

Part 5: Uqood(Contracts)

Muhaqqiq Hilli has divided this into fifteen chapters.

Chapter One: Kitabu Ttijarah

It deals with purchase and sale, conditions of transactions, types of transactions like cash or credit sales, profits, usury, and so on. It also explains rules of contracts, pronounced or by conduct.

Chapter Two: Kitabalrahn

Deals with buying or selling a mortgage.

Chapter Three: Kitab Almufliis

Mufliis means a bankrupt, who cannot pay off his debts. The Islamic jury would immediately issue an order to restrain such a person from using his wealth till such time when a thorough assessment has been made, and possible payments to the creditors have been arranged.

Chapter Four: Kitab Alhijr

It is an interdiction where an owner of wealth or property is restrained from having any say in its use, like in the cases of a bankrupt, a minor, an insane person, a dying person who intends to will beyond his right of one third, a fool etc.

Chapter Five: Kitab Aldhaman

It means a warranty or guarantee. In Shi'a Fiqh, a guarantor becomes responsible for the debts, to the exclusion of the debtor, but the guarantor can call for reimbursement from the debtor. Muhaqqiq Hilli has included all sureties and promissory notes in this category.

Chapter Six: Kitab Alsulh

Sulh here does not mean peace agreement or truce. It actually means settlement, concession or compromise. For example, to settle a debt whose exact figure is not known by offering a certain sum, and so on.

Chapter Seven: Kitab Alsharikah

It means joint ownership, like in the case of inheritance. As long as it has not been divided, it belongs jointly to all the heirs. It also means partnership. Interestingly, there are cases of unwilling partners, when wheat owned by one person gets mixed up with wheat belonging to another, and separating is impossible. Partnership in businesses, industries and agriculture are contracted by an agreement.

Chapter Eight: Kitab Almudharibah

It is a partnership between capital and labour. When a man or a group of men investing their capital for a business, enter into an agreement with those who will put in their labour or will manage, they must first agree about the share of dividends, and then either pronounce a formula for mudhariba, or make some practical gestures.

Chapter Nine: Kitab Almuzari'ah Or Musaqt

This is a type of Mudhariba, but with a difference. Instead of an arrangement between a businessman, an industrialist and a worker, it is an agreement between a landowner and a person who will work to till the land and carry out plantation, with a clear understanding about profit sharing when the harvest is ready.

Musaqt is an arrangement between the farmer or garden owner, and the worker who undertakes to water the garden etc. and do all such work which would help the harvest or fruition. Again, it is absolutely necessary that a prior agreement on the proportion of profit to be shared by each is reached. In Mudharibah, Muzariah and Musaqt, the profit, little or more, is proportionately shared, but the losses are borne by the capitalist alone.

Chapter Ten: Kitab Alwadee'ah

This is just like Amanat, where a person deposits his property in trust with another person, making him responsible for its protection and security. This chapter deals with the responsibilities of the trustee, particularly in the circumstances of loss or damage.

Chapter Eleven: Kitab Alariyah

To borrow something from a person, with an intention of benefiting from it. The difference between this and wadeeah is that in wadeeah a person is given something to hold in trust, with no permission to use it in any way; while in ariyah, a person agrees to lend his property to another person with a clear understanding that the latter will use it to derive some benefit. Simple example is lending a car to someone for his use, lending clothes for wearing etc.

Chapter Twelve: Kitab Alijarah

To hire, or give on rent. This is done in two ways. Either one gives away his property to another for use against an agreed sum of rent, or one undertakes to complete a certain piece of work against payment. This arrangement has one common feature with ordinary purchase and sale in both the cases, something is given in return. The difference is that in any business or sale, a commodity is exchanged with money or its value, while in ijarah, the property itself is not exchanged, but its utilisation or benefit is hired or rented out.

Chapter Thirteen: Kitab Alwakalah

To appoint someone authorising him to enter into a contract on one's behalf or to make a certain commitment. The example is when a wakil is appointed for Nikah, Ijarah, Selling, Divorce, etc.

Chapter Fourteen: Kitab Alwuqoof & Sadaqat

This deals with endowments and charities. waqf means to exclude one's own property from ownership and give it away for a particular use. In other words, it is an endowment settled for public use. Many laws govern this act, and fuqaha debate over whether waqf requires an intention of qurbat or not. Then there are laws about waqf khas (family endowments) and waqf aam.

Chapter Fifteen: Kitab Alsukna Wal Habs

It is another type of endowment but with a difference. While waqf is permanent, where the owner gives away his property forever, sukna is a temporary arrangement. In it, a person gives away his abode or house to a deserving person for a fixed period of time. When the time expires, the property is restored to him, as its rightful owner.

Habs means a temporary bequest for charitable purposes. In this arrangement, the property itself is not given away; only its accruals or benefits are bequeathed for a certain period, upon expiration of which the benefits revert to the owner.

Chapter Sixteen: Kitab Alhibat

Deals with the gifts. One can only settle a thing which he rightfully owns as a gift. They are of two types: a gift given in exchange or a gift given away without any return. Gifts given in exchange or substitute cannot be claimed back, but that which is given away without any exchange can be claimed back. But if this unconditional gift has been settled on ones own relatives, or if its original form has been changed or destroyed, then it cannot be reclaimed.

Chapter Seventeen: Kitab Alsubq Wa Alramayah

Deals with racing and shooting, a chapter which falls under subsidiary laws of jihad. Islam forbids wagering, betting or staking, but allows training for racing or shooting or marksmanship as a prelude to military skills.

Chapter Eighteen: Kitab Alwasiyyah

This relates to making of the Will, testament etc. in respect of one's estate and minor heirs. Man has a right to appoint an executor or administrator for the purpose. He can direct the appointee to look after his minor children, educate them and provide them with necessary training. Similarly, he can direct him to use up to 1/3 of his estate in the manner he, the testator, prefers.

Such directives are of three types: One is related to distribution of his money and property; another can be about performing certain duties, like Haj, Ziyarat, Qadha Namaz, Fasts, etc. The last one concerns releasing from the bondage, like when he directs that a particular slave be set free upon his death.

Chapter Nineteen: Kitab Annikah

Marriage Contract. In this chapter, Fuqaha discuss several aspects, including the conditions, the types of woman or man one can marry, prohibition in marriage, temporary marriages, permanent marriages, maintenance of the wife and the children and so on.

Though Muhaqqiq Hilli had enumerated 15 chapters, we observe that there are more. Possibly, Muhaqqiq amalgamated certain chapters under one heading.

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