

The *Muhrim* would not stop chanting the call until he enters Makkah; and performs the circumambulation and the jogging between Safa and Marwa. Thereafter he resumes the *talbiyah* until he gets to worship-ground of 'Arafat.

There are four kinds of *Ihrām*. The best of them is the *Ifrād* —exclusive *Ihrām*. This is when the pilgrim enters into inviolate state for the *hajj* alone. Then after *hajj* rites, it is traditional (*sunnah*) for him to enter the inviolate state for lesser *hajj* — *Umrah*.

The *Ihrām* of a male involves both his face and his head, thus he is prohibited from covering both with whatever amounts to direct cover such as turban, rag or any of such things that can be of benefit to him, from heat or cold. It is forbidden for him to wear a ring. The *Ihrām* of a female involves only her face and her hands. She is allowed to hang a cloth over her face for the purpose of veiling it from arousing passion but she is not to affix the cloth to her face with a pin or a similar item. It is forbidden for a *Muhrim* to apply scent that can stick to the body or the cloth such as musk or ambergris. One is also forbidden from anointing his/her hair, clipping nails, cutting of hair and having sexual cohabitation or its preliminaries.

*Hajj* becomes void if sexual cohabitation occurs before staying at the 'Arafat or after it but before performing the circumambulation of 'ifādah<sup>147</sup> and throwing of pebbles at the *Jamrat al-Aqabah*, be it on the day of sacrifice or before it.

2. The circumambulation. It has obligatory conditions, prophetic traditional practices and meritorious practices. The obligatory conditions are six.
  - i. Freedom from impurity and filth
  - ii. Covering of nudity
  - iii. One should keep the House (Ka'bah) to one's left.
  - iv. Doing the circumambulation for seven full rounds in the mosque.
  - v. Keeping the whole body out of the Ka'bah.

التَّيْبَةَ حَتَّى يَدْخُلَ مَكَّةَ فَإِذَا طَافَ سَمَى عَاوِدَهَا لِرَوَاحِ  
مُصَلَّى عَرَفَةَ ، وَأَوَجَّهُ الْإِحْرَامَ أَرْبَعَةً وَأَفْضَلُهَا الْإِفْرَادُ ، وَهُوَ أَنْ يُحْرِمَ  
بِالْحَجِّ مُفْرَدًا ثُمَّ إِذَا فَرَغَ مِنْ أَفْعَالِ الْحَجِّ يُسْنُ لَهُ أَنْ يُحْرِمَ بِعُمْرَةٍ ،  
وَإِحْرَامُ الرَّحْلِ فِي وَجْهِهِ وَرَأْسِهِ ، فَيُحْرِمُ عَلَيْهِ سِتْرُهُمَا بِمَا يُعَدُّ  
سَاتِرًا كَالْعِمَامَةِ وَالْخِرْقَةِ ، وَكُلُّ مَا يُسْتَفَعُّ بِهِ مِنَ الْحَرِّ وَالْبَرْدِ وَيُحْرِمُ  
عَلَيْهِ لُبْسُ الْخَاتَمِ ، وَإِحْرَامُ الْمَرْأَةِ فِي وَجْهِهَا وَكَفِّهَا فَقَطْ . وَلَهَا  
أَنْ تَسْدُلَ عَلَى وَجْهِهَا ثَوْبًا لِأَجْلِ الشَّرِّ ، وَلَا تَغْرِزُهُ بِإِبْرَةٍ وَتَحْوِمَا ،  
وَيُحْرِمُ عَلَى الْمُحْرِمِ مَسُّ طَيْبٍ يَغْلِقُ بِالْجَسَدِ وَالثَّوْبِ كَالْمِسْكِ  
وَالْعَنْبَرِ وَنَحْوِ الرُّاسِ وَتَقْلِيمُ ظَفِيرٍ وَإِبَانَةُ شَعْرِ الْجِمَاعِ وَمُقَدَّمَاتُهُ ،  
وَيَفْسُدُ الْحَجُّ بِالْجِمَاعِ إِنْ وَقَعَ قَبْلَ الْوُقُوفِ أَوْ بَعْدَهُ قَبْلَ طَوَافِ  
الْإِفَاضَةِ وَدَمَى جَمْرَةَ الْعَقَبَةِ فِي يَوْمِ النُّحْرِ أَوْ قَبْلَهُ ، الرُّكْنُ الثَّانِي :  
الطَّوَافُ وَلَهُ وَاجِبَاتٌ وَسُنَنٌ وَمُسْتَحَبَّاتٌ : فَالْوَجِبَاتُ سِتَّةٌ السَّلَامَةُ  
مِنَ الْحَدَثِ وَالْجَبْتِ ، وَسِتْرُ الْعَوْرَةِ ، وَجَعْلُ الْبَيْتِ عَنْ يَسَارِهِ ،  
وَالطَّوَافُ سَبْعَةً أَشْوَاطٍ دَاخِلَ الْمَسْحِدِ وَخُرُوجُ الْجُمُوعِ الْبَدَنِ عَنْ



- vi. Performance of 2 *rak'ahs* of prayer at the end of the circumambulation.  
The prophetic traditions on it are five;
  - i. Doing it on foot
  - ii. Kissing the Black Stone with the mouth during the first round, if the pilgrim is able to and
  - iii. Touching the "Angle of Yaman" of the Ka'bah during the first round.
  - iv. Offering of supplication and invoking blessings on the Prophet. Blessing and peace of Allah be on him.
  - v. Trotting for men in the first three rounds of the (initial) Circumambulation of Arrival. Trotting is more than walking and it is not running.

Its meritorious acts are many. Among which are: avoidance of extensive reading of the Qur'an; avoidance of much talk, and recitation of poem.

Another meritorious act is abstention from drinking water except (when absolutely necessary) for quenching of thirst. Non-resident of Makkah should perform more circumambulations; for doing so is much better in his/her own case than performing supererogatory canonical prayer. One who sits in the mosque is expected to face the Ka'bah. It is reprehensible to recite and to chant the *talbiyyah* in the mosque.

3. Jogging, between Safa and Marwah for seven rounds. The pilgrim starts from Safa and ends it at Marwah. The going is counted as a round while the return-trip is also another round. The jogging is not valid except it is preceded by circumambulation. It is not stipulated that the said preceding circumambulation should be necessarily be an obligatory circumambulation. All the condition for canonical prayer, except facing the *Qiblah*, are also conditions for the jogging. Desirable as well are stay at Safa and Marwah and supplication there. The stay or supplication has no time limit.

Care should be taken concerning what some people do by running between Safah and Marwah. The male pilgrim, and not the female; is expected to trot in between the two green slopes.<sup>148</sup> If one trots throughout the jogging it is still valid though the person commits an error, the same

النَّيْتِ وَصَلَاةُ رَكَعَتَيْنِ عَلَيْهِ وَمَسْنُونَاتُهُ خَمْسَةٌ: الْمَشْيُ، وَتَقْبِيلُ الْحَجَرِ الْأَسْوَدِ فِيهِ فِي الشُّوْطِ الْأَوَّلِ إِنْ قَدَرَ وَلَتَسُّ الرُّكْنِ الْيَمَانِيِّ فِي أَوَّلِ شَوْطٍ وَالِدُعَاءُ وَالصَّلَاةُ عَلَى النَّبِيِّ ﷺ، وَالرَّمْلُ لِلرِّجَالِ فِي الْأَشْوَاطِ الثَّلَاثَةِ

الأولى فِي طَوَافِ الْقُدُومِ وَهُوَ فَوْقَ الْمَشْيِ، وَدُونَ الْجَرْيِ، وَمُسْتَحَبَّاتُهُ كَثِيرَةٌ مِنْهَا تَرَكَ الْكَثِيرُ مِنْ قِرَاءَةِ الْقُرْآنِ وَتَرَكَ الْكَلَامَ وَانْشَادِ الشُّعْرِ وَتَرَكَ شُرْبَ الْمَاءِ إِلَّا لِعَطَشٍ، وَلِكَثِيرِ الْغَرِيبِ مِنَ الطَّوَافِ فَإِنَّهُ أَفْضَلُ فِي حَقِّهِ مِنَ الرُّكُوعِ، وَيُسْتَحَبُّ لِمَنْ جَلَسَ فِي الْمَسْجِدِ أَنْ يَتَوَجَّهَ إِلَى الْكَعْبَةِ وَتَكَرَّرَ الْقِرَاءَةُ وَالتَّلْبِيَةُ فِيهِ. الرُّكْنُ الثَّلَاثُ السَّغْيُ بَيْنَ الصَّفَا وَالْمَرْوَةِ سَبْعَةَ أَشْوَاطٍ يَبْدَأُ بِالصَّفَا وَيَخْتِمُ بِالْمَرْوَةِ وَيَعُدُّ الْبَدْءَ شَوْطًا وَالرَّجْعَةَ شَوْطًا وَلَا يَصِحُّ إِلَّا بِتَقَدُّمِ طَوَافٍ، وَلَا يُشْتَرَطُ أَنْ يَكُونَ الطَّوَافُ وَاجِبًا، وَيُسْتَحَبُّ فِيهِ شُرُوطُ الصَّلَاةِ غَيْرِ الْإِسْتِقْبَالِ وَالْمُكْتُّ عَلَى الصَّفَا وَالْمَرْوَةِ وَالِدُعَاءُ عَلَيْهِمَا، وَلَيْسَ فِي ذَلِكَ حَدٌّ، وَلِيَحْذَرَ مِمَّا يَفْعَلُهُ بَعْضُهُمْ مِنَ الْجَرْيِ مِنَ الصَّفَا إِلَى الْمَرْوَةِ، وَإِنَّمَا يُسْرِعُ الرَّجُلُ دُونَ الْمَرَّاقِ بَيْنَ الْمِيلَيْنِ الْأَخْضَرَيْنِ، وَلَوْ رَمَلَ فِي جَمِيعِ سَعْيِهِ



applies to one who does not trot at all throughout.

4. Staying at 'Arafat for at least an hour before the eve of the Day of Sacrifice. To be on a mount for the stay is preferred; except if there are difficulties for the animal. Standing is better than sitting. One should not sit, unless there are some necessities. To stand on the 'Arafat, with the Imam in the afternoon is obligatory. Leaving it shall necessitate a sacrifice (if done without a cogent reason).

### 'UMRAH

Lesser *hajj* ('Umrah) is a prophetic tradition that shall be performed once in a life-time.

All the principles of *hajj* except standing on 'Arafat, are its own principles. It has two physical boundaries which is the same as the posts for *hajj* except for one who is in Makkah, who would have to enter the state of *Ihrām* at a territory called *Hill* – (opposite the Haram at Makkah). It is better for him to enter the state of *Ihrām* at *Ji'irānah*. The second boundary is that of time. That is all days of the year. The method of its *Ihrām*, such as the desirability of bath and cleanliness, what is to be worn, what is prohibited for him as dress, scent and similar things are as exactly as in *hajj*. It is reprehensible to do it more than once in a single year. It becomes void with the occurrence of sexual cohabitation and other similar actions before the completion of its principles.

### CONCLUSION

When a pilgrim leaves Makkah, let his intention and resolve be to pay a visit to the Prophet (on whom there are blessing and peace of Allah) for visiting him (S.A.W.) is a unanimous prophetic tradition, as well as a desirable meritorious act. When a visitor aims at visiting the Prophet, let it be

أجزأه ، وقد أساء ، وكذا لو لم يرمل بالكليّة . الركن الرابع الوقوف بمرقة ساعة من ليلة النحر والوقوف رايكيا أفضل ، إلا أن يكون بدائيته عذر ، والقيام أفضل من الجلوس ولا يجلس إلا ليتعب والوقوف نهاراً مع الإمام واجب يجبر بالدم إذا تركه .

### ﴿فصل﴾ العُمرة

العُمرة سنة في العمر مرة وأركانها أركان الحج ما عدا الوقوف ، ولها ميقاتان ، مكاني وهو ميقات الحج إلا في حق من هو بمكة فإنه يحرم من الحل ، والأفضل أن يحرم من الجعرانة ، وزماني وهو جميع أيام السنة ، وصفة الإحرام بها من استحباب الغسل والتنظيف وما يلبسه وما يحرم عليه من اللباس والطيب وغير ذلك كالْحَجِّ ، ويكره تكرارها في العام الواحد وتفسد بالجماع ، وما في معناه إذا وقع قبل انقضاء أركانها .

### ﴿خاتمة﴾

إذا خرج الإنسان من مكة فلتكن نيته وعزمته زيارة النبي ﷺ ، إذ زيارته ﷺ سنة مجمع عليها وقضية مرغّب فيها فإذا

exclusively for the visit, for the Prophet is a leader and not a follower. It is desirable for the visitor to stop at the outskirt of Madinah, perform purification, apply scent and put on his most beautiful dress. Then when he enters the mosque, he starts with canonical prayer (*ṣalātu taḥiyatu 'l-masjid*), if it is a time when it is proper to observe prayer. If not, he would start by visiting the tomb of the noble prophet, Muhammad (S.A.W.) He would not stick to the tomb. He backs the *Qiblah* and faces the noble tomb and says:<sup>149</sup>

On Prophet, may peace, mercy and benediction of Allah be unto you.

Then he moves towards his right by about the length of an arm and says:

Peace be unto you oh Abu Bakr Aṣ-Ṣiddiq

He moves again by about an arm-length and says:

Peace be unto you, father of Ḥaṣṣ, 'Umar; al-Fāruq. He thereafter offers the salutation whenever he enters or goes out of the mosque.

أَمُّ الزَّائِرِ لَا يُشْرِكُ مَعَهُ غَيْرَهُ لِأَنَّهُ عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ مَبْعُوعٌ لَا تَابِعٌ، وَيُسْتَحَبُّ أَنْ يَنْزِلَ خَارِجَ الْمَدِينَةِ، فَيَتَطَهَّرُ وَيَتَطَيَّبُ وَيَلْبَسُ أَحْسَنَ ثِيَابِهِ، ثُمَّ إِذَا دَخَلَ الْمَسْجِدَ بَدَأَ بِالرُّكُوعِ إِنْ كَانَ وَقْتُ تَجَوُّزِ فِيهِ النَّافِلَةِ، وَإِلَّا بَدَأَ بِالْقَبْرِ

الشَّرِيفِ وَلَا يَلْتَصِقُ بِهِ، وَيَسْتَدْبِرُ الْقِبْلَةَ وَيَسْتَقْبِلُ الْقَبْرَ الشَّرِيفَ وَيَقُولُ: السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّهِ وَبَرَكَاتُهُ، ثُمَّ يَتَنَحَّى عَنْ يَمِينِهِ نَحْوَ ذِرَاعٍ فَيَقُولُ: السَّلَامُ عَلَيْكَ يَا أَبَا بَكْرٍ الصَّدِيقَ، ثُمَّ يَتَنَحَّى إِلَى الْيَمِينِ أَيْضًا نَحْوَ ذِرَاعٍ فَيَقُولُ: السَّلَامُ عَلَيْكَ يَا أَبَا حَفْصٍ عُمَرَ الْفَارُوقَ، وَيُسَلِّمُ كُلَّمَا دَخَلَ وَخَرَجَ.



## CHAPTER SEVEN

### SACRIFICE, NAMING RITES AND THE SLAUGHTERING OF ANIMALS

As for a type of sacrifice of animal known as *al-udhiyah*, it is the slaughtering of animals for the purpose of seeking closeness to Allah on the day of *'Idu'l-kabir* — the Great Festival<sup>150</sup> — and the two days after it. It is a Prophetic tradition which is done by a free Muslim who is capable of doing it whether he/she is old or young, male or female, resident or traveller while he is not a pilgrim at Munna. It is done on behalf of himself and or on whom he has responsibility to maintain, such as his children, and his poor parents. It is done after the Imam has slaughtered his own animal, on the days of sacrifice. The sacrifice of a person who slaughters his beast before then, is not valid.

Those who do not have an Imam shall give allowance of time that is considered enough for the Imam nearest to them to have performed his prayer and offered his sacrifice. On whether the said Imam is the spiritual leader or the political leader, there are two opinions. The sacrifice of whoever sacrifices his/her animal before the sacrifice day or after the dawn-break but before sunrise on the day of sacrifice is not valid. The least sufficient animal for the festival — sacrifice is as follows: a lamb or a goat that is a year old. For cattle it is a *thaniyy* — one calf on its fourth year; for camels, it is a *thaniyy* — camel — one which has completed its fifth and is in its sixth year.

For festival—sacrifice and hajj penance sacrifice, the following should be avoided:

- (i) One eyed animal. That is the one whose eye has lost sight.
- (ii) An animal with pronounced illness.
- (iii) One with pronounced lameness.
- (iv) The emaciated i.e. one without any fat. It is said that it is one whose bone has no marrow.
- (v) One with slit ear except when the slit is slight: that is,

## الباب السابع في الأضحية والعقيقة والذبح

أما الأضحية فهي ما يُقربُ بذكائه من الأنعام يوم الأضحي وتاليته، وهي سنة على المستطيع الحر المسلم، كبيراً كان أو صغيراً ذكراً أو أنثى مقيماً أو مسافراً: غير حاجٍ بعيني عن نفسه وعن تلزمته نفقته كالأولاد والآباء الفقراء، ووقتها بعد نحر الإمام، من يوم النحر فمن ذبح قبله لم يجزه ومن لا إمام لهم فليتحروا صلاة أقرب الأئمة إليهم ونحره، وهل المراد بالإمام إمام الصلاة أو العباسي؟ قولان،

ومن ذبح قبل يوم النحر أو يوم النحر بعد الفجر قبل طلوع الشمس لم يجزه، وأقل ما يجزي في الضحايا من الأسنان الجذع من الضأن والمعز وهو ابن سنة والثني من البقر وهو ما دخل في السنة الرابعة والثني من الإبل وهو ما أوفى خمس سنين ودخل في السادسة ويتقى في الضحايا والهدايا العيوب فلا يجزي في الضحايا والهدايا عوراء، وهي التي ذهب نود إحدى عينيها، ولا مريضة مرضاً بيناً، ولا عرجاء عرجاً بيناً ولا عفاء، وهي التي لا شحم فيها، وقيل هي التي لا مخ في



not more than a third.

- (vi) Similarly, one whose ear is cut off, is not acceptable, except the cut is insignificant.
- (vii) One that has lost a greater part of its tail.<sup>151</sup>
- (viii) One with broken horn, if the wound has not healed up; if it has healed, then it is acceptable.

Slaughtering a beast on the 7th day of a child—birth is desirable. Its conditions are identical with those of festival sacrifice.

Slaughtering is the complete cutting of the gullet and the two jugular veins. Anything short of that is unacceptable. Slaughtering by a woman is acceptable.

If the one carrying out the slaughtering of the animal lifts his hand in the process, after cutting only part of the gullet and the jugular veins, and thereafter returns the knife and completes the slaughter, the flesh of the animal so slaughtered shall not be eaten.

If, on the other hand, the slaughterer deliberately continues to apply the knife until he completely severed the head from the beast, he has committed a reprehensible act, though the flesh of the animal so slaughtered shall be eaten.

If the slaughterer begins the slaughtering from the nape or from only the outlay the animal shall not be eaten.

The acceptable method of slaughtering is to lay the beast on its left side, facing the *Qiblah*, and the slaughterer says:

In the name of Allah, Allah is the Greatest.<sup>152</sup>

He combines the invocation of Allah's name with *Takbir*. When saying the *Basmalah* he would not complete it up to *Ar-Rahmāni-R-Rahīm*, and he would not offer any salutation to the Prophet (S.A.W.). If he stops at saying *Bismillāh*, it is sufficient even if he forgets to say it out of forgetfulness, it is still unanimously acceptable. *Ibnu'l-Qāsim* opined that even if the omission is deliberate, it is still acceptable but according to *Mudāwwanah* - school of thought (the most basic book on Islamic Law) it is not acceptable.

If he does not make the beast face the *Qiblah*, even if deliberate, it is still admissible. Allah knows best.

عَظَامِهَا وَلَا مَشْقُوقَةُ الْأُذُنِ . إِلَّا أَنْ يَكُونَ الشَّقُّ بَسِيرًا وَهُوَ الثَّلَاثُ  
وَكَذَا قَطْعُ الْأُذُنِ لَا يُجْزِي إِلَّا أَنْ يَكُونَ بَسِيرًا وَكَذَلِكَ ذَهَابُ أَكْثَرِ  
الذَّنْبِ وَكَذَلِكَ مَكْسُورَةُ الْقَرْنِ إِنْ لَمْ يَبْرَأْ فَإِنْ بَرَأَ أَجْزَأُ وَأَمَّا  
الْمَقِيقَةُ فَمُسْتَحَبَّةٌ وَهِيَ الذَّبِيحَةُ الَّتِي تُذْبَحُ يَوْمَ سَابِعِ وَلَادَةِ  
الْمَوْلُودِ ، وَيُسْتَرْطُ فِيهَا مَا يُسْتَرْطُ فِي الضَّحِيَّةِ . وَأَمَّا الذَّبْحُ فَهُوَ  
قَطْعُ الْخُلُقُومِ جَمِيعِهِ وَقَطْعُ الْوَدَجَيْنِ ، فَلَا يُجْزِي أَقْلٌ مِنْ ذَلِكَ ،  
وَذَبْحُ الْمَرَأَةِ جَائِزٌ ، فَإِنْ رَفَعَ الذَّابِحُ يَدَهُ عَنِ الذَّبِيحَةِ بَعْدَ تَقْلِيمِ  
بَعْضِ الْخُلُقُومِ وَالْوَدَجَيْنِ ثُمَّ أَعَادَ يَدَهُ فَأَجْزَأُهَا  
لَمْ تُؤْكَلْ فَإِنْ تَمَادَى الذَّابِحُ عَمْدًا حَتَّى قَطَعَ الرَّأْسَ مِنَ الذَّبِيحَةِ  
أَسَاءَ وَتَوَكَّلْ وَمَنْ ذَبَحَ مِنَ الْقَفَا أَوْ مِنْ صَفْحَةِ الْعُنُقِ لَمْ يُؤْكَلْ  
وَصِفَةُ الذَّبْحِ الْمُسْتَحَبُّ أَنْ يَضَعَ الذَّبِيحَةَ عَلَى يَسَارِهَا مُتَوَجِّهَةً  
لِلْقِبْلَةِ وَيَقُولَ الذَّابِحُ : بِسْمِ اللَّهِ وَاللَّهُ أَكْبَرُ فَيَجْمَعُ بَيْنَ التَّسْمِيَةِ  
وَالْتَكْبِيرِ وَلَا يَذْكُرُ مَعَ التَّسْمِيَةِ الرَّحْمَنِ الرَّحِيمَ ، وَلَا يُصَلِّي عَلَى  
النَّبِيِّ ﷺ ، فَإِنْ اقْتَصَرَ عَلَى التَّسْمِيَةِ أَجْزَأُ وَلَوْ تَرَكَهَا نِسْيَانًا أَجْزَأُ  
اتِّفَاقًا وَكَذَلِكَ تُجْزِئُهُ لَوْ تَرَكَهَا عَمْدًا عِنْدَ ابْنِ الْقَاسِمِ وَمَذْهَبُ  
الْمُدَوَّنَةِ لَا تُجْزِئُهُ وَلَوْ تَرَكَ التَّوَجُّهَ إِلَى الْقِبْلَةِ أَجْزَأُ وَلَوْ كَانَ عَمْدًا  
وَاللَّهُ أَعْلَمُ .



## CHAPTER EIGHT MARRIAGE AND DIVORCE

### Matrimony

**AN-NIKĀH** – (Marriage) literally means entering of a thing into another thing. In Islamic Law, the term, (*nikāh*) – is contract and it is a metaphor for sexual cohabitation. Imām Mālik is reported to have said “Marriage is a desirable act” There is a divergence of opinions on its status in this generation. Some people believe that to leave marriage and engage in acts of worship, for fear of lack of means of meeting his obligations towards wife, is more meritorious (than going into marriage when one is incapable of meeting the obligations). Some people opined that to marry, under such circumstances, is still preferred, and he would strive for a lawful means, if he is able to, and if not, he would have recourse to means that are neither expressly allowed nor forbidden—doubtful means. Sexual cohabitation is not acceptable in the Islamic law, except through two means marriage contract or possession; for the statement of the Almighty Allah that “Those who guide their sexual organs except to their spouses and what their right hands possess”<sup>153</sup>

The first – Marriage contract – has four constituents:

1. Marriage guardian. Marriage contract is not valid without it. Certain conditions are to be satisfied by a would be guardian. These include religious compatibility (on the part of the guardian and the ward). An unbeliever cannot give a Muslim lady out in marriage; neither can a Muslim give out an unbelieving lady out in marriage, except when the prospective bride is his (Muslim's) bondswoman or his manumitted ward; these he can give out in marriage.

Another condition is freedom. Therefore a bondsman, a conditionally freed, a semi autonomous bondsman, or a partially freed person would have marriage contracted by him nullified even if consummation had taken place. Sexual cohabitation would make her earn the dower.

## الباب الثامن في شيء من مسائل النكاح والطلاق

أما النكاح فمعناه في اللغة دخول الشيء في الشيء ، يقال نكحت الحصة أخفاف الإبل ونكح النوم العين ، وفي الشرع حقيقة في العقد مجاز في الوطء ، قال مالك : النكاح مستحب ، واختلف فيه في زماننا هذا ، فقال بعضهم : تركه والإشتغال بالعبادة مخافة عدم القيام بحقوق الزوجة أفضل ، وقال بعضهم : التزوج أفضل ، ويجهل في الحلال ما قدر فإن لم يجد فالمشابه ، والنكاح بمعنى الوطء لا يجوز في الشرع إلا بأحد أمرين : عقد نكاح ، أو ملك يمين ، لقوله تعالى : والذين هم لفروجهم حافظون إلا على أزواجهم أو ما ملكت أيمانهم ، والأول له أركان أربعة : الأول الولي ، فلا يصح العقد بدونه ، ويشتراط في الولي شروط : منها اتفاق الدينين فلا يزوج الكافر المسلمة ولا المسلم الكافرة إلا أن تكون أمته أو معتوقته فإنه يزوجهما ، ومنها الحرية ، فالعبد والمكاتب والمُدبر والمعتق بغيره يفسخ ما عقده ولو بعد الدخول ولها المهر



According to some jurists, the conditions include that he must not himself be a ward, and that he must be a just person. The popular view is that viciousness does not strip one of the right to be a marriage guardian; rather it impairs the perfection of a marriage contract but it does not hinder the validity of the marriage. A fool but impudent person may contract marriage of his own daughter with the permission of his own guardian. Other conditions are maturity, consciousness, masculinity. A contract by a woman on herself or on other is not acceptable.

She should delegate to a man her own marriage contract, that of her bonded—serf and also that of her freedmaid and those under her patronage.

2. Dower. Marriage contract is not valid without it. It is a minimum of a quarter of a *dinar* of gold or three *dirhams* of silver. Or an amount of money that is equivalent of any of the two. It is an obligation due to Allah and to the woman. The obligation towards Allah is three *dirhams* and anything above that is the right of the woman. Even if she agrees, with dispensing with the whole dower, marriage contract based on such agreement is not valid, she may forgo anything above a quarter of a *dinar*. Dower has no maximum limit.
3. Witnessing. It is a condition for a valid consummation and not a condition for marriage contract.
4. Legally qualified spouses. This is the woman who should be free from legal inhibitions which render her forbidden in marriage and the man.  
In the case of the man, there are conditions for validity and conditions for its confirmation. The conditions for its validity are four: Islam, discretion, consciousness, (or sanity) manliness. For a hermaphrodite shall not marry and shall not be married.  
The confirmatory conditions are five:  
(i) Freedom from bondage. The marriage of a bondsman, without the consent of his master, shall not be confirmed.

بِالْمَيْسِرِ . وَمِنْهَا عِنْدَ بَعْضِهِمْ أَنْ يَكُونَ غَيْرَ مُوَلَّى عَلَيْهِ ، وَأَنْ يَكُونَ عَدْلًا ، وَالْمَشْهُورُ أَنَّ الْفِسْقَ لَا يَسْلُبُ الْوِلَايَةَ وَإِنَّمَا يَقْدَحُ فِي كَمَالِ الْعَقْدِ دُونَ صِحَّتِهِ وَيَعْقِدُ السَّقِيَّةُ ذُو الرَّأْيِ عَلَى ابْنَتِهِ بِإِذْنِ وَلِيِّهِ ، وَمِنْهَا الْبُلُوغُ وَالْعَقْلُ وَالذُّكُورِيَّةُ ، فَالْمَرْأَةُ لَا يَجُوزُ عَقْدُهَا عَلَى نَفْسِهَا وَلَا عَلَى غَيْرِهَا وَلَهَا أَنْ تَفُوضَ لِمَنْ يَعْقِدُ لَهَا مِنَ الرِّجَالِ فِي تَرْوِيجِ نَفْسِهَا ، وَفِي أَمْتِهَا الْفَقِيرُ وَالْمُعْتَقَةُ ، وَمَنْ هِيَ فِي إِبْصَانِهَا

الرُّكْنُ الثَّانِي لِلصَّدَاقِ فَلَا يَصِحُّ النِّكَاحُ بِدُونِهِ وَهُوَ رُبْعُ دِينَارٍ مِنَ الذَّهَبِ ، أَوْ ثَلَاثَةُ دَرَاهِمٍ مِنَ الْفِضَّةِ ، أَوْ مَا هُوَ قِيَمَةُ أَحَدِهِمَا مِنَ الْعُرُوضِ وَهُوَ حَقٌّ لِلَّهِ تَعَالَى وَلِلْأَدَمِيِّ ، فَحَقُّ اللَّهِ ثَلَاثَةُ دَرَاهِمٍ ، وَمَا زَادَ عَلَى ذَلِكَ حَقٌّ لِلْمَرْأَةِ ، فَلَوْ رَضِيَتْ بِاسْتِقْطَائِهِ جُمْلَةً لَمْ يَجْزُ وَلَهَا أَنْ تُسْقِطَ مَا زَادَ عَلَى رُبْعِ دِينَارٍ وَأَكْبَرَ الصَّدَاقِ لَا حَدَّ لَهُ الرُّكْنُ الثَّالِثُ الْإِشْهَادُ ، وَهُوَ شَرْطٌ فِي صِحَّةِ الدُّخُولِ لَا فِي صِحَّةِ الْعَقْدِ .

الرُّكْنُ الرَّابِعُ الْمَحَلُّ وَهُوَ الْمَرْأَةُ الْخَلِيَّةُ مِنَ الْمَوَانِعِ الَّتِي تَقْتَضِي تَحْرِيمَهَا ، وَالزَّوْجُ وَيُشْتَرَطُ فِي الزَّوْجِ شُرُوطُ صِحَّةٍ وَشُرُوطُ اسْتِقْرَارٍ ، فَشُرُوطُ الصَّحَّةِ أَرْبَعَةٌ : الْإِسْلَامُ وَالتَّمْيِيزُ وَالْعَقْلُ وَتَحَقُّقُ الذُّكُورَةِ ، فَالْخَتْمُ الْمَشْكِلُ لَا يَنْكِحُ وَلَا يَنْكَحُ ، وَشُرُوطُ الْإِسْتِقْرَارِ خَمْسَةٌ : الْحُرِّيَّةُ . فَلَا يَسْتَقِرُّ نِكَاحُ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ



- (ii) **Maturity.** If a kid marries without the consent of his father or his testamentary executor, if the guardian confirms it, it is acceptable but if he rejects it after consummation the woman shall earn a quarter of a *dīnār*.
- (iii) **Management of one's own affair – Independence.** If an imprudent marries without the permission of his guardian, the guardian shall confirm it, if it is appropriate, but if he rejects it only after consummation, then the woman shall earn a quarter of a *dīnār*.
- (iv) **Sound health.** The marriage by a sick man or woman is not valid. It would be nulled, even if consummation had already taken place.
- (v) **Compatibility of spouses.** Marriage equality or compatibility is a right of the woman and the marriage guardians. If the woman agrees with the marriage guardians to wave it except the question of Islam it is proper.
- (vi) **The formula.** It is a pronouncement with which marriage is contracted. The formula expected from the marriage guardian is such as "I have contracted the marriage" or "I have given her out in marriage" and the groom would say something like "I accept" or "I am pleased with it"

A muslim-man shall not request marriage from a lady who had received an earlier request for marriage from another Muslim, nor make a bid over his bid. Marriage on the basis of exchange is prohibited. That is a vulva for a vulva such as when one man gives out his daughter in marriage to another man, in consideration of the other man's daughter who he takes in marriage without any dower. Also unlawful is temporary marriage, that is, marriage that would subsist for a specified time (not for life).

Such temporary marriage shall be annulled whether before or after consummation without any divorce. She would be entitled to dower which women of equal status with her normally take; unless a particular amount had been specified. In that case she shall be entitled to the specified amount. The punishment for adultery shall be waved for him,

وَالْبُلُوحُ فَلَوْ تَزَوَّجَ الصَّبِيَّ بِغَيْرِ إِذْنِ أَبِيهِ أَوْ وَصِيِّهِ فَإِنْ أَجَازَهُ وَلِيُّهُ جَازَ ، وَإِنْ رَدَّهُ بَعْدَ الْبِنَاءِ فَلِلزَّوْجَةِ رُبْعُ دِينَارٍ ، الثَّالِثُ الرُّشْدُ فَإِنْ تَزَوَّجَ الصَّبِيَّ بِغَيْرِ إِذْنِ وَلِيِّهِ ، فَلِلْوَلِيِّ إِمضَاؤُهُ إِنْ كَانَ سَدَادًا ، وَإِنْ رَدَّهُ بَعْدَ الْبِنَاءِ فَلِلزَّوْجَةِ رُبْعُ دِينَارٍ ، الرَّابِعُ الصُّحَّةُ فَلَا يَصِحُّ نِكَاحُ مَرِيضٍ وَلَا مَرِيضَةٍ وَيُفْسَخُ وَلَوْ بَعْدَ الْبِنَاءِ ، الْخَامِسُ الْكَفَاءَةُ ، وَالْكَفَاءَةُ حَقُّ الْمَرْأَةِ وَالْأَوْلِيَاءِ ، فَإِنْ انْفَقَتْ مَعَهُمْ عَلَى تَرْكِهَا مَا حَدَا الْإِسْلَامُ جَازَ ، الرُّكْنُ السَّادِسُ الصَّبِيَّةُ ، وَهِيَ اللَّفْظُ الَّذِي يَتَعَدَّى بِهِ النِّكَاحُ .

فَالصَّبِيَّةُ مِنَ الْوَلِيِّ نَحْوَ أَنْكَحْتُ وَزَوَّجْتُ وَالصَّبِيَّةُ مِنَ الزَّوْجِ نَحْوَ قَبِلْتُ وَرَضَيْتُ وَلَا يَخْطُبُ أَحَدٌ عَلَى خِطْبَةِ أُخِيهِ وَلَا يَسُومُ عَلَى سَوْمِ أُخِيهِ ، وَلَا يَجُوزُ نِكَاحُ الشَّغَارِ وَهُوَ الْبُضْعُ بِالْبُضْعِ ، مِثْلُ أَنْ يُزَوَّجَ الرَّجُلُ ابْنَتَهُ إِرْجُلٍ عَلَى أَنْ يُزَوَّجَهُ لِأَخَرٍ ابْنَتَهُ ، وَلَيْسَ بَيْنَهُمَا صَدَاقٌ وَلَا يَجُوزُ نِكَاحُ الْمُتَعَةِ وَهُوَ النِّكَاحُ إِلَى أَجَلٍ وَيُفْسَخُ قَبْلَ الْبِنَاءِ وَبَعْدَهُ بِغَيْرِ طَلَاقٍ ، وَيَجِبُ فِيهِ صَدَاقٌ الْغِلَرُ إِلَّا أَنْ يَكُونَ هُنَاكَ تَسْمِيَةٌ فَلَهَا الْمُسَمَّى وَيَسْقُطُ عَنْهُ الْحَدُّ



and the offspring of the marriage shall be his and she should observe full *'iddah* (waiting term.)

Marriage cannot be properly contracted with a woman during her *'iddah* – waiting term – period, be the *'iddah* that of death or that of divorce. The prohibition of marriage becomes everlasting if sexual cohabitation takes place during the *'iddah* period or even if it takes place after it (but when the marriage contract had taken place during the *'iddah* period).

Explicit courtship is forbidden during *'iddah* but allowed are complimentary utterances which imply the desire, such as his saying "I am attracted to you"

Both a free-person and a bondsman can marry concurrently a maximum of four free Muslim women or four free scriptural women. For a bondsman he has the right to marry concurrently a maximum of four Muslim bondswoman. A free man can also do like the bondsman, if he fears committing fornication, and does not have the means i.e. money to marry or maintain a free-woman.

#### POLYGYNY

A man who marries two or more wives, be they free persons, or bondswomen, muslims or women of the scripture, it is obligatory on him to deal equitably with them. If he does not act equitably with them, he is a transgressor and disobedient to Allah and His prophet. Neither is he fit for Imamship nor should his witness be acceptable. Whoever contests its being mandatory is an apostate, who would be expected to repent within three days, if he does not then, he is an unbeliever.

The said equity is applicable to maintenance and clothing, according to the status of each of them. The noble, according to the standard of women of her status, and a lowly woman, according to her status. There should also be equality in night sharing. The man shall not go into the apartment of a wife, for his needs in a day that is not her turn, rather he would make his request from outside her room. The

وَيُلْحَقُ بِهِ الْوَلَدُ وَعَلَيْهَا الْعِدَّةُ كَامِلَةً وَلَا يَجُوزُ النِّكَاحُ فِي الْعِدَّةِ سِوَاهُ  
كَانَتْ عِدَّةَ وَفَاةٍ أَوْ طَلَاقٍ وَيَتَأَبَّدُ التَّحْرِيمُ فِيهِ بِالْوَلَدِ فِي الْعِدَّةِ أَوْ  
بَعْدَهَا وَيَحْرُمُ التَّضَرُّعُ بِالْخِطْبَةِ فِي الْعِدَّةِ وَالتَّحْرِيسُ بِالْقَوْلِ  
الْمَعْرُوفِ مَبَاحٌ مِثْلُ أَنْ يَقُولَ إِنِّي فِيكَ لِرَاغِبٌ.

وَيَجُوزُ لِلْحَرِّ وَالْعَبْدِ نِكَاحُ أَرْبَعِ حَرَائِرَ مُسْلِمَاتٍ أَوْ كِتَابِيَّاتٍ ،  
وَلِلْعَبْدِ نِكَاحُ أَرْبَعِ إِمَاءَ مُسْلِمَاتٍ وَلِلْحَرِّ ذَلِكَ إِنْ خَشِيَ الْعَنَتَ وَلَمْ  
يَجِدْ لِلْحَرَائِرِ طَوْلًا : أَيَّ مَالًا .

#### ﴿فصل﴾

مَنْ كَانَ مُتَزَوِّجًا بِامْرَأَتَيْنِ أَوْ أَكْثَرَ حَرَائِرَ أَوْ إِمَاءَ مُسْلِمَاتٍ أَوْ  
كِتَابِيَّاتٍ فَإِنَّهُ يَجِبُ عَلَيْهِ أَنْ يَعْدِلَ بَيْنَهُنَّ فَإِنْ لَمْ يَعْدِلْ فَهُوَ ظَالِمٌ  
نَاصِرٌ لِلَّهِ وَلِرَسُولِهِ لَا تَجُوزُ إِمَامَتُهُ وَلَا شَهَادَتُهُ وَمَنْ جَعَلَ وَجُوبَهُ  
فَهُوَ كَافِرٌ يُسْتَأْبُ ثَلَاثًا فَإِنْ لَمْ يَتُبْ فَهُوَ كَافِرٌ وَالْعَدْلُ الْمَذْكُورُ  
يَكُونُ فِي النِّفَقَةِ وَالْكُسُوفِ بِحَسَبِ حَالِ كُلِّ وَاحِدَةٍ فَالْشَّرِيفَةُ يَقْدَرُ  
مِثْلُهَا ، وَالْدُّنْيَةُ يَقْدَرُ مِثْلُهَا . وَفِي الْمَيْتِ فَلَا يَدْخُلُ لِحَاجَتِهِ عِنْدَ



sharing of nights shall be a day and night at a time, the sharing shall not be on a two-day rotation except with the consent of the wives.

## TWO USEFUL HINTS

1. A man shall not cohabit with his wife or his bondswoman in a room while there is another person there, whether the person is young or old, awake or asleep.
2. It is reprehensible to have the spouses together on a single mat (or bed). It is said that it is even prohibited. There is divergence of opinions on sleeping together with a collection of bondswomen. Some opined that it is legal, while others opined that it is not. As far as sharing of a bed is concerned it is said to be reprehensible, but as regards sexual cohabitation with any one of them while another or others are present, the law is unanimous about its illegality. This brings us to the end of what I intended to compile on issues related to marriage.

## DIVORCE

### Repudiation or Divorce

The word "*at-talāq*" – repudiation or divorce is taken from the statement "I release the camel". And it is released when you free it from the cord or shackle. Any woman with a husband is under a covenant with her husband. When he repudiates her, she has been released from his covenant. "*At-Talāq*" literally means a break and departure. In usage it is the breaking of marriage bonds between a couple. This authority to so break the bond, has been vested on the husbands and not the wives by the Almighty – Allāh. The break are of two types: The approved that is orthodox repudiation and the reprehensible, which is heretical repudiation. The latter is three repudiations in one pronouncement. Orthodox repudiation has conditions. That if the repudiated woman is capable

مَنْ لَمْ تَكُنْ نَوَيْتَهَا وَإِنَّمَا يَطْلُبُهَا مِنْ خَارِجِ الْبَيْتِ ، وَالْقِسْمُ يَوْمٌ وَلَيْلَةٌ وَلَا يَقْسِمُ يَوْمَيْنِ إِلَّا بِرِضَاهُنَّ .

﴿قَالَ تَانِ﴾

الأولى : لَا يُصِيبُ الرَّجُلُ زَوْجَتَهُ أَوْ أَمَتَهُ وَمَعَهُ أَحَدٌ فِي الْبَيْتِ صَغِيرًا كَانَ أَوْ كَبِيرًا يَقْطَعَنَّ أَوْ نَائِمًا ، الثَّانِيَةُ يُكْرَهُ أَنْ بُضَاجِعَهُنَّ فِي فِرَاشٍ وَاحِدٍ وَقِيلَ يَحْرُمُ ، وَاخْتَلَفَ فِي جَمْعِ الْإِمَاءِ فَقِيلَ يَجُوزُ وَقِيلَ لَا يَجُوزُ وَقِيلَ يُكْرَهُ هَذَا فِي الْمُضَاجَعَةِ وَأَمَّا وَطْءُ إِحْدَاهُنَّ بِمَخْضَرٍ أُخْرَى فَلَا يَجُوزُ اتِّفَاقًا ، وَهَذَا آخِرُ مَا أَرَدْنَا جَمْعُهُ مِنْ مَسَائِلِ النِّكَاحِ

وَأَمَّا الطَّلَاقُ فَهُوَ مَاخُودٌ مِنْ قَوْلِكَ أَطْلَقْتُ النَّاقَةَ فَانْطَلَقَتْ إِذَا أُرْسِلَتْهَا مِنْ عِمَالٍ أَوْ قَبْدٍ ، فَكُلُّ ذَاتِ زَوْجٍ مُؤَقَّةٌ عِنْدَ زَوْجِهَا . فَإِذَا فَارَقَهَا أَطْلَقَهَا مِنْ وَثَاقِهِ ، وَالطَّلَاقُ لَفْظُ الْإِنْقِطَاعِ وَالذَّمَّابُ ، وَاضْطِلَاحًا حَلُّ الْعِصْمَةِ الْمُتَعَقِدَةِ بَيْنَ الزَّوْجَيْنِ ، وَهَذَا أَمْرٌ جَعَلَهُ اللَّهُ تَعَالَى بِأَيْدِي الْأَزْوَاجِ دُونَ الزَّوْجَاتِ وَهُوَ عَلَى قِسْمَيْنِ : مُبَاحٌ وَهُوَ طَّلَاقُ السَّنَةِ ، وَمَحْظُورٌ وَهُوَ طَّلَاقُ الْبَيْعَةِ وَهُوَ الطَّلَاقُ ثَلَاثًا فِي كَلِمَةٍ وَاحِدَةٍ ، وَلِطَّلَاقِ السَّنَةِ شُرُوطٌ :



of menstruating, she should not be menstruating or having post-natal bleeding at the time of the pronouncement of the repudiation. She should be in a period of cleanliness in between two distinct occasions of menstruation within which he had not cohabited with her. He should pronounce the divorce once in the period.

If a man tells his wife: "You are divorced." That is one pronouncement of divorce, unless he intends it to be more than once pronouncement of divorce.

*Khul'* — Release — is an irrevocable dissolution. It cannot be reversed, even if he did not mention repudiation. Once she has given him something on the basis of which he releases her.

The constituents of repudiation are four:

1. The proponent of the repudiation. It is conditional that he should be a Muslim, who is responsible. The repudiation pronounced by an unbeliever is discountenanced.<sup>154</sup> Also disregarded is the repudiation pronounced by a child-husband, someone who is not in his senses, due to insanity, swoon or similar feats. It is said in *Jawāhir*<sup>155</sup> "that concerning one intoxicated by liquor or spirit, there are two views" The statement of the author of *Jawāhir* "with liquor or spirit" is to exclude the situation when a person takes milk or eats lawful food or medicine then it intoxicates him. If such a person pronounces repudiation under such circumstances, according to the unanimous opinion of jurists, such repudiation is not binding on him.
2. Another constituent is the object of repudiation. That is the wife. The condition is that the husband, prior to the repudiation, possessed marital authority over the woman.
3. Another constituent is intention. One whose tongue pronounced repudiation without actually intending it, that pronouncement does not confer repudiation on him. The repudiation pronounced by one coerced to pronounce it is not effective.

أَنْ تَكُونَ الْمُطَلَّقةُ مِنْ تَحِيضٍ ، وَأَنْ لَا تَكُونَ حَائِضًا وَلَا نَفْسَاءَ وَأَنْ تَكُونَ فِي طَهْرٍ لَمْ تُمَسَّ فِيهِ وَأَنْ يُطَلَّقَ فِيهِ وَاحِدَةً ، وَمَنْ قَالَ لِزَوْجَتِهِ أَنْتِ طَالِقٌ فَهِيَ وَاحِدَةٌ حَتَّى يَتَوَيَّ أَكْثَرَ مِنْ ذَلِكَ ، وَالْخُلْعُ طَلَقٌ بَاطِنٌ لَا رَجْعَةَ فِيهَا وَإِنْ لَمْ يُسَمَّ طَلَاقًا إِذَا أُعْطَتْهُ شَيْئًا يَخْلَعُهَا بِهِ مِنْ نَفْسِهِ ، وَأَرْكَانُ الطَّلَاقِ أَرْبَعَةٌ : الْأَوَّلُ مَوْقِعُ الطَّلَاقِ ، وَشَرْطُهُ أَنْ يَكُونَ مُسْلِمًا مُكَلَّفًا فَلَا يَنْعَقِدُ طَلَاقُ الْكَافِرِ ، وَلَا الصَّبِيِّ وَلَا مَنْ زَالَ عَقْلُهُ بِجُنُونٍ أَوْ إغمَاءٍ أَوْ نَحْوِ ذَلِكَ ، وَالسَّكْرَانُ بِخَمْرِ أَوْ نَبِيذٍ الْمَشْهُورُ نَفُوذُ طَلَاقِهِ ، قَالَهُ فِي الْجَوَاهِرِ وَظَاهِرُهُ مَبْذُورٌ لَا ،

وَاحْتَرَزَ بِقَوْلِهِ بِخَمْرِ أَوْ نَبِيذٍ عَمَّا لَوْ شَرِبَ لَبَنًا أَوْ أَكَلَ طَعَامًا حَلَالًا أَوْ دَوَاءً فَسَكِرَ مِنْهُ ، فَإِنَّهُ إِنْ طَلَّقَ فِي تِلْكَ الْحَالَةِ لَا يُلْزَمُهُ طَلَاقٌ إِجْمَاعًا ، الثَّانِي الْمَحَلُّ وَهُوَ الزَّوْجَةُ ، وَشَرْطُهُ مِلْكُ الزَّوْجِ عِصْمَةُ الْمَرْأَةِ قَبْلَ الطَّلَاقِ ، الثَّلَاثُ الْقَصْدُ فَمَنْ سَبَقَ لِسَانُهُ إِلَى الطَّلَاقِ لَمْ يَقَعْ عَلَيْهِ طَلَاقٌ وَلَا يَقَعْ طَلَاقُ



4. The pronouncement or an action that amounts to it. The pronouncement is of two kinds: manifest pronouncement and indirect pronouncement as well as what amounts to either of them both.

The manifest pronouncement is that which contains the word — "at-talāq" — "repudiation" —, no matter how it is put. Such as you are repudiated or you are a repudiated one. Such repudiation thus becomes effective and it does not require any intention and the repudiation amounts to one repudiation only except when he intends it (as shown by action and circumstances) to be for more than one.

The indirect pronouncement is of two kinds: The clear and the imputed. The clear one are such as "You are free" or "You are acquitted" it is like manifest pronouncement in the sense that the claim of the man that he did not intend divorce shall not avail.

In the case of the imputed pronouncement such as "Be gone" or "Go away", the claim of the husband that it was not an intent of repudiation and concerning the number of divorce that it was intended to convey, shall be upheld. If he claims that he intends repudiation by it, the popular view among jurists is that it is taken as repudiation.

What amounts to the pronouncement is of various kinds. Among them are understood indicators. An indication from a dumb is considered as repudiation, Understood indicator includes written repudiation from one who is capable of speaking.

If he puts the repudiation in writing and he intends it to mean repudiation, then what he wrote shall be binding on him. If he writes it without any determination to repudiate, he can recall it provided the letter has not got to the woman; but if it has got to the woman, it becomes binding.

But in the case of one who had absolutely resolved within his mind to repudiate and he wrote the letter which has not got to the woman, there are two reports. (One is that repudiation is binding; the other is that it can be recalled by him).

المُكْرَوِ ، الرَّابِعُ اللَّفْظُ أَوْ مَا يَقُومُ مَقَامَهُ مِنَ الْفِعْلِ ، أَمَّا اللَّفْظُ فَيَنْقَسِمُ إِلَى صَرِيحٍ وَكِتَابَةٍ وَمَا عَدَاهُمَا ، فَالصَّرِيحُ مَا فِيهِ لَفْظُ الطَّلَاقِ عَلَى أَيِّ وَجْهِ كَانَ مِثْلُ أَنْ يَقُولَ أَنْتِ طَالِقٌ أَوْ أَنْتِ مُطَلَّقَةٌ فَيَلْزَمُ بِهَذَا الطَّلَاقُ وَلَا يَقْتَرِفُ إِلَى نِيَّةٍ وَمُطَلَقُهَا وَاحِدَةٌ ، إِلَّا أَنْ يَنْوِي أَكْثَرَ ، وَالْكِتَابَةُ قِسْمَانِ ظَاهِرَةٌ وَمُخْتَمَلَةٌ ظَاهِرَةٌ مِثْلُ قَوْلِكَ أَنْتِ خَلِيَّةٌ وَرَبِيَّةٌ وَهِيَ كَالصَّرِيحِ فِي أَنَّهُ لَا تُقْبَلُ دَعْوَاهُ فِي غَيْرِ الطَّلَاقِ ، وَالْمُخْتَمَلَةُ مِثْلُ إِذْهَبِي وَأَنْصَرِفِي فَتُقْبَلُ دَعْوَاهُ فِي غَيْرِهِ وَعَدَدُهُ فَإِذَا ادَّعَى أَنَّهُ أَرَادَ الطَّلَاقَ قَالَهُ شَهْوَرٌ أَنَّهُ يَكُونُ طَلَاقًا ، وَأَمَّا مَا يَقُومُ مَقَامَ اللَّفْظِ فَأَنْوَاعٌ : مِنْهَا الْإِشَارَةُ الْمَقْهَمَةُ وَهِيَ مُعْتَبَرَةٌ مِنْ

الْأَخْرَسِ فِي الطَّلَاقِ وَمِنْهَا كِتَابَةُ الطَّلَاقِ مِنَ الْقَادِرِ عَلَى النُّطْقِ فَإِنْ كَتَبَ الْكِتَابَ بِالطَّلَاقِ وَهُوَ عَازِمٌ عَلَى الطَّلَاقِ وَقَعَ عَلَيْهِ مَا كَتَبَهُ وَإِنْ كَتَبَهُ غَيْرَ عَازِمٍ فَلَهُ إِدَّاهُ مَا لَمْ يَبْلُغِ الْمَرْأَةَ فَيَلْزَمُهُ وَلَوْ عَقَدَ الطَّلَاقَ بِقَلْبِهِ جَازِمًا مِنْ غَيْرِ تَرَدُّدٍ فَفِيهِ وَقُوعُ الطَّلَاقِ عَلَيْهِ بِمَجْرَدِ ذَلِكَ رِوَايَتَانِ ، وَلَا يَجُوزُ أَنْ يَتَزَوَّجَ الرَّجُلُ امْرَأَةً لِحِلِّهَا



It is prohibited for a man to marry a woman in order to make her lawful for one who had irrevocably repudiated her. Such practice does not make her lawful for the first husband. The marriage shall be aborted whether or not consummation has taken place. If the termination of marriage is after consummation had taken place, she is entitled to the specified dower. A woman whom a man has repudiated by a triple repudiation shall not thereafter, whether through ownership or marriage, be lawful for him until she had been married to, and divorced by another man.

### REVOCABLE REPUDIATION

It is said in the *Risālah* <sup>156</sup> that: He who repudiates his wife may take back his wife who still menstruates in as much as she has not entered her third menstrual circle. For a free woman or second menstrual circle for a bondswoman. A commentator said: "The husband possesses the right of revocation in any repudiation that is not yet up to three, provided it is not accompanied with a ransom, that is, once the separation is not through *Mubara'ah*, mutual separation or on account of ransom.

He has the power of revocation provided the period of retreat *'iddah* — has not expired, for marriage bond between a couple does not cease to subsist without triple repudiation in the case of a free woman as long as it is not accompanied by ransom and the *'iddah* has not expired.

The revocation may be through both intention and utterance, or intention alone. If he resolves within himself that he has revoked the repudiation, the revocation, between him and Almighty Allah, remains valid. If a person pronounces the revocation without the actual intention, while the revocation is valid, it is a matter between him and Allah; the Almighty.

Sexual cohabitation without the intention of revocation is not a revocation. Sexual cohabitation without the intent of revocation, is illegal.<sup>157</sup>

لَمَنْ طَلَّقَهَا ثَلَاثًا وَلَا يُحِلُّهَا ذَلِكَ ، وَيُفْسَخُ قَبْلَ الْبِنَاءِ وَبَعْدَهُ ، وَإِنْ فُسِّخَ بَعْدَهُ فَلَهَا الْمُسَمَّى . وَمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا لَمْ تَحِلَّ لَهُ بِحِلِّكَ وَلَا نِكَاحٍ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ .

### ﴿فَصْلُ الرِّجْعَةِ﴾

قَالَ فِي الرِّسَالَةِ وَلَهُ : أَيُّ لِّلْمُطَلَّقِ زَوْجَتَهُ الرِّجْعَةُ فِي الَّتِي نَحِيضُ مَا لَمْ تَدْخُلْ فِي الْحَيْضَةِ الثَّالِثَةِ فِي الْحُرَّةِ أَوْ الثَّانِيَةِ فِي الْأُمَةِ قَالَ شَارِحُهَا

الرِّجْعَةُ بِمِلْكِهَا الزَّوْجُ فِي كُلِّ طَلَاقٍ نَقَصَ عَدَدُهُ عَنِ الثَّلَاثِ مَا لَمْ يَكُنْ مَعَهُ فِدَاءٌ أَوْ مَا لَمْ يَكُنْ عَلَى وَجْهِ الْمُبَارَاةِ وَالْفِدْيَةِ وَإِنَّمَا كَانَتْ لَهُ الرِّجْعَةُ مَا لَمْ تَنْقُضِ الْعِدَّةُ لِأَنَّ الْعِصْمَةَ بَيْنَ الزَّوْجَيْنِ لَا تَنْقَطِعُ بِمَا دُونَ الثَّلَاثِ فِي الْحُرَّةِ إِذَا لَمْ يَكُنْ مَعَهُ فِدَاءٌ مَا لَمْ تَنْقُضِ الْعِدَّةُ وَالرِّجْعَةُ تَكُونُ بِالنِّيَّةِ مَعَ الْقَوْلِ أَوْ بِالنِّيَّةِ دُونَ الْقَوْلِ ، فَإِنْ نَوَى فِي نَفْسِهِ أَنَّهُ رَاجِعُهَا فَقَدْ صَحَّتْ رَجْعَتُهُ فِيمَا بَيْنَهُ وَبَيْنَ اللَّهِ تَعَالَى ، وَلَوْ انْفَرَدَ اللَّفْظُ دُونَ النِّيَّةِ لَمَا



On the issue of the need for the presence of witnesses for the revocation, there are two views: that it is obligatory and that it is only desirable.

## CHAPTER NINE

### COMMERCIAL TRANSACTION

A commercial transaction has three constituents.

1. A statement that amounts to consent, such as the statement of the seller that "I sold it to you" and the purchaser saying "I bought it"; or an action (from either party) such as acceptance of offer by payment and delivery.
2. The parties, i.e. the seller and the purchaser. It is a condition for the validity of the sale that each of the parties<sup>158</sup> must be in full possession of his/her faculties. Sale or purchase by a person not in his full senses is not validly contracted, be the lack of full control of one's faculties due to youthfulness, madness, or drunkenness and similar things. A commercial transaction cannot be effected except by one with his full capacity.
3. The object. This means the price and the priced. Concerning both of them, there are five conditions to be satisfied.
  - (i) Ritually clean. The sale of a ritually unclean object such as excreta, or a filthy thing that cannot be purified such as rancid oil is not valid.
  - (ii) To be of lawful utility. The sale of an animal that is illegal for consumption such as horse, mule or donkey is not valid, if it is in a critical condition that may lead to death.
  - (iii) Not being generally unlawful while at the possession of the seller. It is not proper to sell dog (except for hunting and security).

صَحَّتْ لَهُ الرَّجْعَةُ بِذَلِكَ فِيمَا بَيْنَهُ وَبَيْنَ اللَّهِ تَعَالَى ، وَالْوُطْءُ بِدُونِ  
النِّيَّةِ لَا يَكُونُ رَجْعَةً ، وَالْوُطْءُ حَرَامٌ ، وَفِي الْإِشْهَادِ عَلَى الرَّجْعَةِ  
قَوْلَانِ بِالْوُجُوبِ وَالِاسْتِحْبَابِ .

## الباب التاسع في البيع

وَلَهُ ثَلَاثَةُ أَرْكَانٍ الْأَوَّلُ مَا يَدُلُّ عَلَى الرِّضَا مِنْ قَوْلٍ كَقَوْلِ  
الْبَائِعِ بِعْتُكَ وَقَوْلِ الْمُشْتَرِي اشْتَرَيْتُ ، أَوْ فِعْلٍ كَالْمُعَاطَاةِ . الثَّانِي  
الْعَاقِدُ وَهُوَ الْبَائِعُ وَالْمُشْتَرِي وَيُشْتَرَطُ فِي صِحَّةِ بَيْعِهِ أَنْ يَكُونَ  
مُمَيِّزًا ، فَلَا يَنْقَضُ بَيْعُ غَيْرِهِ ، وَلَا شِرَاؤُهُ لِصَغَرٍ أَوْ جُنُونٍ أَوْ سُكْرِ أَوْ  
نَحْوِ ذَلِكَ وَلَا يَلْزَمُ الْبَيْعُ إِلَّا مِنْ مُكَلَّفٍ . الثَّالِثُ الْمَحْقُودُ عَلَيْهِ وَهُوَ  
الْثَمَنُ وَالْمُثْمَنُ ، وَيُشْتَرَطُ فِيهِمَا خَمْسَةُ شُرُوطٍ : الطَّهَارَةُ فَلَا  
يَجُوزُ بَيْعُ نَجَسٍ كَالْعَذِيرَةِ ، وَلَا مُتَنَجِّسٍ لَا يُمَكِّنُ تَطْهِيرَهُ  
كَالزَّيْتِ ، وَالِانْتِفَاعُ بِهِ انْتِفَاعًا شَرْعِيًّا فَلَا يَجُوزُ بَيْعُ مُحَرَّمِ الْأَكْلِ  
كَالْفَرَسِ وَالْبَعْلِ وَالْحِمَارِ إِذَا أَشْرَفَ عَلَى الْمَوْتِ ،  
وَعَدَمُ نَهْمٍ وَرَدَّ فِي عَيْنِهِ فَلَا يَجُوزُ بَيْعُ الْكَلْبِ وَالْقَذَرَةُ عَلَى