurity consists of cleaning the body, clothes or anything else from the ten impure substances: urine, feces, blood, semen, touching carcass, etc. This form of purification

does not stipulate having an intention.

Spiritual purification from spiritual impurities consists of using water for *wudū'*, *ghusl* and *tayammum*. This form of spiritual purification is a prerequisite for such acts of worshipping as prayer and circulating the Ka'aba *tawāf*. This form of spiritual purification is broken by different natural occurrences such as sleep, urination and ejaculation; intention is a prerequisite in this form of purification.

There are eleven ways which one can use to spiritually purify something that has become physically impure. They are as follows: pure water, touching earth, sunlight, transformation, evaporation of two thirds of a liquid, transfer of human blood into a mosquito or a bug, converting to Islam, being part of something or someone pure, removing the physically impure substance and preventing an animal that has eaten physically impure substances (instead of food) from eating more physically impure substances.

2. Prayer (*ṣalāh*): Praying precludes one from committing terrible actions. It is the foundation of religion and if it is accepted all other forms of worship will be accepted but if it is rejected all other forms of worship will be rejected.

In this section the obligatory daily prayers are discussed as well as the prayers on the two holy days (*ʿīd*), the funeral prayer, the Prayer of the Signs, the prayer after *tawāf* and recommended prayers *nawāfil*. The conditions of prayer are also discussed along with the foundations of prayer, the precepts to prayer and the actions that invalidate the prayer. The different types of prayer are also discussed, such as the prayer of a traveler, individual prayer, congregational prayer and compensatory prayers.

3. Taxes (*zakāh*): It is a form of tax which is applicable to nine different items: gold, silver, wheat, barley, dates, grapes, cows, sheep and camels. The conditions of these nine items are discussed in jurisprudence, how much must be paid and how the money should be spent. This form of tax is mentioned in the Qurʾān, for the most part, next to prayer. A verse that mentions how this tax should be spent is in *Sūrah al-Tawbah*, verse 60.

4. The One-Fifth tax (*khums*): *Khums* is another form of tax taken from one fifth of one's property. The Sunni sects claim that this tax is applicable to war-booty alone. One fifth of the war-booty is taken and added to the Islamic treasury. The Ahl al-Bayt (a) jurisprudential sect says that war-booty is only one of the items that this tax is applicable to.

The following items are added to war-booty: mines, treasures, lawfully obtained money mixed with unlawfully obtained money in such a way that one does not know how much of it is lawful and how much is unlawful and one does not know the rightful owner, land that an unbeliever living in a Muslim country buys from a Muslim, treasures taken from the sea and money saved for over a year. The proof that the Ahl al-Bayt (a) sect uses, is the *khums* verse (*al-Inf*: 41) and traditions from the Ahl al-Bayt (a).

5. Fasting (*sawm*): Fasting is obligatory for every a *mukallaf*, who has come of age and does not have a

valid exception. One must fast during the month of *Ramadān* in every year. It is also recommended to fast on other days throughout the year, except on the two holy days (*'īd*), for it is forbidden to fast on those days. It is not recommended to fast on the tenth day of the month of *Muharram*. A fasting person must refrain from eating, drinking, sexual intercourse, soaking the head in water, inhaling thick smoky substances...etc.

6. Staying in a mosque (*i'tikāf*): The Arabic term *i'tikāf* literally means staying in a specific place, but when used as a jurisprudential term it means staying for an extended time in a mosque in order to worship. This is an act of worship that a person does by fasting for three or more days in a mosque. The different rules and conditions of this are explained in jurisprudence. *I'tikāf* is essentially recommended, but if one performs *i'tikāf* for two days, the third day becomes obligatory. One must perform this act of worship in the Holy Mosque of Mecca, the Prophet's Mosque in Medina, the Kufa Mosque, The Basra Mosque, or, at least, the main congregational mosque of a city. One may not perform this act in a small mosque. The Prophet (s) would perform *i'tikāf* on the last ten days of the month of *Ramadān*.

7. Pilgrimage (*hajj*): The Arabic term *hajj* literally means intention, but in jurisprudence it is a term which comprises of different actions performed in a specified place (Mecca and its surroundings). It is obligatory on anyone who meets all of the conditions. The actions of the pilgrimage are as follows: putting on the special *ihrām* clothes in Mecca, stopping in 'Arafāt, staying in al-mash'ar, throwing the stones at the *'qabah*, sacrificing an animal, shaving one's head, walking around the Ka'bah seven times (*tawāf*), performing the *tawāf* prayer, running back and forth between Safā and Marwah, *tawāf al-nisā'*, *tawāf al-nisā'* prayer, throwing stones at the symbol of *satans*, and staying at *Mina*.

There are three kinds of pilgrimage. The first is called *al-tamatu'* and is obligatory on those whose homes are more than 92 kilometers away from the Holy Mosque of Mecca. The second and third are called *al-qirn* and *al-ifrād* respectively. These are obligatory on those whose homes are less than that distance.

8. Lesser pilgrimage (*'umrah*): There are two types of this smaller version of pilgrimage. The first is called *al-tamatu'* and is obligatory on every *mukallaf* who can perform the pilgrimage and lives more than 92 kilometers away from the Holy Mosque of Mecca. The second type is called *al-ifrād* and is obligatory on anyone who is financially able to perform it, whether the greater pilgrimage has become obligatory on him or not, and does not live more than 92 kilometers from the Holy Mosque of Mecca.

The actions that must be performed in the lesser pilgrimage are: putting on the *ihrām* clothes in one of the specified sites, *tawāf*, *tawāf* prayer, running back and forth from Safā and Marwah and have one's hair cut.

9. Declaring War (*jihād*): There are two types of war in Islam: offensive and defensive. In Ahl al-Bayt (a) jurisprudential sect only an infallible can declare war, and that is when it becomes an obligatory duty. On the other hand, a defensive war can become obligatory at any time and can also become obligatory

upon men as well as women.

War can also be divided into civil and international war. It is also obligatory to fight a group that leaves the community of an Imam, like what happened in the case of the *Khawarij* and the wars of *Jamal* and *Siffin*.

The following subjects are also mentioned under the main subject of war: rules pertaining to followers of other religions living in Muslim countries and peace treaties between Muslim governments and non-Muslim governments.

10. Enjoining good and forbidding evil (*'amr bi al-ma'ruf wa nahy 'an al-munkar*): Islam is a religion that deals with social issues. The importance of a healthy society is emphasized in the divine laws that were sent for mankind's success. It is obligatory, according to Islamic law, for everyone to uphold moral actions and to fight immoral actions. This is what is mentioned under the subject of enjoining good and forbidding evil. Refer to the verse in *Surah al-Imran*: 104.

There are conditions pertaining to this are mentioned in the books of jurisprudence.

After the section of worship, the section of contracts is mentioned. This section has fifteen different subjects:

1. Trading (*tijarah*): Transactions like buying, criteria of the buyer and the seller, the items being bought or sold, the contract itself, the wording of the contract, different kinds of transactions: resale with specification of gain, resale with the specification of loss, and *tuliyyah* are also discussed. *Tuliyyah* is the transfer of the sold to the buyer without any addition or subtraction from it.
2. Collaterals (*rahn*): The item that is given is called a collateral, the person giving the collateral is called a *rahn*. The *Rahn* must offer this transaction by using any words that relay his offer and the *murtahan*, or person who takes the collateral, must accept it by using any words that relay his acceptance.³
3. Bankruptcy (*iflas*): A bankrupt person is one who does not have enough money to pay back his debts. The Islamic jurist prevents this person from using his property with the intent of him paying back his debts, as much as possible.
4. Limitation of legal competence (*hajr*): The Arabic term '*hajr*' literally means preventing and what is meant is the prevention from spending one's money. There are many instances where one is prevented from spending his money due to bankruptcy (which was mentioned), a child who has not come of age, an insane person, an incompetent person and a dead person who has made a will for over one-third of his property.
5. Guarantee (*daman*): This is a contract that needs both a proposal and an acceptance. There is a difference in guarantees between the Shia and the Sunni. The Ahl al-Bayt (a) jurisprudential sect defines '*daman*' as the moving over of the responsibility for the debt from the indebted person to the

guarantor.

After this the person who lent money does not have the right to ask the person he lent the money to for his money, rather he must ask the guarantor. This way, the guarantor pays back the debt and then seeks out the person who owed the money in the first place to pay him back. However, the Sunni jurisprudential sects claim that the person who lent the money can get his money from either the person he loaned it to or the guarantor.

6. Peace (*sulh*): The agreement upon giving up one's possession of an item or the yield of an utilizable thing or the yield of a right. It is not conditional on there being a fight before it.

The peace that is meant here is not the same as what is meant in the subject of war (*jihad*). Peace that is mentioned in the subject of war is a political agreement, but the peace that is mentioned here is related to financial matters, for example if one owes an unknown amount of money to another he can make 'peace' with that person by paying him a specific amount of money agreed upon by both parties.

7. Partnership (*shaarkah*): Partnership means the ownership of property or a right by more than one person. An example of this is the inheritance that belongs to a few children. They are partners in the inheritance before it is divided up. Another example is when two or more people own a car, horse or piece of land, even if two people share in a piece of virgin land that they cultivated.

There are two types of partnerships: contracted and non-contracted. What were mentioned above are examples of non-contracted partnerships. Examples of contracted partnerships are business partnerships, farmland partnerships and industrial partnerships. There are many rules mentioned in the books of jurisprudence pertaining to contracted partnership.

8. Silent partnership (*mudharabah*): this is a type of contracted partnership where there is a partnership between one's property and another's work. One or more people give money to another person or persons to conduct business transactions with that money.

9. Silent partnership in farming and running an orchard (*muzara'ah* and *musaqat*): These are two types of partnerships similar to *mudharabah*. They are both partnerships between money and work. The difference between them is that *mudharabah* is a partnership between money and work in business while *muzara'ah* is a partnership between money and work in farming.

For example, the owner of a land makes a contract with a farmer and they split up the profits in an agreed upon fashion. *Musaqat* is a partnership between money and work in an orchard, for example, the owner of the land makes a contract with the gardener and they split the profits that they make from the selling fruits.

One of the conditions that must be observed in a partnership between money and work, whether it is *mudharabah*, *muzara'ah* or *musaqat*, is that if a loss the loss as well as the profit is shared, and that the

profit cannot be a fixed amount of money but rather a certain percentage. This way, both the person who puts up the money and the person who works are equal.

10. and 11. Trust and borrowing (*wad'ah* and *'ar'ayah*): *Wad'ah* is giving a piece of one's property to another to protect it. *'ar'ayah* or lending is letting another use one's property in order to make a profit. Both of these are kinds of trusts with the difference that in the case of *wad'ah* one gives his property to another for safe keeping and the keeper can only benefit from that property with the owner's consent. This is the opposite of *'ar'ayah* where the other person uses the property in order to make a gain from it.

12. Renting (*ij'arah*): This is a contract where one rents the yield of an utilizable thing or a right to specified price. There are two types of renting. The first is where one rents a piece of property at a specified price – as in renting a house, a car or even clothes– and the other is where one hires a person perform a certain work, for example sowing clothes, cutting hair, building a house or other things.

Renting is similar to buying and selling because two pieces of property are being exchanged, with the difference that in buying and selling a piece of property is exchanged with another while in renting a piece of property is exchanged with the right to make use of another piece of property.

There is a similarity between renting and *'ar'ayah*. In both renting and *'ar'ayah* utilization occurs, however, with renting the person pays for the ability to use the other's property while and in *'ar'ayah* the person does not pay which means he does not have a right in using the property.

13. Representation (*wakalah*): allowing another to act in lieu of someone during his life. An example of this is that man, nowadays, needs someone to represent him in a courtroom or a representative in a contract, for example, business contracts, renting, *'ar'ayah*, trusts, religious endowments, divorce, etc.

The person who is being represented is *muwakkil*, the person who is representing is *muwakkal* or *wakil* and the transaction is *wakalah* or representation.

14. Religious endowment and charity (*waqf* and *sadaqah*): *Waqf* means to give away one's property to a special group of people. There is a difference of opinion about *waqf* needing an intention of getting closer to Allah or not. Muhaqiq al-Hill's opinion is that it intention is not a prerequisite because *waqf* and *sadaqah* are mentioned in the section of contracts, not worship.

There are two types of *waqf*, specific and general. Each one of these has their own special laws.

15. Religious endowment of a house or yield (*sukna* and *habs*): These are similar to *waqf*. The difference is that in *waqf* the property is given away forever and the person is not able to retrieve his property.

Habs is when a person allows another to use the yield of his property in order to perform humanitarian services for a specific period of time after which the property is returned to its owner.

Sukna or habitation is when someone allows another to live in his house for a specified period of time

after which the property is returned to its owner.

16. Gifting (*hibah*): One of the things that one can do with his possessions is to give them away. Gifting can be either with receiving something in return, or without. One is not able to take back a gift for which something was given in return, but one can take back a gift in which something was not given in return for it, except if it was gifted to a relative or the if the gift is no longer in existence.

17. Racing and shooting (*sabq* and *rimyah*): These are two forms of contracts that are conditional upon racing, involving the use of horses or camels, and shooting. Islam has forbid all kinds of gambling except these kinds because they improve military skills and improve one's ability to do well in war times. Racing and archery are related to the section on *jihad*.

18. Will (*wassiyah*): A will is making someone the possessor of an item or a yield after one's death. This is according to the will one makes regarding his possessions and small children (if it is allowed to make a will regarding the raising and protection of one's children) and occurs after his death. In a will, a person has control over only one third of his total possessions, to be given away or used in whatever many he decides.

Muslim jurists have divided a will into three parts. First is property, one makes another the owner of a certain part of his property. Second is contracts, one pays another to represent him in performing a pilgrimage, *zayrah*, prayer, fast are any other righteous deed. Third is freeing, one frees one of his slaves, for example.

19. Marriage (*nikah*): Jurists mention the conditions of the marriage contract. Then they mention whom we can't marry (*mahram*), for example a father can't marry his daughter, a mother can't marry her son, a sister can't marry her brother and so forth. Then they mention the two forms of marriage; the permanent and the temporary. Then they mention what happens if the marital duties are violated. Then the jurists mention the concept of adequate support, which is one of the wife's rights with the husband.

This is the end of the section on contracts. Muhaqiq al-Hill mentioned that there were 15 different subjects within this section, but then mentioned 19 of them. It is not understood why. Maybe it was a mistake or maybe he mentioned some of the subjects together.

The third section that Muhaqiq al-Hill mentioned is one-party contracts. There are 11 subjects mentioned within this section.

1. Divorce (*talq*): Divorce is when a man annuls his marriage contract. Divorce is either forever (*batin*) or not (*raj'i*). If the divorce is *raj'i*, the man can return to his marriage during the specified time during which the woman cannot remarry.

For divorce to be valid, it must not be initiated when the wife is having her menstrual period and that there must be two just witnesses available. The Prophet of Islam said: "Allah loathes divorce although it

is a permissible action.”

2. When divorce is requested by either the the wife or both parties it is called *khal'* and *mub^ḥrah*: These are two forms of irreversible *b^ḥin* divorce. *Khal'* is a form of divorce where the wife forces the husband to divorce her by giving him back part or the entire dowry; i.e. whatever the man would accept to divorce her. If he chooses to divorce her he cannot return to her unless she gives him permission.

Mub^ḥrah is similar to *khal'*, but in this case both parties opt for the divorce. Here, the woman can choose what she wants; with the condition that it does not surpass her dowry.

3. A pre-Islamic form of divorce (*zih^ḥr*): *Zih^ḥr* is a form of divorce that was prevalent during the pre-Islamic era, or the so-called Era of Ignorance. It is where the husband says to the wife: “You are to me like the back of my mother.” This was enough for the couple to become divorced. Islam does not accept *zih^ḥr* as a form of divorce. Rather, Islam says that it is forbidden to say this and if one does he must pay a penalty, which is freeing a slave. If one cannot find a slave he must fast two months in a row. If one is unable to fast he must feed sixty poor people. It becomes forbidden for the husband to have intercourse with his wife after he said the mentioned sentence and before he paid the penalty.

4. Abstinance vow of a husband (*ḥ^ḥḥ*): *ḥ^ḥḥ* is a kind of vow where a husband vows not to perform intercourse with his wife forever, or at least more than four months, in order to punish her. If the wife takes her case in front of a judge the judge will force the man to take back his vow or divorce his wife. If he decides to take his vow back he will have to pay the penalty. Taking back a vow is forbidden except in this case where it becomes obligatory.

4. Cursing (*la^ḥn*): *La^ḥn* is also related to the relationship between a husband and wife. It is a kind of curse from one side against the other. If a husband claims that his wife committed adultery but does not produce four witnesses, he will be subject to the punishment of false testimony, except if he performs *la^ḥn*. If he performs *la^ḥn* his wife will be forbidden for him forever.

La^ḥn must be performed in front of a judge. The man must say four times: I bear witness, in front of Allah, that what I said about this woman is true. Then he must say: The curse of Allah is upon me if I am a liar. Then the woman must say four times: I bear witness, in front of Allah, that he is a liar. Then she must say: May Allah become angry with me if he is truthful.

In this way the husband and wife are separated from each other forever.

6. Freeing a slave (*ḥ^ḥḥ*): Islam has many teachings regarding slavery. Slaves are only taken from prisoners of war. The purpose behind slavery is not to use the slave but rather it is for them to live in a Muslim family and to become Muslim. The goal is not to make a slave remain a slave forever, instead it is to teach a disbeliever Islam and then give him social freedom after he has attained spiritual freedom. So, the goal of slavery is to free the slaves and there are many different ways to free a slave in Islam. For this reason, jurists have called this subject *freeing a slave*, not slavery.

Jurists have said that there are four ways to free a slave:

- A slave owner freeing a slave because of a religious penalty or just getting closer to Allah.
- Freeing part of the slave, half of him, a third of him, a fourth of him or a tenth of him for any reason.
- If someone enslaves his parents, grandparents, children or grandchildren. In Islam this form of slavery does not exist and the relative would be automatically freed.
- If a slave has certain bodily ailments, for example if he is blind or has leprosy.

7. *Tadbīr*, *mukātabah* and *ist'isād*: These are three cases which necessitate freeing a slave. *Tadbīr* is when the slave owner makes a will to free the slave after his death. *Mukātabah* is when the owner and the slave make a contract for the slave's freedom after he pays a sum of money. Allah orders the slave owners to make a contract with a slave if the slave wishes and the slave is a believer. Allah also says that some money should be given to him to help him with life's expenses.⁴ *Ist'isād* is when a women slave bears the master's child. After the slave owner's death the mother becomes the slave of the child and, as was mentioned earlier, a child cannot be the owner of his mother, so she becomes free.

8. Confession (*iqrār*): Confession is one of the legal subjects of Islam. If a person claims that another owes him money he must put forth evidence. If he cannot produce evidence his claim will be dismissed. However, if the other person confesses to the fact that he owes the plaintiff money, his confession will take the place of the missing evidence.

9. Reward (*ju'rah*): *Ju'rah* is similar to hiring a person to perform work, except in *ju'rah* a specific person is not hired but rather the person says that he would pay a certain amount of money to anyone who performs a specific work.

10. Vows (*aymān*): *Aymān* is the plural of the Arabic term *yamān* which consists of two types of vows: *halaf* and *qasam*. If a person vows to perform a certain action it is obligatory on him to perform it. Of course there are conditions:

- When the vow is taken in Allah's name. It is not obligatory to carry out a vow taken in the Prophet's, Imām's or Qur'an's name.
- The action has to be a permissible one. It is not obligatory to carry out a vow made to perform a forbidden or disliked action.

Examples of correct vows are to read so and so good book from cover to cover or to brush one's teeth every day. If one does not carry out a correct vow he must pay the penalty.

11. Pledge (*nathr*): A pledge is different than a vow and it has specific wording. If a person wants to pledge to perform the daily recommended prayers he must say: "*lillah alayi* (literally translated as for Allah on me, or I commit to Allah) to perform the daily recommended prayers every day." The pledge is conditional on the fact that the action is beneficial for one's religion or worldly affairs. A pledge to perform

an action that is neither beneficial nor harmful is invalid.

The wisdom behind carrying out the vow or pledge is because they are types of contracts made with Allah and it is obligatory to be true to one's contracts that he makes with other people⁵, so it is also obligatory to be true to the contracts he makes with Allah.

Miscellaneous Rulings

The forth section of jurisprudential rulings is the miscellaneous rulings. Miscellaneous rulings does not have a specific definition, rather Muhaqiq al-Hill⁶ put everything that was not acts of worship, contracts or one-party contracts into this section. He divided this section into twelve subjects:

1. Hunting and slaughtering animals (*sayd* and *thib⁷h⁸*): Before anything, we will say: “An animal whose meat is lawful to eat becomes lawful when it is slaughtered in a specific way, fished in a specific way, hunted by a trained dog (in relation to some animals) or hunted by a weapon that has a spearhead, like an arrow or spear.”

If an animal is slaughtered or hunted in the above-mentioned method, the rulings of a *tathk⁹yah⁶* (it becoming lawful to eat) will apply to it, not the rulings of a carcass. A carcass is spiritually unclean and is a forbidden item to eat.

Hunting is only allowed on the wild animals whose meat is permissible, like gazelle, mountain goats, wild cows and the likes. Hunting is not allowed on domesticated animals like sheep and cows.

The use of dog that is used to hunt is conditional on it being trained to do so; the killed animal that is retrieved by an untrained dog is not permissible to eat. Similarly one is unable to use other predatory animals.

The weapon used to hunt is conditional on it being made out of iron, or at least another material that is mined; so it is not allowed to hunt with a weapon made out of rock. Another condition is that the person hunting or slaughtering an animal must be a Muslim and must start his action by the reciting the name of Allah. There are other conditions as well.

2. Foods and beverages (*at'amah* and *ashribah*): There are a series of rulings in Islam regarding eating and drinking, given to make sure one uses nature beneficially. Examples of these are hunting and slaughtering animals, which have been mentioned, and food and drinks. Islam generally permits beneficial items and forbids harmful items, but does not satisfy itself with this general principle. In some cases the harm of a certain item is mentioned which necessitates staying away from it or the benefit of an item is mentioned which allows the usage of it.

There are two types of foods: animal and non-animal. Animals are divided into two categories: sea animals and land animals. None of the animals in the sea are allowed except fish types that have scales.

Land animals are divided into two categories: wild and domesticated. From amongst the domesticated animals cows, camels and sheep are permissible. Horses, mules and donkeys are also permissible but it is not recommended to eat them. Dogs and cats are forbidden to eat. From amongst the wild animals, predatory animals and insects are forbidden to eat, but wild cows, wild donkeys and mountain goats are permissible. Rabbits are also forbidden to eat, even though they are not predatory animals.

Different kinds of birds are permissible to eat, for example pigeons, ducks and chicken. Predatory birds are forbidden to eat.

It is forbidden to eat non-meat items if they are a spiritually unclean substance or a spiritually clean substance that has become spiritually unclean. It is also forbidden to eat anything that is harmful according to the general public. So, for example, it is forbidden to eat poison, even if it is tasty.

It is forbidden to eat dirt, whether it is harmful or not. It is also forbidden to drink any intoxicating substance or eat someone else's food without their permission.

3. Usurpation (*ghasb*): Usurpation is using the property or rights of another without consent. This is forbidden and one becomes accountable to the owner if his property becomes destroyed. It is forbidden to use anything that has been usurped, meaning that *wudʿ* would become invalid if performed with usurped water or one's prayer *salat* would become invalid if performed wearing usurped clothes or on an usurped place.

4. Right of pre-emption (*shuf'ah*): The right of pre-emption is the right that a partner has to purchase the partnership of a third party who bought it from his partner. So, if two people purchase an item jointly and one of them sells his share the other has the right to purchase the share from the third party at the same price.

5. Cultivation of virgin land (*ihy' al-mawat*): Cultivation or revival of moorland for farming purposes. The Prophet of Islam (s) said: "Whoever cultivates a piece of moorland, it becomes his."

There are many issues dealt with in this section.

6. Lost property (*laqtah*): The general meaning of lost property is property that the owner lost and nobody else has obtained it. There are two kinds of this lost property: animal and non-animal.

The finder does not have the right to take the property as his own if it is an animal and he does not fear that it will die. But, if he does fear that it will die, for example, if he finds a sheep in the middle of the desert, he can take it as his own but he must search for its owner. If he finds the owner he must give the sheep to him, but if he does not find the owner then it becomes a property with an unknown owner which sin in this case should be spent on the poor with the permission of a judicator.

If the lost property is not an animal and worth less than half of a *mithqal* of a silver coin, the finder can take it as his own. But, the finder must declare that he has found the lost item and search for its owner

for one year if it is worth more than the above mentioned amount (naturally, items that would go bad, like fruit, are not included in this ruling). If the owner was not found and the finder found the item in the Holy Mosque of Mecca, the finder can do one of two things: he can give it away as charity and give the price of the item to the owner, if he ever finds him, or he can keep it for the owner.

If he found it anywhere outside of the Holy Mosque of Mecca he can do one of three things: he can take ownership of the item and owe the owner the price of the item if the owner is found or he can give it away as charity and pay back the owner if found or keep it as a trust for the owner.

If there is no sign on the item indicating the owner there is no need to declare that one has found it, rather, the finder will be able to choose from the three choices above.

7. Inheritance (*mirath*): The rules of inheritance in Islam are obligatory to follow. It is not permissible for the deceased (during his life) to split up the inheritance however he desires or to give all of his possessions to one person. The division of property is done on three levels; when there is a person on one level, the next levels do not receive inheritance.

The first level: Parents and children. If the children are dead at the time of the division, grandchildren get the inheritance.

The second level: Grandparents, brothers and sisters and if one's brothers and sisters died, nieces and nephews.

The third level: Aunts and uncles and their children.

These are according to family relations, but if one is related because of a reason, for example marriage, they inherit in every level.

The exact amount that everyone inherits is explained in detail in the books of jurisprudence.

8. Judgment (*qadh*): It is the judgment made between people in order to settle their disputes. There are many issues addressed in this section that cannot be explained here, but we will mention some brief points:

The court system in Islam is a special system that makes sure that justice is served in a precise way. One of the ways to prove this is by mentioning the special conditions that Islam gives for one to become a judge. Some of the conditions are: He must be a *mujtahid* on a scholastic level and his *ijtihād* must be established. His morals must also be in congruence with Islam.

Another condition is that he must be pious and stay away from vices, even the ones that have nothing to do with being a judge. The judge is not allowed to take money from the defendants or the plaintiff's, rather he is awarded a large sum of money from the Muslim nation's treasury.

Confessions and witnesses (and nowadays oaths) are effective in proving or disproving one's claim in

the Islamic court system.

9. Being a witness (*shahādah*): Witnessing is a branch of the section of judgment. Confessions fall under the same category. If one claims, for example, that another person owes him money, the other person can either confess to the claim or denies it. If he confesses it is enough for the judge to order that the money be paid. If he rejects the claim, the plaintiff must bring evidence to prove his claim.

One way of provide evidence is to produce a witness. If he has a witness and all of the conditions of being a witness and giving testimony are observed, his claim will be proved. The defendant does not have to provide a proof that he is truthful. Sometimes the defendant has to swear an oath that he is truthful.

10. Fixed and open legal punishments (*hudūd* and *ta'zīrāt*): These punishments are related to Islam's penal system and are also related to the sections of judgment and witnesses. Islam has given certain punishments for certain crimes which are supposed to be carried out in every situation, every place and every age. These punishments are called *hudūd*. There are some punishments that are up to the judge to determine, where he can look at the situation and make the punishment more or less severe. These punishments are called *ta'zīrāt*.

We will mention some of the *hudūd*, briefly, because mentioning them in length should be done in other books.

- The punishment for adultery of two married people who can easily be with their spouse is stoning. If one of the adulterers was not married or could not easily be with his spouse he or she would be given 100 lashes, except if the adultery was committed with one of his or her family members (*mahram*) where the punishment would be death.
- The punishment for homosexuality is death by the sword, throwing him or her off of a high mountain or building or burning him alive.
- The punishment for wrongly accusing someone of a crime is 80 lashes. Wrongly accusing someone of a crime means accusing a man or woman of committing adultery without having enough witnesses.
- The punishment for drinking alcohol or other liquid intoxicants is 80 lashes.
- The punishment for theft is cutting off the four fingers of the right hand with the condition that the stolen item was worth at least a fourth of a *dīnār*.
- The punishment of an enemy who takes up arms against the people is either killing him by the sword, crucifixion or cutting off his right arm and left leg or his left arm and right leg.

11. Retaliation (*qasās*): Retaliation is another form of punishment that Islam allows. In reality, this is the right of the victim if he was injured, but not killed or for his inheritor against the criminal. The crime

should either be murder or seriously injuring one of the victim's body parts and the crime would have either committed intentionally, similar to second-degree murder, or accidentally.

Intentional murder is when the criminal hits the person with the intention of killing him, with or without the use of a weapon, resulting in the death of the victim. The important thing here is the intention to murder.

Second degree murder is when the criminal intentionally hits the person but without the intention of killing him, resulting in death. For example the intention was to wound the person but ended up killing him. Or, if the person wants to discipline a child by hitting him and the child dies.

Accidental murder is when the killer did not have any intention of harm at all.

If the murder was committed intentionally the inheritors of the victim have a right called *qasās*. They can use this right and have the murderer executed in an Islamic court. *Qasās* does not apply to second-degree or accidental murder.

12. Fines (*dīyah*): Fines are another right that is given to the victim or his inheritors. The difference is that in *qasās* there is the eye for an eye concept while with *dīyah*, a fine is incurred.

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1. Imām al-Khomeinī (r), *Tahrīr al-Wasīla*, page 4
 2. Shaykh al-Tūsī, *al-Mabsūt*, volume 1, page 4
 3. Imām Khomeini (r), *Tahrīr al-Wasīla*, volume 2, page 3
 4. Refer to *Sūrah Nūr*, verse 33
 5. Refer to 5: 1
 6. Opposite of a carcass.
 7. An old unit of measurement.

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