

The Messenger of Allah, may Allah bless him and grant him peace, said: The superiority of the learned man over the worshipper is like that of the moon, on the night when it is full, over the rest of the stars. The learned are the heirs of the Prophets, and the Prophets leave neither dinar nor dirham, leaving only knowledge, and he who takes it takes a big fortune.

- Abu Dawud



## About Us

The Academy of Research in Islamic Jurisprudence (ARIJ) was established in 2012 by Mufti Ibrahim Kureshi and Mufti Zakariyya Panchbhaya under the supervision of their elders, Mufti Ahmed Khanpuri and Mufti Saeed Motara. The organization was established to provide guidance to the Muslims of Canada on a host of emerging issues pertaining to Islamic laws (fiqh). In our short period of operation we have provided Muslims practical guidance on the following issues:

- Inheritance and the structuring of wills
- Structuring financial contracts
- Divorce proceedings

We regularly answer questions on fiqh related matters on our website at [www.arij.ca](http://www.arij.ca) and frequently conduct workshops, classes and seminars on Islamic topics to disseminate general Islamic knowledge.

## In This Issue....

- Calculation of distance to be considered a traveler
- Contraception in Islam
- Appointing someone to pay **zakat** on one's behalf
- Contracting marriage over the phone
- Islamic Finance: Investing in shares and paying **zakat** on them

**Q.** In terms of the *shari'ah*, what is the distance one needs to travel or intend to travel to be considered a *musaafir* (traveler)? Also, from what point does one calculate the travel distance? I.e. does he start calculating when he leaves his home or his area or his city?

**A.** If a person sets out on a journey **with the intention of travelling for 78 km or more** then in terms of *shari'ah* he is considered to be a *musaafir* (*shar'i* traveller) as soon as he exits the boundary of his hometown. Once a person exits the boundaries of his hometown the *shar'i* implications of a traveler will now be applicable to him.

When he reaches his destination, if he has the intention of residing therein for 15 days or more, he will not remain a *musaafir* while he is stationed at that place. If he intends to stay for less than 15 days, then he will remain a *musaafir*. All the rules of *shariah* pertaining to each scenario will apply accordingly.

For one to be regarded as a traveler, the distance from the boundary of one's hometown to the boundary of the intended city of destination will be taken into consideration. Therefore, one will only be classified as a *Musaafir* if the distance between the boundaries of the two cities is 78 kilometers or more.

Hence, the extra mileage traveled within the borders of one's hometown and the destination town will not be considered in determining the 78 kilometers of travel.

(Ref: *Fatawa Mahmoodiyah*, Vol. 7, Pg. 476, *Fatawa Darul Uloom Zakariyavol 2*. Pg. 499-500)

What is implied by the boundary of a town or city according to *shari'ah* is the termination point of the built up/urban area of the city. In the case where the built up area of a town merges with that of another town, the boundary will be determined by the limit of the legal jurisdiction of the city wherein the governing body of the city or town can legislate and enforce its laws. (Please refer to a more detailed explanation on our website).

(*Radd al-Muhtaar* vol. 2, pg. 121)

Therefore the residents of Toronto who intend to travel to Cambridge will not be deemed as *musaafir* since the distance from the border of Toronto (401 and Renforth) to the border of Cambridge (401 and Townline) is only 64 km.

East York, York, North York and Scarborough are no longer considered to be separate cities but rather a part of the city of Toronto, because they are all governed by the mayor and the city council of Toronto. They do not have their own governing bodies.

If a resident of Toronto intends to travel overseas (which is more than 78 km) then the rules pertaining to a traveler will apply to him once he reaches the airport, as the airport is located in Mississauga. However for the residents of Mississauga the rules of a traveler will not apply to them at the airport as it is located in their own hometown.

## Contraception in Islam

The Messenger of Allah, may Allah bless him and grant him peace, encouraged having more children. However the *shari'ah* permits the use of reversible contraception under the following conditions:

1. *If another pregnancy would adversely affect the care and upbringing of the existing child*
2. *If it is proven that another pregnancy would adversely affect the health of the mother or it might put her life at risk.*
3. *If the husband lives in a morally corrupt society and he fears that his children will be misguided*
4. *If the couple are not experiencing a healthy marital relation and there is a high probability of the marriage breaking down*

If the couple have any other valid excuses accepted by the *shari'ah* and sanctioned by a qualified and experienced Muslim doctor then too, it will be permissible to use contraceptives. However it will not be permissible to use contraceptives due to unwarranted excuses such as:

1. *If the husband fears that he will not be able to see to the needs of his children due to poverty (this is contrary to the ayah of the Quran where in Allah mentions that the responsibility of the sustenance of every living creature lies with Allah (Al-Hud Ayah 6)*
2. *If the child happens to be a girl and one fears it will be a disgrace to the family. This notion has been reprimanded multiple times in the Qur'an etc.*

The conclusion of the above mentioned permissible excuses is, if one experiences these excuses, then one is permitted to use reversible contraceptive methods. Once the excuse no longer exists, it will be inappropriate to continue using it. As for people in general, to promote the use of contraceptives is abhorrent and Makruh.

(*Fatawa Darul Uloom Zakariya vol. 3 pg, 650-652*)

## Questions & Answers

Q. Is it permissible for my father to give zakaat on my behalf?

A. The zakaat given by your father on your behalf will not be valid and you won't be absolved of your duty to pay *zakaat*. The reason for the zakaat not being discharged is because your *niyyah* (intention) is missing. If you appoint your father to give *zakaat* on your behalf or he takes your permission and you permit him, then however you will be absolved of discharging your *zakaat*. This is because by you appointing him or by your father taking your consent to pay the *zakaat* on your behalf, your intention to give *zakaat* is present.

(*al-Bahr ar-Raiq, Vol. 2, pg. 410*)

Q. If a student is saving money to pay his OSAP off, does Hajj become obligatory upon him if he attains enough wealth to perform Hajj? For instance, he starts saving money during high school and possesses enough money for Hajj before starting university.

A. If the student is in debt then he must pay off his debt first. If there is any money in surplus to his debt and necessary expenses through which he is able to perform Hajj, then Hajj will become necessary upon him provided that those days have set in where people normally make preparations for Hajj (i.e. submitting passport for visa, booking tickets, or submitting application to Hajj agencies, etc).

However, if there was no debt incurred, and the student was saving money for future expenses, then Hajj will become necessary upon him provided that he had sufficient funds to perform Hajj in those days where people normally make preparations and go for Hajj as mentioned above.

(*Radd al-Muhtaar vol.3 pg.408, al-Bahr al-Ameeq vol.1 pg.381*)

Q. Abu Bakr lives in Canada. He wants to marry Fatima, a girl living in India. Abu Bakr for a number of reasons cannot travel to India to marry her, nor can Fatima travel to Canada unless she is proved to be the wife of Abu Bakr. How can Abu Bakr and Fatima contract a valid Islamic marriage without meeting each other? Is it permissible for them to contract the marriage by telephone?

A. It is a necessary condition for a valid contract of Islamic marriage to ensure that at least two males or one male and two females be present at the time of the marriage and should witness both, the proposal (*ijab*) and the acceptance (*qabool*). This necessary condition cannot be fulfilled in a telephonic conversation. Similarly, it is also a pre-condition for the validity of the marriage contract that the exchange of vows (*ijab & qabool*) and similarly the witnessing thereof should take place in one sitting. The aforementioned can be deduced by the following juristic reference:

“And from amongst the conditions of (the validity) of nikah is the listening of the exchange of vows by the witnesses jointly (and at once in the same sitting).”

(Fatawa Hindiyah vol.1 pg. 268)

However, if Abu Bakr wants to Islamically contract the marriage by remaining in different places, then this too has been accommodated in the Shari’ah which we refer to as nikah by proxy. This would entail that though Abu Bakr resides in Canada and is not able to go to India and physically contract the said marriage, Abu Bakr would be permitted to appoint and authorize any mature and reliable person in India to act on his behalf as his representative (*wakil*) and pronounce the offer (proposal) on his behalf.

Hence, if for example Abu Bakr appoints Yusuf (who resides in India) to be his agent (*wakil*) over the telephone for this purpose, Abu Bakr will authorize him in the following words:

“I authorize you to contract my marriage with Fatima, daughter of so and so person, on a sum of \$.....as dowry (*Mahr*)”.

Then at the time of the actual marriage ceremony in the presence of the witnesses, Yusuf may pronounce his proposal (*ijab*) on behalf of Abu Bakr by saying, “I hereby offer the proposal of marriage to Fatima, upon which Fatima will then reply by accepting the proposal in the following words, “I hereby accept Abu Bakr in marriage”.

Note: Fatima does not need to be present at the marriage ceremony as she can also appoint a representative (*wakil*) to contract the marriage on her behalf.

The same procedure may also be adopted by the girl who in turn appoints somebody in Canada as her representative and thereafter contracting the marriage in a like manner.

In both cases, it will be a valid marriage contract whereby the two principal parties will be wedded and will be considered husband and wife.

**Q.** If the urine of an infant comes on to the clothing or the body, will the clothes or body become impure?

**A.** According to the Hanafi madhab, the urine of an infant is impure. Therefore, if it comes into contact with one’s clothing or body, it will have to be removed from the body or clothing before proceeding to perform any act of worship. The rule pertaining to the vomit of an infant is that if it is a mouth full, it will be considered impure and will have to be removed. However, if it is less than a mouth-full then it will not be impure.

(References: Haashiyah Tahtaawi pg. 83, Fatawa Hindiyah vol.1 pg. 46)

## Islamic Finance

Many Muslims are unsure of where and how to invest their money, especially funds which are in registered accounts, such as RRSP, TFSA and RESP. Many others are investing, especially in shares traded on public exchanges (i.e. the stock market), without knowing the correct rules regarding on how to determine whether or not a certain company is permissible to invest in. In order to facilitate halaal avenues for Muslims to invest in we will soon be publishing a booklet, *inshaAllah*, which will highlight in detail what is permissible and what is not. Moreover, from time to time we will try to provide guidance on specific publicly traded companies, on whether or not it is permissible to invest in them and the amount of *zakat* due on each share.

**Disclaimer:** We are not certified accountants or financial planners. We are not providing financial or ethical advice regarding whether or not one should invest in a certain corporation. Our opinions are our interpretation of the AAOIFI standards to the best of our ability. (We will provide more details and insight into the AAOIFI standards in forthcoming issues, *inshaAllah*). If there are qualified individuals who feel we have made a mistake in interpreting the AAOIFI standards or the financial statements or on any other matter they are more than welcome to point it out. Our opinions on specific corporations are valid as of the date of publication of the statements. We also ask our readers to regularly visit our website at [www.arj.ca](http://www.arj.ca) and keep up with our newsletters to find out any changes in our opinions which we may have previously expressed.

In this issue we are providing our analysis on the statements of Canadian Oil Sands as a sample on our interpretation and application of the AAOIFI standards. The analysis can be found on the next page.

According to the AAOIFI standards it would not be permissible to invest in a company if its debt to asset ratio exceeds 30%. Since the ratio in this case is only 14%, and there is no indication of significant haram sources of revenue, it would be permissible to invest in the shares of Canadian Oil Sands. Moreover the *zakat* due on each share will be \$0.06 if one intends to hold the shares on a long-term basis for the purposes of earning dividends. If it is held for the purposes of trading and short-term capital gains then the *zakat* will be on the market price of each share on the date *zakat* is due.



# Financial analysis for the determination of the permissibility of investing in shares of Canadian Oil Sands and the zakaat due upon them

Based on financial statements for the year ended December 31, 2012

All figures in millions of Canadian dollars, except for per share amounts

Eligible Assets		Consideration for Calculating Zakat <sup>1</sup>	Consideration for Calculating Permissibility <sup>2</sup>
Cash and cash equivalents	1,533	Yes	Yes
Accounts receivable	311	Yes	Yes
Inventories	137	*Yes	Yes
Property, plant and equipment	8,003	No	Yes
Add: Accumulated amortization	2,787	No	Yes
<b>Eligible Liabilities</b>			
Accounts payable and accrued liabilities	479	Yes	No
Current tax	40	Yes	No
Current portion of long-term debt	297	Yes	Yes
Long-term debt	1,497	No	Yes

## 1. Calculation of zakaat on shares of Canadian Oil Sands

Assets on which zakaat is due	2,153
Less: Liabilities	1,041
Net assets on which zakaat is due	1,112
Rate of zakaat	2.5%
Zakaat (2.5% of assets on which zakaat is due)	28
Total shares outstanding	484
<b>Zakaat per share</b>	<b>\$0.06</b>

## 2. Determining the permissibility of investing in shares of Canadian Oil Sands

Total eligible assets	12,791
Total interest bearing debt	1,794
<b>Ratio of interest bearing debt to assets</b>	<b>14%</b>

\*Inventory is to be valued at the wholesale selling price for zakat purposes. Since the inventory value is recorded at cost in the statements, it needs to be adjusted while calculating zakat. The adjustment is shown below:

### Market value of inventory

Revenue	3,905
Cost of sales	1,850
Gross margin factor (Revenue/Cost of sales)	2.11
Inventory book value	137
<b>Inventory market value</b>	<b>289</b>