

Islamic Jurisprudence ♦ Financial Matters 2 ♦ 26 Rabi II 1442 / 12 December 2020 1

***Dhimān* – (الضمان) – Surety**

- *Dhimān* means “surety”.
- *Dhāmin* (الضامن) means “surety” or “guarantor”.
- It means: The guarantee of the debt of one party by another who assumes the responsibility of paying the debt in case the debtor defaults or is unable to make the payment.

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1

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***Dhimān* – (الضمان) – Surety (2)**

Two Forms of *Dhimān*

<p>The liability of loan shifts from debtor to guarantor.</p> <p>= if he dies before the debtor, the loan become immediately payable from his estate.</p>	<p>The guarantor pledges to creditor to pay the loan.</p> <p>= if he dies before the debtor, there is no liability on his estate <i>unless</i> he makes a specific will about it.</p>
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2

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***Dhimān* – (الضمان) – Surety (3)**

- This kind of *dhimān* (surety) is obviously a valid agreement; and is also supported by an authentic hadith:
- Imam Sadiq (a) was asked by a person who is dying, and he has debt, and another person takes on his liability. He said, “If the creditors agree, then the deceased is released from the liability.”

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3

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***Dhimān* – (الضمان) – Surety (4)**

Conditions for its validity:

1. The guarantor proposes & the creditor accepts.
2. Both should be *bāligh*, sane, willing intent to do so and are not barred from managing their property (e.g., because of bankruptcy).
3. The loan should have been finalized between the creditor and the debtor.
4. The debtor, the guarantor and the loan should be clearly specified.

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4

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***Dhimān* – (الضمان) – Surety (5)**

Some Rules about Surety:

- The guarantor can be changed: For example, 'Amr was the initial guarantor for Zayd; then Bakr becomes a guarantor for 'Amr; then Khalid becomes a guarantor for Bakr – then all become free from their liabilities except the last guarantor.
- There can be two guarantors for a single loan as per their agreed upon proportions. If they don't specify their proportions, then they are liable for half each of the loan.

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5

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***Rahn* – (الرهن) – Security**

- *Rahn* means something given to the creditor as a deposit in lieu of the loan.
- The Qur'an supports it:
وَأِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَانٌ مَّقْبُوضَةٌ
"If you are on a journey and you do not find a scribe, then the creditor can take possession of a security from the debtor." (2:283)

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6

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Rahn – (الرهن) – Security (2)

Conditions:

1. The debtor proposes the security and the creditor accepts it.
2. Both should be bāligh, sane, willing intent to do so and are not barred from managing their property (e.g., because of bankruptcy).
3. The security or deposit should be an item that can be legally sold or bought. So a loan or usage of flat or wine or a waqf property cannot be a deposit.
4. The loan should be confirmed.

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7

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Rahn – (الرهن) – Security (3)

Some Rules about Security / Deposit:

1. It is not necessary that the deposit be a property of the debtor.
2. The creditor cannot sell the security unless he has the *wikālat* (authorization) from the debtor to sell it in case of default and recoup his loan. + Such a *wikālat* cannot be revoked as long as the debtor is alive.
3. If the proceeds of the sale of the security is more than the loan, then the extra will be a trust to be given to the debtor.

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8

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Rahn – (الرهن) – Security (4)

4. If the deposited item can be sold partially and fulfill the payment of the loan, then only half should be sold and the other half will remain with the debtor.
5. The *rahn* (the item deposited) is a trust (*amānat*) with the creditor. As an *amānat*, if it is destroyed or lost, without any negligence on part of the creditor, then he is not responsible for it. However, if it was because of the creditor's negligence, then he is liable to replay it or to pay its value.

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9

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Hawālah – (الحوالة) – Transfer of Liability

- **Hawālah** means transfer of the debt from the debtor to another person.

1. The transfer should be proposed by the debtor and accepted by the creditor.
2. Both should be bāligh, sane, willing intent to do so and are not barred from managing their property (e.g., because of bankruptcy).
3. The loan should be confirmed and specified before the transfer of liability.

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10

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Kafālah – (الكفالة) – Guarantee

- **Kafālah** means the guarantee in which the guarantor pledges to bring the debtor to the creditor when it is time to pay the loan.
- “**Kafil**” means the guarantor.
- The creditor has the right to ask for such a **kafil**.
- Such a guarantee is valid but it is considered makrūh.

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11

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Kafālah – (الكفالة) – Guarantee (2)

- Once the term of the loan ends, the creditor has the right to ask the guarantor to bring the debtor in for payment.
- If the debtor pay off, then the loan comes to its end.
- But if the debtor does not show up, then the creditor can take the guarantee (kafil) to the religious judge who will put him in prison until the debtor shows up.
- Kafālah ends with the death of the kafil or makfūl. But if the creditor dies, then the kafālah will continue as the right of the his heirs.

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12

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Wadī'ah – (الوديعة) – A trust

- **Wadī'ah** means placing an item for safekeeping with someone else.
- This is valid if both parties agree on it.
- Both should be bāligh, sane, willing intent to do so and are not barred from managing their property (e.g., because of bankruptcy).
- The wadī'ah agreement ends if the owner dies or becomes insane – the trust then has to be returned to the heir.

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13

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Wadī'ah – (الوديعة) – A trust (2)

- If the entrusted item is destroyed or lost without negligence, then the trustee is not liable for it.
- However, if it was because of negligence, then he should either replace it or pay its value.
- When the owner asks for his property back, it is wājib to return it as soon as possible even if the owner is a kāfir.
- If the trustee feels that his death is approaching, then he should return the trust to the owner or let the heirs know that this is a trust to be returned to so-and-so.

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14

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Wadī'ah – (الوديعة) – A trust (3)

- If a thief gives something to you as a trust, then it is not permissible for you to return it to him; rather it is a religious trust with you and it is wājib to give it to the owner if you know him or you should try to find out the owner.
- If you can't find him, then you should give that as sadaqah on behalf of the owner, of course, with the permission of the mujtahid (ihtiyat wajib).

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15

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Wadi'ah – (الوديعة) – A trust (4)

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا
“Verily commands you to deliver trusts back to their owners.” (4:58)

أَمِنَ بَعْضُكُم بَعْضًا فَلِيُؤَدَّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ
“...But if one of you trusts another, let him who is trusted deliver his trust...” (2:283)

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16

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Wadi'ah – (الوديعة) – A trust (5)

- Abu Kahmas conveyed salams of 'Abdullah Abi Ya'fur to the 6th Imam. Imam Sadiq (a) said:
- When you see 'Abdullah, convey my salam to him and say to him, “Indeed Ja'far bin Muhammad says to you:
- “See what was the character of 'Ali (a) which elevated him in the eyes of the Prophet (s) and then follow it. For indeed 'Ali (a) reached that esteem in eyes of Allāh's Messenger (s) because of truthfulness in speech and fulfillment of the trust.”

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17
