A SUMMARY OF ISLAMIC JURISPRUDENCE

Special Edition for *Al- daawah Foundation*

The Prophet (PBUH) says:

"If Allah wants to do good for a person, He makes him understand the religion."

Dr. Sâlih Al-Fawzân

Professor of Islamic Jurisprudence, Member of the Board of Senior Ulema & Member of the Permanent Committee for Fatwa and Research

بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

Bismi Allahi Alrrahmani Alrraheemi

In the name of Allah, the most Beneficent, the most Merciful

In the Name of Allah, the Entirely Merciful, the Especially Merciful

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Publisher

Sulaiman A. Almaiman

Translator's Preface

This book is an English translation of sheikh professor Ṣâliḥ Al-Fawzân's الملخص الفقهي *A Summary of Islamic Jurisprudence*: Dâr Al-`Âṣimah, 2001 (ISBN:3967/21). Our main aim in providing the English translation is propagating the true Da`wah that derives from Allah's Book and His Messenger's Sunnah. This is a duty that every Muslim should cherish. Allah says: ***"And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful."*** (Âlu `Imrân: 104). With this in mind, this translated work is, then, a humble response to our realization of a great responsibility to give the English speaking reader access to rich Islamic Jurisprudence Literature that simply focuses on the rules of jurisprudence and their proofs from the Qur'ân, Sunnah and the practice of the Righteous Salaf in addition to the opinions of the scholars of jurisprudence on controversial issues as well as the proofs they quote in support of their opinions. In doing so, we have left no stone unturned to make sure that the final copy of a translated book meets a specific high quality standard that would convey the same meaning intended by the author and expressed in the original source text. In effect, we have tried to set a balance between the originality of thought and the nature of the style of language.

To attain this aim, our work (in this book and others) exhibits certain distinctive features, namely, the process of translation, the style, the attention paid to the sociolinguistic aspects (i.e., transliteration, glossary and endnotes). We touch upon these features in the following section.

1.PROCESS

Before reaching the publisher, our work goes through a developmental process to guarantee that the final version of the translated book is as perfect as can be.

In effect, this process commenc.es with the first-hand translation, which is done by some very carefully chosen translators who are native-speakers of Arabic and have a native-like command of the target language. The main principle that governs the translation process is that the translator is after integrity. With integrity as the main target, the translators would not be tempted to impose their own ideas on the text nor would they gloss over the difficult paragraphs instead of taking the trouble to find out what is really meant. Translators would do their best to convey both the content and spirit of the original.

The next step of the process is undertaken by a reviser who has a high profile in translating religious texts and is aware of the traps that one might fall into. In addition, he has a thorough religious background knowledge that enables him to detect any unintended error in conveying the meaning.

The revised version is then submitted to a picky editor who is well-versed in the target language and has substantial knowledge of Islamic Sciences.

Finally, the edited version is handed over to a native-speaker of English who is knowledgeable in Islamic Sciences to make sure that the translation is readable and meaningful to the target audience.

2.STYLE

A natural outgrowth of the processes adopted in translation is the style the final version has come out in. The intended meaning of the author has been conveyed in a style that is authentic and as close to the original as possible. It really sounds authentic: So natural that the work does not read like a translation, but an indigenous piece of writing. The translation version is marked by remarkable variety and richness as well as tremendous skill at writing within formal religious genre. Moreover, attempts have been made to have it simple, clear and appealing to the target audience.

3.ATTENTION TO SOCIOLINGUISTIC ASPECTS

As a way to fill up the gap caused by sociolinguistic differences between the two languages (source language and target language), our work includes some additional features (i.e., transliteration, glossary and endnotes) that would guarantee better understanding of the concepts and ideas that might confuse the English speaking reader due to the lack of schemata in this field.

A- TRANSLITERATION SYSTEM

In the process of translation, we made a serious attempt to limit the use of transliterated Arabic terms (see table in p. X) to the following two situations:

i) There is no English expression that can reflect the same meaning as the original term.

ii) The Arabic term is of such importance that it is essential to familiarize the reader with it.

B-GLOSSARY

At the end of the book, we have included a glossary defining common Arabic terms that fulfill the above criteria. Included in the glossary also are terms that need further explanation.

C-ENDNOTES

In the endnotes, we have given clear and concise explanations of the terms that are not clear or understandable to the target reader due to the sociolinguistic differences in addition to the commentaries written by the author himself. Furthermore, each *hadîth* mentioned in the text of the book is ascribed in the endnotes to the book it is quoted from.

D-INDICES

To facilitate the process of going through the book and save the reader's time, we have included two indices, namely, subject index and name index. So, if the reader is looking for specific information or a given name, s/he would go directly to the index to find the page number.

4. QUR'ÂN TRANSLATION

The Qur'ân is Allah's exact words. These words can never ever be exactly translated into other languages because of, among other things, possible misinterpretations and limited human understanding. What is followed in the book is to translate the meanings as understood by Muslim scholars. We solely depended on the '***Translation of the Meaning of the Qur'ân***', translated by Saheeh International – Riyadh and published by Abulqasim Publishing House. When a verse is cited, the English interpretation is given between quotation marks "...." in indented, bold, and italicized format. The location of the Qur'anic verse, the name of the sura is given below to the verse as it is illustrated in the example below:

> ***"And We sent not before you any messenger except that We revealed to him that there is no deity except Me, so worship Me."***
>
> (Al-Anbyâ': 25)

5. *HADÎTH* TRANSLATION

Similarly, when we cite a *hadîth*, we mention the book of *hadîth* it is quoted from in addition to its number in the book. Further, the translation of Prophetic *hadîth* is represented in an indented format, italicized and between quotation marks "..." as it is illustrated in the example below:

> *"Do not drink in gold or silver vessels nor eat in similar bowls (i.e. bowls made of gold or silver), for they belong to them (the disbelievers) in this world and to us in the Hereafter."*

PART 2

INTRODUCTION

All praise be to Allah, the Lord of the Worlds, and peace be upon our Prophet Muhammad, the Seal of prophets, and upon his household, his Companions, and whoever follows their example with good conduct until the Day of Recompense.

To commence, this is a brief account of juristic issues, in which views are provided with proofs from the *Sunnah* (Prophetic Tradition) and the Qur'ân. I have previously delivered the content of this book in the form of sermons broadcast on radio, and I have been repeatedly asked by the audience to redeliver them, and to publish them as a treatise, for the sake of continuous benefit, if Allah wills. In fact, I never intended this book to be published when it was under preparation, but in response to the wish of many people, I reviewed it, arranged its contents, and presented it to be published. And here it is now, gentle reader, between your hands; whatever correctness and benefit you find therein are out of the Grace of Allah, Alone, and whatever mistakes you find are mine, and I seek the forgiveness of Allah for them.

This treatise is an abstract of a book entitled *Ar-Rawdul-Murbi` fî Sharh Zâdul-Mustaqni`* including its footnotes, written by Sheikh `Abdur-Rahmân Ibn Muhammad Ibn Qâsim (may Allah have mercy on him), bearing in mind that I added some remarks, when necessary.

I ask Allah, Glorified and Exalted be He, to guide us all to useful knowledge and righteous deeds. May Allah confer peace and blessings upon our Prophet Muhammad, his household, and his Companions.

The Virtues of Understanding Religion

All praise be to Allah, Lord of the Worlds, and peace be upon our Prophet Muhammad, and upon his household, his Companions, and whoever follows their example with good conduct until the Day of Recompense.

To commence, understanding the religion is considered one of the best deeds, and a sign of goodness. The Prophet (PBUH) says:

> *"If Allah wants to do good for a person, He makes him understand the religion."*[1]

This is because comprehending the religion leads to useful knowledge upon which righteous deeds depend. Allah, Exalted be He, says:

> ***"It is He Who has sent His Messenger with guidance and the religion of truth..."*** (Qur'ân: Al-Fath: 28)

"Guidance" here refers to useful knowledge, and "the religion of truth" is that which leads to righteous deeds. Besides, Allah commanded the Prophet (PBUH) to invoke him for more knowledge; Allah, Exalted be He, said:

> ***"... And say, 'My Lord, increase me in knowledge.' "***
>
> (Qur'ân: Tâhâ: 114)

Al-Hâfiz Ibn Hajar comments that the aforesaid Qur'anic verse, ***"...And say, 'My Lord, increase me in knowledge,' "*** is a clear indication of the merit and excellence of knowledge, for Allah never commanded His Prophet (PBUH) to invoke Him for more of anything other than knowledge[2]. The Prophet (PBUH) used to refer to the assemblies wherein useful knowledge is taught as *"The Gardens of Paradise,"* and he (PBUH) stated that *"Men of knowledge are the inheritors of prophets."*

There is no doubt that before one starts doing something one should know how to perform it in the best way, so as to perform it well to harvest its desired fruits. Likewise, it is by no means reasonable that one starts worshipping one's Lord – the way through which one's salvation from Hellfire and admittance to Paradise are gained – without having due knowledge.

As such, people are divided into three categories regarding knowledge and deeds:

The first category is represented in those who combine useful knowledge along with righteous deeds. Those are the ones whom Allah has guided to the straight path; the path of those upon whom Allah has bestowed favor of the prophets, the steadfast affirmers of truth, the martyrs and the righteous, and excellent indeed are these as companions.

The second category is represented in those who learn useful knowledge but do not act accordingly. Those are the ones who have evoked Allah's anger, like the Jews and whoever follows their footsteps.

The third category is represented in those who act without having knowledge. Those are the ones who are astray, namely the Christians and their likes.

These three categories are mentioned in the Sura of *Al-Fâtihah (the Opening Chapter of the Qur'ân)*, which we recite in every *rak`ah* (unit of prayer) of our prayers:

> ***"Guide us to the straight path – the path of those upon whom You have bestowed favor, not of those who have evoked [Your] anger or of those who are astray."*** (Qur'ân: Al-Fâtihah: 6-7)

In his interpretation of the aforesaid verses of the Sura of *Al-Fâtihah*, **Sheikh Muhammad Ibn `Abdul-Wahhâb** (may Allah have mercy on him) has stated:

> *"The scholars meant in the verse that reads, **'those who have evoked (Allah's) anger'** are those who do not act in accordance with their knowledge, and **'...those who are astray'** are the ones who act without knowledge. The former is the quality of the Jews, while the latter is that of the Christians. Some ignorant people mistakenly believe that those two qualities are restricted to the Jews and the Christians, forgetting that Allah commands them to recite the above-mentioned Qur'anic invocation seeking refuge with Him from being one of the*

people of these two qualities. Glory be to Allah! How do those ignorant people think that they are safe from these qualities, though they are taught and commanded by Allah to keep on invoking Him (through the aforesaid verses) seeking His refuge against them?! Are they not aware that they thus assume evil about Allah?!"[3]

This shows the wisdom behind the obligation of reciting this great Sura (i.e., *Al-Fâtihah*) in every *rak'ah* of our prayers (whether obligatory or supererogatory). It is because this sura contains many great secrets, among them is the great Qur'anic invocation that reads, ***"Guide us to the straight path – the path of those upon whom You have bestowed favor, not of those who have evoked [Your] anger or of those who are astray."*** (Qur'ân: Al-Fâtihah: 6-7) Through this invocation, we ask Allah to guide us to follow the conduct and the way of the people who have useful knowledge and perform righteous deeds, which is the way to salvation in both this world and the Hereafter. We also invoke Him to safeguard us from the pathway of the ones astray, who have neglected either the righteous deeds or the useful knowledge.

Thus, we could argue that useful knowledge is that derived from the Qur'ân and the *Sunnah* (Prophetic Tradition). It is gained by means of deep understanding and comprehension of both, which can be achieved through the help of religious instructors or scholars. This can also be achieved through the books of exegesis of the Qur'ân and those of *Hadîth*, as well as the books of jurisprudence and those of Arabic grammar – the language in which the Qur'ân has been revealed. Such books are the best means of comprehending the Qur'ân and the *Sunnah*.

So as to perform the acts of worship so perfectly, you should, dear Muslim brother, learn what leads to the perfection of your performance of these various acts of worship, such as Prayer, Fasting and *Hajj* (Pilgrimage). You should also be aware of the rulings on *Zakâh*[4] as well as the rulings on the dealings that concern you, so as to make use of what Allah has made lawful for you and avoid what He has made unlawful. You should observe this to ensure that the money you earn and the food you eat are lawfully obtained, in order to be one of those whose supplications are granted by Allah. In fact, you have to know about all these matters, and this could be easily achieved, Allah willing, provided that you have resolute determination and sincere intention. So, be keen on reading useful relevant books, and keep in touch with religious scholars to ask them about whatever ruling you are in doubt about and to be acquainted with the rulings of your religion.

In addition, you should take an interest in attending religious symposiums and lectures delivered at mosques and the like, listening to the broadcast religious programs, and reading religious magazines and publications. If you concern yourself with such good activities, your religious knowledge will increase, and your insight will be enlightened.

Also, do not forget, dear brother, that knowledge increases and grows when it is practically applied. Thus, if your deeds are according to your knowledge, Allah surely will increase your knowledge. This corresponds with the maxim stating, "He whose deeds are done in accordance with his knowledge, Allah will bestow upon him the knowledge of that which he has no knowledge about." This is confirmed by the Glorious Qur'anic verse that reads:

> ***"... And fear Allah. And Allah teaches you. And Allah is Knowing of all things."*** (Qur'ân: Al-Baqarah: 282)

In fact, the worthiest thing to spend your time on is seeking knowledge, for which the people of good judgment compete. It is through knowledge that hearts maintain living and deeds are purified.

Allah, Exalted be His Words and Glorified be His Attributes, praises the scholars who act in accordance with their knowledge, and states their elevated degrees, as He mentions in His Glorious Book, the Qur'ân:

> ***"... Say, 'Are those who know equal to those who do not know?' Only they will remember [who are] people of understanding."***
> (Qur'ân: Az-Zumar: 9)

Allah, Exalted be He, also says:

> ***"... Allah will raise those who have believed among you and those who were given knowledge, by degrees. And Allah is Acquainted with what you do."*** (Qur'ân: Al-Mujâdilah: 11)

So, Allah, Glorified and Exalted be He, shows the merit of those given knowledge along with faith, and tells us that He is Acquainted with and Aware of what we do. Thus, Allah shows us the necessity of combining both knowledge and righteous deeds, and tells us that both have to be out of one's sincere faith and fear of Him, Glorified be He.

In accordance with the Qur'anic duty of cooperating in righteousness and piety, we will – if Allah wills – provide you, gentle reader, through this book with some information of the juristic inheritance which our scholars

extracted and wrote down in their books. We will provide you with what can be easily understood, so that it can benefit you and help you in gaining more useful knowledge.

Finally, we invoke Allah to bestow useful knowledge upon all of us, and to guide us to the righteous deeds. We also invoke Him, Glorified and Exalted be He, to make us see the truth as it really is, and guide us to follow it, and to see falsehood as it really is, and grant us the ability to avoid it, He is Hearing and Responsive.

Endnotes

1 Al-Bukhârî (71), Muslim (2386).
2 See *Fathul-Bârî* (1/187)
3 See Ibn Ghannâm's *Târîkh Najd*.
4 *Zakâh* is an annual expenditure for the benefit of the Muslim community, primarily to help the poor, required from those Muslims who have excess wealth. Paying *Zakâh* is one of the five main pillars of Islam (for more elaboration, refer to the chapter on *Zakâh*).

I:TRADE TRANSACTIONS

CHAPTER

1

Trade Transactions

Allah, in His Noble Book, the Qur'ân, and the Prophet (PBUH) through his honorable *Sunnah* (Prophetic Tradition), pointed out the rulings on transactions because of people's need for them; people in general need food, clothes, houses, vehicles and other necessities of life in addition to different luxuries which are obtained through trade.

Trade is permissible according to the Qur'ân, *Sunnah*, consensus of Muslim scholars, and analogical deduction.

Allah says:

> ***"...but Allah has permitted trade..."*** (Qur'ân: Al-Baqarah: 275)

And:

> ***"There is no blame upon you for seeking bounty from your Lord (during Hajj)..."*** (Qur'ân: Al-Baqarah: 198)

The Prophet (PBUH) said:

> *"The seller and the buyer have the right to keep or return goods as long as they have not parted. If both parties speak the truth and point out the defects and qualities (of the goods), then they will be blessed in their transaction. But if they tell lies or hide something, then the blessings of their transaction will be destroyed."*[1]

Muslim scholars uniformly agree on the permissibility of trade in general.

Concerning analogical deduction, trade transactions are permissible because people's needs are interdependent, and people grant nothing for nothing. A person does not give what he has, money or goods, in return for nothing, so wisdom necessitates the permissibility of trade in order to enable people to get their needs.

Trade transactions can be validated by means of a verbal formula or an actual one. The verbal formula expresses the seller's verbal agreement on the sale when he, for example, says to the buyer, "Well, I sell it to you" and the buyer's verbal acceptance when he, for example, says, "And I buy it". The actual formula is the act of exchange itself, when the seller is given the usual price and the buyer takes the commodity, without any verbal declaration.

Sometimes a trade transaction is validated by means of both verbal and actual formulas. **Shaykhul-Islâm Taqiyyud-Dîn** (may Allah have mercy on him) said:

> *"There are some ways of exchange. First, when the seller gives only a verbal acceptance and the buyer takes the commodity (without declaring his acceptance). For example, a seller may say to the buyer, 'Take this piece of cloth for a dinar,'*[2] *and the buyer takes it (without saying a word). The same ruling applies when the price is a given material; for example, the seller may say to the buyer, 'Take this piece of cloth for yours' and then the buyer takes it. Second, when the buyer declares his acceptance and the seller only gives him the commodity whether the price is a given material or the sale is on credit (and the buyer is honestly guaranteed to pay). Third, when neither the seller nor the buyer speaks (about the price) for there is a custom to that effect."*[3]

There are certain conditions to be fulfilled (some related to the two parties while others to the commodity) to make a trade transaction valid, lacking any of which invalidates the transaction:

Conditions Related to the Seller and the Buyer

First: Mutual Consent: A trade transaction becomes invalid if either the seller or the buyer is unjustly forced to conclude it. Allah, Exalted be He, says:

"...but only [in lawful] business by mutual consent..."

(Qur'ân: An-Nisâ': 29)

Moreover, the Prophet (PBUH) said:

"Selling should be only by mutual consent."

(Related by Ibn Hibbân, Ibn Mâjah, and other compilers of *Hadîth*)[4]

However, a transaction concluded through just compulsion is deemed valid, as in the case when the ruler (or the one in authority) forces a bankrupt person to sell his remaining property in order to pay off his debts.

Second: Being free, having reached puberty, being legally accountable, and being sane: A trade transaction becomes invalid if either of the seller or the buyer is a minor, a foolish or weak-minded person, an insane person, or a slave who has not taken his master's permission (to conclude the transaction).

Third: Being the owner (of the commodity or the money) or a representative of the owner: The Prophet (PBUH) said to Hakîm Ibn Hizâm:

"Do not sell what you do not have (or possess)."

(Related by Ibn Mâjah and At-Tirmidhî who deems it a *sahîh* (authentic) *hadîth*)[5 6]

Al-Wazîr said:

"Scholars agree that it is impermissible for a Muslim to sell whatever is not present with him or whatever he does not possess, and then goes out to buy that thing for his customer, for this is a void trade transaction."

Conditions Related to the Commodity

First: Being absolutely lawful to use: It is impermissible to sell whatever is prohibited for a Muslim to make use of, such as intoxicants, the flesh of swine, musical instruments, and dead animals. The Prophet (PBUH) said:

"Allah and His Messenger prohibited the trade of intoxicants, dead animals, pigs, and idols."

(Related by Al-Bukhârî and Muslim)[7]

He (PBUH) also said:

"Allah prohibited intoxicants and their (gained) prices, dead animals and their prices, and pigs and their prices."

(Related by Abû Dâwûd)[8]

It is also illegal to sell the impure fats (or the ones affected by impurity) for the Prophet (PBUH) said:

"When Allah prohibits something, He prohibits the price paid for it."[9]

Also, Al-Bukhârî and Muslim related that the Prophet (PBUH) was asked:

"O Allah's Messenger! What about the fat of dead animals, for it is used for greasing the boats and the hides, and people use it (as oil) for lamps?" He (PBUH) replied, 'No, it is prohibited.' "

Second: The price and the commodity must be available, (when the trade transaction is concluded), for any unavailable commodity is considered nonexistent and is illegal to be sold. For example, it is illegal to sell a fugitive slave, a runaway camel, or a bird in the air. Likewise, it is illegal for a Muslim to sell something taken by force except in the presence of the one who took it forcefully, or one who is able to restore it (such as the police or a judge or the like, to guarantee delivering it to the buyer).

Third: The price and the commodity must be known to the seller and buyer, for hiding any is regarded as fraud which is prohibited in Islam. Thereupon, it is invalid for the buyer to buy something he does not see or recognize, and for the seller to sell an animal embryo in its mother's womb or milk in udders, separately. Also, the selling systems called *mulâmasah*[10] and *munâbadhah*[11] are prohibited. Abû Hurayrah (may Allah be pleased with him) narrated:

"The Messenger of Allah (PBUH) forbade selling by mulâmasah and munâbadhah."

(Related by Al-Bukhârî and Muslim)[12]

Selling by *hasâh* (stone), likewise, is prohibited; it is another type of sale which means that when the buyer throws a stone at a certain commodity displayed for sale, he has to buy it at the price decided by the seller.

Endnotes

1 Al-Bukhârî (2079) [4/391] and Muslim (3836) [5/416].
2 Dinar: An old Arab coin that equals 4.25 grams of gold.
3 See: *'Majmû'ul-Fatâwâ'* [29/7-8].
4 Ibn Mâjah (2185) [3/29] and Ibn Hibbân (4967) [11/340].
5 *Sahih* (authentic) *hadîth* is a *hadîth* whose chain of transmission has been transmitted by truly pious persons who have been known for their uprightness and exactitude; such a *hadîth* is free from eccentricity and blemish.
6 Abû Dâwûd (3505) [3/495], At-Tirmidhî (1235) [3/534], An-Nasâ'î (4627) [4/334] and Ibn Mâjah (2187) [3/30].
7 Al-Bukhârî (2236) [4/535] and Muslim (4024) [6/8].
8 Abû Dâwûd (3485) [3/487].
9 Abû Dâwûd (3488) [3/488].
10 *Mulâmasah*: A way of selling used to be practiced before Islam; it means that when the buyer touches something displayed for sale, he has to buy it at the price decided by the seller.
11 *Munâbadhah*: A way of selling used to be practiced before Islam; it means that when the buyer throws something to the seller, the buyer has to buy it at the price decided by the seller.
12 Al-Bukhârî (2146) [4/453] and Muslim (3780) [5/393].

CHAPTER

2

Prohibited Trade Transactions

Allah has made trade permissible for His servants as long as it does not cause them to miss what is more useful and much important, such as an obligatory act of worship. Trade is also permissible so long as it does not cause any harm to others.

It is impermissible for a Muslim upon whom the *Jumu`ah* (Friday) Prayer is obligatory to buy or sell after its second prayer call (*adhân*), for Allah, Exalted be He, says:

> ***"O you who have believed, when [the adhân] is called for the prayer on the day of Jumu`ah [Friday], then proceed to the remembrance of Allah and leave trade. That is better for you, if you only knew."*** (Qur'ân: Al-Jumu`ah: 9)

Thus Allah, Glorified and Exalted be He, has prohibited trade when the prayer call for the *Jumu`ah* (Friday) Prayer is declared lest Muslims should be too busy with trade to attend the Prayer. Allah has mentioned trade in particular

as it is one of the most important worldly activities that occupy people's times, as most people earn their living through trade. This Divine prohibition implies that trade is prohibited and invalid at such a time (when the *Jumu`ah* Prayer is due). Then Allah, Glorified and Exalted be He, says, ***"That"***, referring to leaving trade and attending the *Jumu`ah* Prayer, ***"is better for you"*** than being occupied with trade ***"if you only knew"*** your own good and interests. Likewise, it is prohibited for a Muslim to be occupied with any worldly activity, not only trade, at the due time of *Jumu`ah* Prayer.

It is impermissible for Muslims as well to let trade or any other worldly activity divert them from establishing obligatory prayers after hearing the prayer call. Allah, Exalted be He, says:

> ***"[Such niches are] in houses [i.e. mosques] which Allah has ordered to be raised and that His Name be mentioned [i.e. praised] therein; exalting Him within them in the morning and the evenings. [Are] men whom neither commerce nor sale distracts from the remembrance of Allah and performance of prayer and giving of Zakâh[1]. They fear a Day in which the hearts and eyes will [fearfully] turn about - that Allah may reward them [according to] the best of what they did and increase them from His bounty. And Allah gives provision to whom He wills without account [i.e. limit]."*** (Qur'ân: An-Nûr: 36-38)

It is also illegal to sell anything which can be used for disobeying Allah and committing a sin. To illustrate, it is illegal to sell certain fruit juices to whoever uses them for making intoxicants, as it would be cooperation in sinning. Allah, Exalted be He, says:

> ***"...but do not cooperate in sin and aggression..."***
>
> (Qur'ân: Al-Mâ'idah: 2)

This kind of sale is considered cooperation in aggression. Similarly, it is illegal to sell weapons, armaments, and munitions at the time of dissention among Muslims lest they might be used for killing Muslims; the Prophet (PBUH) prohibited Muslims to do so, and Allah, Exalted be He, says:

> ***"...but do not cooperate in sin and aggression..."***
>
> (Qur'ân: Al-Mâ'idah: 2)

In this connection, **Ibnul-Qayyim** said:

> *"All legal proofs demonstrate that the validity, legality and permissibility of a sale are also affected by intentions and usage. For example, one is prohibited from selling someone a weapon if one knows that he would*

use it for killing a Muslim, as this is considered cooperation in sin and aggression. However, if a Muslim sells a weapon to someone who fights in the Cause of Allah, it is considered (for the seller) a sign of obedience and devotion to Allah. On the other hand, it is impermissible to sell weapons to those who fight Muslims or those who use them for highway robbery, as it is regarded as cooperation in sin."[2]

Muslims are not permitted as well to cancel the sales of one another. For example, a Muslim seller may say to a customer who has paid ten pounds for an item from another seller, "I can sell you a similar piece for only nine pounds," or "I can sell you a better one for the same price." This is prohibited for the Prophet (PBUH) said:

"You must not try to cancel the sales of one another."

(Related by Al-Bukhârî and Muslim)[3]

The Prophet (PBUH) also said:

"A Muslim must not try to cancel the sales of his (Muslim) brother."

(Related by Al-Bukhârî and Muslim)[4]

Likewise, it is impermissible for Muslims to cancel the purchases of one another. For instance, a Muslim buyer may say to a seller who has sold another Muslim a commodity for nine pounds, "I can buy it for ten pounds," or the like. Nowadays, many a prohibited trade transaction like the aforementioned ones occurs in the markets of Muslims. So, a true Muslim must avoid such violations, forbid them, and show disapproval of those who commit them.

Among the prohibited trade transactions is that made by a town dweller on behalf of a desert dweller, for the Prophet (PBUH) said:

"A town dweller should not trade on behalf of a desert dweller."[5]

Ibn `Abbâs, commenting on this *hadîth*, said, *"It means that he (a town dweller) should not act as his (a desert dweller's) broker."*[6]

The Prophet (PBUH) also said:

"Leave the people alone, Allah will give them provision from one another."[7]

Thus, a town dweller is prohibited to sell or buy on behalf of a desert dweller. In fact, what is prohibited is that a town dweller goes to a desert dweller and offers his service to buy or sell something on his behalf. Yet, it becomes

permissible only if the desert dweller is the one who comes to the town dweller asking him to buy or sell on his behalf.

Another type of prohibited trade is that called *`înah*, in which a seller sells a commodity on credit to a buyer and then buys it from him at the same time at a lower price. For example, a trader sells a car for twenty thousand pounds on credit then buys it from the same man (who has just bought it) for fifteen thousand pounds cash. Thus, the original buyer owes the seller twenty thousand pounds to be paid at the due time. This kind of selling is prohibited as it is mere fraud and one of the forms of *ribâ*[8]. In this way, the seller sells a sum of money on credit for another one in cash, making the commodity just a means of fraud. The Prophet (PBUH) said:

> *"If you sell to one another with `înah, hold the tails of cows (i.e. become occupied with worldly gains), become pleased with agriculture, and give up jihâd (fighting in the Cause of Allah), Allah will make disgrace prevail over you, and will not withdraw it until you return (i.e. adhere) to your religion."*[9]

He (PBUH) also said:

> *"There will come a time when people consider ribâ lawful by means of trade."*

Endnotes

1 *Zakâh* is an annual expenditure for the benefit of the Muslim community, primarily to help the poor, required from those Muslims who have excess wealth. Paying *Zakâh* is one of the five main pillars of Islam (for more elaboration, refer to the chapter on *Zakâh*).
2 See the footnote in Ibn Qâsim's book entitled *"Ar-Rawḏ Al-Murbi'"* [4/374].
3 Al-Bukhârî (2139) [4/446] and Muslim (3440) [5/200].
4 Al-Bukhârî (5142) [9/249] and Muslim (3441) [5/201].
5 Al-Bukhârî (2140) [4/446] and Muslim (3803) [5/202].
6 Al-Bukhârî (2158) [4/467] and Muslim (3804) [5/404].
7 Muslim (3805) [5/404].
8 *Ribâ*: A term that includes usury and usurious gain and interest.
9 Abû Dâwûd (3462) [3/477].

CHAPTER

3

Conditions of Trade Transactions

Recurrent are the conditions set by a seller or a buyer when concluding a trade transaction. Accordingly, it has become a necessity to study and tackle the different kinds of such conditions, pointing out the legal and the illegal ones among them. The *faqîhs*[1] (may Allah have mercy on them) defined a condition (of a trade transaction) as follows: *"It is obligating one of the two parties (of the sale) by the other for the benefit of the latter."* According to the *faqîhs*, a transactional condition is invalid unless it is made at the time of the transaction and embedded in the transactional contract. In other words, a condition is invalid if made before or after concluding the contract.

In general, the conditions in trade transactions are divided into valid conditions and invalid ones.

First: Valid Conditions

Valid conditions are those that do not contradict the objective of the contract. Such a kind of condition obligates its fulfillment; the Prophet (PBUH) said:

"Muslims must keep to the conditions they make."[2]

Such conditions obligate fulfillment also because all conditions in trade transactions are originally legal except for those invalidated and prohibited by the Lawgiver[3]. The valid conditions are of two kinds:

1- The first kind of valid conditions of trade transactions is that which ensures and consolidates the contract, and benefits the one who sets such conditions. Examples of such valid conditions are those made by the seller such as stipulating taking a security deposit or stipulating surety; this surely makes the seller free from worry. There are similar valid conditions in favor of the buyer, such as stipulating delaying the payment or part of it for a specified term, i.e. to pay it at a specific date. So long as the buyer is committed to this condition the sale is valid. A buyer may set a condition concerning a specification of the commodity, such as requiring a special brand or product, as people have different preferences. In such a case, the sale is legally valid as long as the commodity meets this condition; otherwise, the buyer has the right to cancel the contract or at least get a compensation for the missing stipulated quality. This compensation is estimated by comparing the value of the commodity meeting the required condition and the one lacking it, and then the difference between the two values can be paid to the buyer if he asks for that.

2- The second kind of valid transactional conditions is that in which one of the two parties stipulates benefiting lawfully from the commodity in a certain way. For example, a seller of a house may stipulate staying therein for a specific period, or a seller of a riding animal or a car may stipulate riding it to a certain place. Jâbir (may Allah be pleased with him) narrated:

"The Prophet (PBUH) sold a camel and stipulated to ride it (and use it) until he reaches Medina."

(Related by Al-Bukhârî and Muslim)[4]

This *hadîth* states the permissibility of selling an animal and stipulating riding it to a certain place; the same goes for similar transactional cases. Another example is when the buyer stipulates a specific work

to be done to the commodity, such as buying firewood stipulating that the seller should deliver it, or buying cloth making a condition that the seller should stitch it.

Second: Invalid Conditions

There are two kinds of invalid conditions:

1- The first kind is the invalid illegal condition that basically nullifies the selling contract, such as when one of the two parties stipulates another contract within the main one. For example, it is an illegal condition when a seller of a commodity makes a condition that the buyer must make him his partner in business, lend him a sum of money, or allow him to share his house, etc., or that he says, "I sell you this commodity on the condition that you rent me your home." Such a condition is legally invalid so it nullifies the original contract. This is because the Prophet (PBUH) forbade concluding a selling contract based on another conditional contract[5]. This Prophetic prohibition was interpreted by Imâm Ahmad Ibn Hanbal (may Allah have mercy on him) exactly as we have pointed out above.

2- The second type of invalid transactional conditions is the one which itself is null and void, yet it does not nullify the contract. For example, a buyer of a commodity may make a condition that he will give it back if he undergoes loss, or a seller of a commodity may make a condition that the buyer must not resell it. Such a type of conditions is legally invalid as it violates the principle of a business contract that absolutely allows the buyer to use the (purchased) commodity in whatever manner he likes. The Prophet (PBUH) said:

"If anyone imposes a condition which is not in the Book of Allah, then that condition is invalid even if he imposes one hundred conditions."

(Related by Al-Bukhârî and Muslim)[6]

The phrase "in the Book of Allah" in the aforementioned *hadîth* refers to *Sharî`ah* (Islamic Law) including the Qur'ân and the *Sunnah*. Still, such an invalid type of conditions does not nullify the contract. To illustrate, in the well-known incident of Barîrah,[7] the one who sold her made a condition that her *walâ'*[8] would go to him if she was emancipated. However, the Prophet (PBUH) declared that the condition was null, yet he (PBUH) did not consider the contract to be invalid. Then, the Prophet (PBUH) said:

"Verily, the walâ' is for the emancipator."[9]

A Muslim involved in businesses, purchasing and selling, should learn the legal rulings on trade transactions as well as the valid and invalid conditions of any business deal to be aware of the legal situations in such dealings. Thus, Muslims can find legal solutions to their controversies resulting from trade transactions, most of which result from the ignorance of the seller, the buyer, or both, of such rulings, as well as the invalid conditions they set in transactions.

Endnotes

1 *Faqîh*: A scholar of Islamic Jurisprudence.
2 Abû Dâwûd (3594) [4/16]. See also At-Tirmidhî (1352) [3/634].
3 The Lawgiver of Sharî`ah (Islamic Law) is Allah, Exalted be He; the term can also refer to the Prophet (PBUH) as he never ordained but what was revealed to him by Allah.
4 Al-Bukhârî (2718) [5/385] and (4074) [6/32].
5 At-Tirmidhî (1234) [3/533] and An-Nasâ'i (4646) [4/340].
6 Al-Bukhârî (2155) [4/467] and Muslim (3756) [5/380].
7 `Â'ishah's Muslim female slave.
8 *Walâ'*: The freed slave's loyalty by virtue of emancipation.
9 Al-Bukhârî (2155) [4/467] and Muslim (3756) [5/380].

CHAPTER

4

Option in Trade Transactions

Islam is a lenient and comprehensive religion that cares for Muslims' interests and mitigates difficulties to make things easy for them. This is evident in the legal rulings concerning trade transactions as Islam gives each of the seller and the buyer the choice to consider his own interest so that he can confirm what benefits him and cancels out what appears to be against his interest regarding the sale. Option in sales means seeking that which is better in either the conclusion or the voidance of the sale.

There are eight types of option in trade transactions:

First: Option during the Session

Both the seller and the buyer have the choice to confirm or cancel the deal as long as they have not separated from the place of the deal, for the Prophet (PBUH) said:

> *"Both the buyer and the seller have the option (of canceling or confirming the bargain) as long as they have not parted and are still together."*[1]

His Eminence scholar **Ibnul-Qayyim** (may Allah have mercy on him) said:

> *"The Lawgiver has ordained the option during the session while concluding trade transactions for the interests of the two parties to achieve full consent and satisfaction which Allah stipulates in transactions when He says,* ***'...by mutual consent...'*** (Qur'ân: An-Nisâ':29) *Sometimes a contract is concluded without being reconsidered or reviewed. Therefore, the perfect Sharî`ah (Islamic Law) necessitates the existence of a session during which the two parties can reconsider the deal. Thus, according to the aforementioned hadîth, both the seller and the buyer have the choice to confirm or cancel the deal as long as they have not separated from the place of the deal. However, if the two parties or one of them ignores this aspect of choice, the deal is still deemed valid once it is concluded. This choice is a right related to both the seller and the buyer, and each of them is allowed to ignore it '...as long as they have not parted and are still together, or one of them gives the other the option (of keeping or canceling the bargain),' as the Prophet (PBUH) said. However, it is prohibited for each of the two parties to hasten to leave the other in order to prevent him from reconsidering the deal. `Amr Ibn Shu`ayb reported that the Prophet (PBUH) said, '...and it is not permissible for one of them to separate from the other for fear that the latter may demand that the bargain be rescinded.'"*[23]

Second: Option of Stipulation

The two parties can stipulate, during or after concluding the contract, that a certain period of option (to accept or reject the deal) is to be specified. If both of them agree to that, then they have the right of option whether to accept or reject the deal within the specified period. This is because the Prophet (PBUH) said:

> *"Muslims must keep to the conditions they make."*[4]

Moreover, the validity of the option of stipulation is indicated in the general meaning of the following Qur'anic verse:

> ***"O you who have believed, fulfill [all] contracts..."***
>
> (Qur'ân: Al-Mâ'idah: 1)

However, it is permissible for each of the two parties to make a special condition to serve his own interests even if the other does not make any, provided the other agrees. At any rate, option of stipulation is something that

concerns the seller and the buyer, and they are allowed to use it in the way they like provided there is mutual consent.

Third: Option in Case of Deception

If the buyer or the seller is gravely deceived due to misjudgment of the sale, he is permitted to confirm or cancel the deal. The Prophet (PBUH) said:

> *"One should not harm others nor should one seek benefit for oneself by causing harm to others."*[5]

He (PBUH) also said:

> *"The property of a Muslim is not lawful (to be taken) except by his consent."*[6]

None likes to be deceived through the sale, but if the resulting loss is insignificant and usually occurs among people, the deceived person has no option to cancel the deal.

The option in case of deception or misjudgment is applicable in three cases:

The first case is that of deceiving a stranger seller (or merchant) by meeting him before he reaches the market. If a Muslim enters into a business transaction with such a seller (or merchant), and then the merchant finds out that he has been paid less, he legally has the option to cancel or confirm the transaction. Imâm Muslim related that the Prophet (PBUH) said:

> *"Do not meet a merchant on his way and enter into business transaction with him. Whoever meets him and buys from him and then the owner of merchandise comes into the market (and finds that he has been paid less), he has the option (to declare the transaction null and void)."*[7]

Thus, the Prophet (PBUH) prohibits a Muslim to meet a stranger (merchant) before he reaches the market. The Prophet (PBUH) teaches us that if such a merchant finds out that he has been paid less, he legally has the option to cancel or confirm the transaction.

Sahykhul-Islâm Ibn Taymiyah (may Allah have mercy on him) said:

> *"The Prophet (PBUH) stressed that a stranger (merchant) has the option to cancel or confirm the trade transaction if the buyer meets him outside the market (before the former knows about the recent market value), for it is a kind of deception and fraud."*

Ibnul-Qayyim (may Allah have mercy on him) stated:

"This transaction is forbidden as the buyer can deceive the seller merchant, using the latter's unawareness of the market value, and pay him less than what is due. Therefore, the Prophet (PBUH) gives such a merchant the right of option whether to cancel or confirm such a deal when he enters the market (and knows the recent market value). Such a merchant's right of option in case of deception is indisputable, as he does not know the actual market value for his goods, and, thus, the buyer is legally considered deceitful. Likewise, a stranger has the same right if he is sold something exceedingly more expensive than that of the market value."[8]

The second case in which the option in case of deception is applicable is that of *najsh*, in which the buyer is deceived and ensnared by the artificial outbidding of a fake buyer. This is an illegal act as it involves fraud and deception to ensnare the buyer; such a kind of sale, *najsh*, was prohibited by the Prophet (PBUH) who said, *"Do not outbid in a sale in order to ensnare (others)."*[9] A similar form of such a fraudulent selling is when the owner of the commodity lies to the buyer and tells him that he has been offered such and such a price for his commodity or that he has bought it at such and such (a price). Likewise, it is regarded as *najsh* when the seller apparently insists on a certain price for his commodity, which costs much less (than this), so that the buyer may take it for the highest price possible. For instance, a seller may ask for ten pounds to sell a commodity that is worth only five in order to make the buyer pay a little less than ten.

The third case (in which the option in case of deception is applicable) is that of a gullible buyer. In this regard, Imâm Ibnul-Qayyim said:

"The Prophet (PBUH) says, 'Cheating a gullible buyer is (a kind of) ribâ[10] [11]*. A gullible buyer is a person who does not know the actual value of goods and is not good at bargaining. Rather, such a person, out of his kind nature and innocence, trusts the seller. Thus, if such a buyer is gravely deceived through a sale, he has the right of option (whether to cancel the deal or not)."*[12]

Generally speaking, selling based on deception is prohibited as it is a means of cheating the buyer. In some markets of Muslims, when a new merchant offers some goods for sale, the main market merchants conspire and send one of them to bargain with the seller for a lower price. Thus, the seller becomes obliged to sell him the goods at a cheap

price (as nobody else outbids). Afterwards, the buyer returns to his fellow merchants to divide the goods among themselves. This is a prohibited sale for it is a kind of deception and injustice. In such a case, the deceived seller has the right of option to cancel the deal and restore his goods once he knows about the plot. Whoever commits such deceitful transactions must give them up and turn to Allah in repentance. Also, whoever is acquainted with the legal ruling on such sales must show his disapproval of those who practice them and report them to those in authority in order to receive deterrent punishment.

Fourth: Option in Case of Cheating

Cheating in a trade transaction means to swindle by making the commodity's advantage visible and concealing its defect. In such transactions, the seller keeps the buyer in a state of darkness so that the latter would be unable to see the defect. There are two kinds of such transactional cheating:

1) Hiding the defect of the commodity

2) Displaying the commodity beautifully in order to raise its price

All kinds of cheating are prohibited, and the *Sharî'ah* (Islamic Law) permits the buyer in this case to cancel the deal as he has paid the seller for a false quality. In addition, if the buyer had known the truth, he would not have paid that much. An example of such cheating is keeping camels, cows or sheep without milking for a long time before displaying them for sale to make the buyer believe that they always give a lot of milk. The Prophet (PBUH) said:

> *"Do not keep camels or sheep without milking for a long time, for whoever buys such an animal has the option to milk it and then decide whether to keep it or return it to the owner long with one sâ'[13] of dates (in compensation for milking it)."*[14]

Another example of such transactional cheating is hiding the defects of a house or a used car displayed for sale to deceive the buyer.

A Muslim trader must tell the truth about his commodity for the Prophet (PBUH) said:

> *"The seller and the buyer have the right to keep or return goods as long as they have not parted. If both parties speak the truth and point out the defects and qualities (of the goods), then they will be blessed in their transaction. But if they tell lies or hide something, then the blessings of their transaction will be destroyed."*[15]

Thus, the Prophet (PBUH) states that telling the truth (while buying or selling) is a means to get Allah's blessings whereas telling lies causes the blessings to be destroyed. That is to say, a little money gained through telling the truth is blessed by Allah, but much ill-gotten money, gained through lying, has no blessing at all.

Fifth: Option in Case of Defect

It is the option given to the buyer to cancel or confirm the deal because of a defect. In this case, the commodity has a defect before sale and the seller has not mentioned it or he knows nothing about it. The legal principle that gives the buyer that option in case of defect is that a considerable defect usually reduces the value of the commodity or decreases the material of the commodity itself. In order to judge such a defect, the buyer should consult experienced, trustworthy traders; if they consider something a defect, the buyer is legally permitted to cancel the deal, and if they see no defect that reduces the value of the commodity or decreases its material, the buyer has no right to cancel the deal. Therefore, when the buyer discovers and verifies the defect after concluding the deal, he is legally permitted to confirm the deal, taking due compensation (which is the difference in price due to this defect) for the loss caused by this defect, or to cancel the deal, giving back the commodity and taking back his money.

Sixth: Option in Case of False Price

This right of option is applicable in four cases:

1- When the seller claims that he will sell the commodity at the same price he has paid for it, and then the buyer discovers that the actual price is more or less than what the seller has claimed.

2- When one claims that he will make another his partner in a transaction, then the latter discovers that the actual capital put by the former is less than what he has claimed.

3- When the seller claims that he will gain only a certain sum of money more than what he has paid for the commodity, and then the buyer discovers that the actual price is less than that.

4- When the seller claims that he will sell the commodity for a certain sum of money less than what he has paid for it, and then the buyer discovers that the actual price is less than that.

In these four cases, as long as the actual price differs from the price mentioned by the seller, the buyer has the right of option whether to cancel or confirm the deal, according to one of the opinions of the Hanbalî School. The second opinion (in the Hanbalî School) is that the buyer has no option to cancel the deal, but the deal will be based on the actual price, not the false one told by the seller, and Allah knows best.

Seventh: Option in Case of Difference

If the buyer and seller differ about the price, the commodity, its amount, or its quality, and they have no proof, each of them must swear by Allah that he tells the truth. After that, each of them has the right to cancel the deal if he is not satisfied with the oath of the other.

Eighth: Option in Case of Quality Change

Sometime a buyer purchases a commodity which he has seen some time before (concluding the deal), and then he discovers that its quality has changed. In this case, the buyer has the right of option whether to cancel or confirm the deal, and Allah knows best.

Endnotes

1 Al-Bukhârî (2112) [4/420] and Muslim (3833) [5/415].
2 Abû Dâwûd (3456) [3/474], At-Tirmidhî (1250) [3/550] and An-Nasâ'î (4495) [4/288].
3 See: "*I`lâmul-Mûwaqqi`în*" (2/307, 376), (3/301).
4 Abû Dâwûd (3594) [4/16]. See also At-Tirmidhî (1352) [3/634].
5 Ahmad (2867) [1/313] and Ibn Mâjah (2340) [3/106] and (2341).
6 Abû Ya`lâ (1570) [3/140].
7 Muslim (3802) [5/403].
8 See the footnote of "*Ar-Rawd Al-Murbi`*" [4/434].
9 Muslim (3445) [5/302].
10 *Ribâ*: A term that includes usury and usurious gain and interest.
11 Al-Bayhaqî (10924), (10925) and (10926) [5/571].
12 See the footnote of "*Ar-Rawd Al-Murbi`*" [4/435-436].
13 *Sâ`*: A standard measure that equals 2172 grams.
14 Al-Bukhârî (2148) [4/456] and Muslim (3812) [5/406].
15 Al-Bukhârî (2079) [4/391] and Muslim (3836) [5/416].

CHAPTER

5

Disposal of a Purchased Commodity Before Receipt and Rescinding of Bargains

In this chapter, Allah willing, we will deal with the rulings on the lawful disposal of a purchased commodity before receiving it. We will also illustrate how the bargain is legally concluded and when it becomes illegal.

One should be aware that it is invalid to sell a purchased commodity before receiving it whether it is measured, weighed, counted, or measured by cubit, as the *Imâms* agree. The same ruling applies to other kinds of commodities according to the preponderant view of the Muslim scholars (may Allah have mercy on them), for the Prophet (PBUH) said:

> *"He who buys a foodstuff should not sell it until he has received it with exact full measure."*
>
> (Related by Al-Bukhârî and Muslim)[1]

In another narration, it reads, "*...until he has received it.*"[2] In Muslim's narration, it states, "*...until he has weighed it.*"[3]

Ibn `Abbâs (may Allah be pleased with him) said, "*I consider that the same ruling (of foodstuffs) is applied to all types of sales.*"[4] This ruling is directly stated in the *Sunnah* (Prophetic Tradition); Imâm Ahmad related that the Prophet (PBUH) said:

> "*When you buy something, you should not sell it until you have completely received it.*"[5]

Moreover, Abû Dâwûd related:

> "*The Messenger of Allah (PBUH) forbade selling the goods where they are bought until the tradesmen take them to their houses.*"[6]

Shaykhul-Islâm Ibn Taymiyah and his student **Ibnul-Qayyim** (may Allah have mercy on them) stated:

> "*The cause behind prohibiting the buyer to sell a commodity until he has completely received it is the second buyer's inability to receive the commodity. The original seller may not deliver the commodity to the first buyer especially when the former sees the expected profit of the buyer after selling the same commodity to another person. In this case, the original seller may do his best to cancel the deal whether through rescinding or swindling. This ruling is further confirmed by the (Prophetic) prohibition of making profit through what is not in one's possession.*"[7] [8]

Accordingly, Muslims must adhere to the aforementioned transactional legal rulings. When a Muslim buys a commodity, he is not permitted to sell it until he has fully received it. However, many people are negligent in this regard, as they buy goods and sell them before they receive them, or when they receive only part of them, and this is not a legal receipt of the goods. For example, a buyer may count sacks, parcels, or boxes in the store of the seller, and then sell them to another person, which is not considered a legal receipt of the goods that enables the buyer to sell them.

Some may ask, "What is then the legal receipt that enables the buyer to have disposal of the purchased commodity?" The answer is that the legal receipt of goods differs according to their kinds; every kind has its own valid receipt. If the goods are measured, weighed, counted, or measured by cubit, their valid receipt must be through measuring, weighing, counting, or measuring by cubit respectively, provided the goods are taken to a place

belonging to the buyer. If the goods are clothes, animals, cars, or the like, their valid receipt is fulfilled by taking them to a place belonging to the buyer. If the goods can be delivered by hand, such as jewels, books and the like, their valid receipt is fulfilled by the buyer's actual possession of them. Yet, if what is purchased cannot be moved to deliver, such as houses, lands, or fruit on trees, its valid receipt is fulfilled by handing it over to the buyer to be at his disposal as its new owner. The valid receipt of a house (or the like) is fulfilled by giving its key to the buyer and handing him over the property as a new owner.

We have already mentioned some *hadîths* prohibiting a Muslim to sell goods if he has not validly and fully received them from the seller. This ruling serves the interests of both the buyer and the seller, and prevents controversies and disputes resulting from the remissness of the buyer and seller when the former receives the goods from the latter, or when the buyer neither checks the commodity nor verifies its quality and specifications before exempting the seller from liability. A Muslim must adhere to and carry out the aforementioned rulings while concluding business deals.

However, many people today are remiss in the valid receipt of the goods they purchase, committing what has been prohibited by the Prophet (PBUH), and thus they suffer controversies and disputes. Sometimes, the buyer regrets when he discovers the actual specifications of the goods (after concluding the deal) and then he cannot cancel the deal except through long arguments and disputes; whoever violates the orders of the Prophet (PBUH) must regret and suffer consequences in the end.

Among the transactional acts that have been stressed and highly recommended by the Prophet (PBUH) is that either of the contractual parties is to rescind the bargain if he regrets concluding the sale, does not need the commodity any more, or is unable to pay its price. He (PBUH) said:

> *"Whoever accepts the demand of a Muslim to rescind a bargain, Allah will rescind his faults on the Day of Resurrection."*[9]

Rescinding the bargain means to cancel it giving each of the seller and buyer his due right. Among the duties of a Muslim towards his fellow Muslim brother is to agree to rescind the bargain when the latter needs that urgently; this is a sign of gentleness and good treatment, as well as one of the requirements of brotherliness and fellowship in Islam.

Endnotes

1 Al-Bukhârî (2126) [4/435] and Muslim (3819) [5/409].
2 Al-Bukhârî (2136) [4/441] and Muslim (3823) [5/410].
3 Muslim (3818) and (3826) [5/409, 411].
4 Al-Bukhârî (2135) [4/441] and Muslim (3815) [5/408].
5 Ahmad (15253) [3/402] and An-Nasâ'î (4610) [7/329].
6 Abû Dâwûd (3499) [3/492].
7 Abû Dâwûd (3504) [3/495], At-Tirmidhî (1237) [3/535], An-Nasâ'î (4643) [4/340] and Ibn Mâjah (2188) [3/31].
8 See: "*Al-Akhbâr Al-'Ilmiyyah min Al-Ikhtiyarât Al-Fiqhiyah*" [p. 187).
9 Ibn Mâjah (2199) [3/36].

CHAPTER

6

Ribâ

Verily, the issue of *ribâ* is one of the most serious matters that should be tackled. In this regard, all of the heavenly revelations have prohibited dealing in it, and Allah warns those dealing in it with the severest threat. Allah, Exalted be He, says:

> ***"Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity..."*** (Qur'ân: Al-Baqarah: 275)

In this verse, Allah decrees for the person, who deals in *ribâ* and accepts its interest that he ***'cannot stand'*** from his grave ***'except as one stands who is being beaten by Satan into insanity'***. This means that the usurer only stands from his grave like the epileptic when being at the time of paroxysm of epilepsy. Figuratively, this is because the usurer used to accept interest on his money in his life and thereby his abdomen became bulky with it.

Furthermore, Allah threatens the one who returns to dealing in *ribâ* after knowing that Allah has prohibited it, that he will be one of the inhabitants of the Fire wherein he will abide eternally. Allah, Exalted be He, says:

> ***"...But whoever returns [to dealing in interest or usury] – those are the companions of the Fire; they will abide eternally therein."***
>
> (Qur'ân: Al-Baqarah: 275)

Allah, Exalted be He, also says:

> ***"Allah destroys interest and gives increase for charities..."***
>
> (Qur'ân: Al-Baqarah: 276)

This verse means that Allah wipes out the blessing of money that is mingled with the interest gained from dealing in *ribâ*. Despite the fact that the usurer may become richer and richer, Allah will wipe off the blessing of his money and there will be no good in it. Rather, this money will result in bad consequences upon its owner; he will be weary in this life, punished in the Hereafter, and it will be of no avail for him.

In addition, Allah describes the usurer as a sinning disbeliever. Allah, Exalted be He, says:

> ***"Allah destroys interest and gives increase for charities. And Allah does not like every sinning disbeliever."***
>
> (Qur'ân: Al-Baqarah: 276)

Thus, Allah tells (us) that He does not like those dealing in *ribâ*. Accordingly, deprivation of the Divine love means being hated and detested by Allah. Therefore, Allah, Exalted be He, calls the one dealing in *ribâ* a disbeliever. The word 'disbeliever' may be interpreted according to two meanings. As for the first one, it refers to the person who is exceedingly ungrateful to the favors of Allah. Yet, his disbelief does not mean that he is no longer a Muslim. In other words, the usurer shows ungratefulness to the divine favors but still believes in Allah. This is due to the fact that this person does not show mercy toward the disabled, help the poor, nor grant a respite to the insolvent person until the latter's circumstances allow him to pay (to settle his due debt). With regard to the second meaning, the word ***"disbeliever"*** may refer to the actual disbeliever who is no longer a Muslim. This is when such a person deals in *ribâ* deeming it lawful. Hence, Allah, Exalted be He, describes such a person in this verse as a ***"sinning disbeliever"*** since he is immersed in committing sins and wholly engulfed in enjoying the material benefits illegally acquired from *ribâ*, and at the same time causes harm to others.

Furthermore, Allah, Exalted be He, as well as His Messenger (PBUH) have declared war against the usurer, since the latter is an enemy of Allah and His Messenger unless he stops dealing in *ribâ*. Allah describes the usurer as a wrongdoer, as He says:

> ***"O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged."***
>
> (Qur'ân: Al-Baqarah: 278 - 279)

In addition to all these prohibitive Qur'anic verses that deter dealing in *ribâ* and accepting interest, many other prohibitive *hadîth*s are stated in the Prophet's *Sunnah* (Tradition). That is, the Prophet (PBUH) has regarded *ribâ* as one of the great destructive sins[1]. He (PBUH) has also cursed the one who accepts *ribâ*, the one who pays it, the one who records it and the two witnesses to it[2]. Moreover, the Prophet (PBUH) said that if one benefits from only one dirham[3] of *ribâ*, (when he knows that it is ill-gotten money), it will be more than (the evil of) committing adultery thirty three times[4]. In another narration, the Prophet (PBUH) said:

> *"Ribâ is like committing adultery thirty six times after the advent of Islam."*[5]

He, (PBUH), also said:

> *"Ribâ is seventy two degrees (of evil), the least of which resembles (in its sinfulness) committing adultery with one's mother."*[6]

In this connection, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

> *"The prohibition of ribâ is stronger (because of its degree of sinfulness) than the prohibition of gambling. This is because the usurer takes unlawfully an increase (the interest) from a person who is in need, while the gambler may gain this increase or lose it."*

Then, **Ibn Taymiyah** demonstrated that *ribâ*, beyond doubt, is injustice. This is because when dealing in *ribâ*, the rich person invests his power over the poor (the borrower), while in gambling, the poor may gain money from the rich or both gamblers may be equal in poverty or richness. Then he added:

> *"...As gambling involves taking money unjustly, Allah prohibits it. Yet, the injustice and harm afflicted upon the needy person (who has*

to borrow) due to ribâ are not the case in gambling. Furthermore, it is known that doing injustice to those in need (as the case of ribâ) is graver than doing injustice to others who are not in need."[7]

In addition to this, taking the interest (accrued from *ribâ* transactions) is one of the characteristics of the Jews for which they have deserved eternal and continual curse. Allah, Exalted be He, says:

> ***"For wrongdoing on the part of the Jews, We made unlawful for them [certain] good foods which had been lawful to them, and for their averting from the way of Allah many [people]. And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment."***
>
> (Qur'ân: An-Nisâ': 160 -161)

The Wisdom behind Prohibiting Dealing in *Ribâ*

- Dealing in *ribâ* involves consuming people's wealth unjustly. That is, the usurer takes *ribâ* from people without giving them anything useful in return.
- Dealing in *ribâ* involves causing harm to those in need and who borrow by increasing the debts due upon them (interest rates) when they are unable to pay their debts.
- *Ribâ* prevents favors and kind treatment among people, blocks good loans (i.e. loans without interests), opens the door wide for lending for interest, which overburdens the needy borrower.
- *Ribâ* also results in stopping gains, trades, professions and crafts without which other people's interests would not be set right. This is because, when the usurer increases his money through *ribâ*, without exerting any effort, then why should he look for other ways to gain his livelihood? In this regard, Allah, Exalted be He, has made dealings among people be based on mutual benefit in return for work or a material return. On the other hand, dealing in *ribâ* does not involve this, since it is simply giving money multiplied, from one party to another, without any visible product or work.

Linguistically, the word "*ribâ*" in Arabic means increase, while jurisprudentially, *ribâ* means increase in particular things, and it is divided into two kinds. The first is *riban-nasî'ah* (conditional excess for delay of payment) and the other kind is *ribal-fadl* (the selling of an item for another of the same type, on the spot, but in excess)

Riban-Nasî'ah (Delay Usury)

The word '*nasî'ah*' in Arabic refers to delay. *Riban-nasî'ah* involves two types:

First: Increasing the debt on the insolvent person (by way of an interest rate). This is the origin of *ribâ* which used to be done in the Pre-Islamic Period of Ignorance (*Al-Jâhiliyyah*). It means that a person owes another person a sum of money that is to be paid at a certain time. So, when it is time for paying back, the creditor gives the debtor the option either to pay the debt or to allow him much more time in return for an interest on the borrowed sum. Therefore, if the debtor chooses not to settle his debt, the creditor prolongs the period of payment against an interest, which thereby results in the excessive increase of the debt. This is why Allah, Exalted be He, prohibits this type of transactions saying:

"...And if someone is in hardship, then [let there be] postponement until [a time of] ease..." (Qur'ân: Al-Baqarah: 280)

The verse signifies that if the time of payment is due and the debtor is unable to fulfill his debt, it is impermissible for the creditor to increase debt; rather the creditor should give the debtor a grace period. On the other hand, if the debtor is wealthy, he is to pay his due debt. Hence, no increase on the debt (by way of an interest) should be made whether the debtor is insolvent or not.

Second: It refers to the *ribâ* taken through selling goods of the same type but in excess (which is the property in the case of *ribal-fadl*) with delaying the date of delivery, whether for both or just one of the items. There are many examples of this type, such as selling gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt and the like. Besides, this type includes selling any type of these items for the same on credit. The same applies to whatever shares these items in the property (of *ribal-fadl*), as will be pointed out below.

Ribal-Fadl (Excess Usury)

This type of *ribâ* refers to the selling of an item for another of the same type but in excess. With regard to this issue, the Prophet (PBUH) dictates that this kind of transactions is prohibited in six items, namely, gold, silver, wheat, barley, dates and salt. Thus, if any of these items is sold in exchange for another of the same type, then it is prohibited to take more than the other (in weight or

measure). This is due to the *hadîth* narrated by `Ubâdah Ibnus-Sâmit (may Allah be pleased with him) as a *marfû`* (traceable) *hadîth*,[8] in which the Prophet (PBUH) said:

> *"Gold is to be paid for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like for like and equal for equal, and payment is to be made hand to hand."*
>
> (Related by Imâm Ahmad and Imâm Muslim)[9]

The above *hadîth* states the prohibition of paying gold for gold, all its types; coined or not, silver for silver, wheat for wheat, barley for barley or dates for dates, unless like for like, equal for equal and payment is made on the spot. Furthermore, the majority of scholars uniformly agree on the prohibition of selling an item as a payment for another unless both are equal. The same ruling applies to other things that share the same cause of judgment. Yet, scholars differ as regards setting such cause of judgment. In this respect, the soundest view is that the common property in money (coins or banknotes) is its value. That is other similar types are to be valued according to the value of money, such as those banknotes used today. Hence, it is maintained prohibited to sell any of such items in excess for another of the same type, namely, being issued in the same country.

As for the cause of judgment of the rest of the six items – mentioned in the previous *hadîth*, namely, wheat, barley, dates and salt – it is the measure or weight; besides, such items are edible. Thus, the same ruling applies to whatever shares any of their property, as regards weight or measure and edibility. That is, such type of transactions (i.e. *ribal-fadl*) is viewed prohibited, unless there is equality in measure or weight.

In this connection, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

> *"...The criterion in prohibiting the transactions of ribal-fadl is measure or weight (of items being paid for other items) in addition to edibility. This is one of the two views maintained by Imâm Ahmad."*[10]

Accordingly, whatever item shares these six items mentioned in the *hadîth* in that cause of judgment (namely being edible and measurable or being edible and can be weighed, or is paid for as a price), it is to be included in transactions condemned as *ribâ*. Similarly, if such items share that cause of judgment as well as being of the same type, then it is prohibited to sell wheat for wheat, for example, in excess or with delaying the payment. This is based on the *hadîth* of the Prophet (PBUH), in which he says:

> *"Gold is to be paid for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like for like and equal for equal, and payment is to be made hand to hand."*[11]

Furthermore, if the items share the same cause of judgment but differ in type, such as in cases of selling wheat for barley, it is prohibited to delay payment; it must be made on the spot. While, in this case, it is permissible to sell one type for more of the other. This is due to the *hadîth*, in which the Prophet (PBUH) says:

> *"...If these classes differ, then sell as you wish if payment is made hand to hand."*
>
> (Related by Muslim and Abû Dâwûd)[12]

The phrase "hand to hand" here means that payment must take place on the spot before the two parties separate. On the other hand, if the items are different in both cause of judgment and type, it is maintained permissible to pay one type for more of another, so is the case of delaying payment, such as selling gold for wheat or silver for barley.

Let it be known to you, dear Muslim reader, that it is viewed impermissible to sell an item which could be weighed for another of the same type except with equal weight. Besides, it is impermissible to sell a measurable item for another of the same type except with equal measure. This is due to the *hadîth*, in which the Prophet (PBUH) says:

> *"Gold is to be paid for gold with equal weight, and silver is to be paid for silver with equal weight, and wheat is to be paid for wheat with equal measure, and barley is to be paid for barley with equal measure."*[13]

Besides, since items will not be equal when their legal criterion (measure or weight) is different, it is impermissible to sell an item that can be weighed or measured with a random weight or measure for another of the same type. This is because one does not guarantee that both items are equal; hence, ignorance of equality is like knowing about excess (in one item over the other).

As for the issue of money exchange, whether of the same type or not, and whether money is of gold, silver or banknotes, which are common these days, the same ruling applied to the selling of gold and silver is to be applied to it. This is based on the fact that they share the same property; being of value that

can be measured. Thereupon, if an amount of money is exchanged for another of the same type, such as gold coins for gold coins, silver coins for silver coins or any category of paper money for another of the same type (e.g., a dollar for a dollar or Saudi paper dirhams for the like), both exchanged items must be equal in value. Besides, payment must take place on the spot. However, if an amount of money of one type is exchanged for another of a different type, such as exchanging Saudi paper riyals for US dollars, or exchanging gold coins for silver coins, both parties (the buyer and the seller) must be present at the time of the exchange, and payment must take place on the spot. In such a case, it is permissible to exchange one type for more of the other type, both according to their value. Similarly, if a piece of gold jewelry is sold for silver dirhams or for paper money, both the buyer and the seller must be present at the time of the transaction, and the payment must take place on the spot. The same applies to the selling of silver jewelry for gold coins.

On the other hand, if a piece of gold or silver jewelry is sold for jewelry or money of the same type, such as in the case of selling a piece of gold for gold or a piece of silver for silver, there are two matters that should be fulfilled. First, both pieces must be equal in weight. Second, both the buyer and the seller must be present at the time of concluding the transaction and the payment must take place on the spot.

With regard to this, dealing in *ribâ* implies a great danger that one cannot avoid, unless one is well acquainted with its rulings. Therefore, whoever is not able to know about its rulings by himself can ask the people of knowledge. This is because it is not permissible for someone to undertake any transaction, except when being certain that it does not involve *ribâ*, so that his religion can be saved and he can rescue himself from Allah's punishment, with which He has threatened the usurers. It is also impermissible to imitate others in any kind of transactions, without considering it carefully, especially nowadays when people do not consider the ways through which they can get their wealth and gains: be they lawful or not. In this respect, the Prophet (PBUH) said:

> *"There will come a time when people will eat (i.e., take) ribâ. Even the one who will not eat it may not spare its dust (i.e. he will be affected by it in a way or another)."*[14]

It is worth mentioning here that there are many usurious transactions undertaken nowadays. One of these transactions is increasing the debt on the insolvent debtor (by way of an interest rate) when one's debt becomes due and one is unable to fulfill it. That is, the creditor allows the debtor to

postpone fulfilling the debt and in return, he increases that debt in a certain percentage according to the debtor's period of delay. This is the *ribâ* done at the Pre-Islamic Period of Ignorance (*Al-Jâhiliyyah*) which is prohibited according to the unanimous agreement of Muslim scholars. In this regard, Allah, Exalted be He, says:

> ***"O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal – [thus] you do no wrong, nor are you wronged. And if someone is in hardship, then [let there be] postponement until [a time of] ease..."*** (Qur'ân: Al-Baqarah: 278-280)

In these noble verses, Allah, Exalted be He, threatens those taking and dealing in *ribâ* with many threats. These threats involve:

First, Allah, Exalted be He, addresses His servants saying, ***"O you who have believed..."*** and ***"...if you should be believers..."*** which indicates that it is not proper for a believer to deal in *ribâ*.

Second, Allah, Exalted be He, says, ***"...fear Allah..."*** which indicates that those dealing in *ribâ* do not obey Allah nor do they fear Him.

Third, Allah says, ***"...and give up what remains [due to you] of interest..."*** This part of the verse is considered a divine command that obligates refraining from dealing in *ribâ*. Hence, this prohibition indicates that whoever deals in it disobeys the Command of Allah.

Fourth, Allah, Exalted be He, has declared war against those who do not give up dealing in *ribâ*, as He, says, ***"...and if you do not..."*** which means if those dealing in *ribâ* do not give up, ***"... then be informed of a war [against you] from Allah and His Messenger..."*** This means that those dealing in *ribâ* should come to know that they, indeed, wage war against Allah and His Messenger.

Fifth, Allah, Exalted be He, addresses the usurer as a wrongdoer, saying, ***"...but if you repent, you may have your principal – [thus] you do no wrong, nor are you wronged."***

There is another usurious transaction, namely lending against a specified interest. This is through lending something to someone, such as an amount of money, on the condition that the borrowed amount be paid back with an interest. It may also be through crediting an amount of money on the

condition that the borrower must return more than its actual value according to an agreed upon percentage. These are explicit usurious transactions done in banks as well as the other banking institutions, as they conclude transactions through lending loans for those needing them, traders, factory owners, etc. They lend these categories charging them a fixed interest calculated according to a specified percentage. Such percentage is increased in case of failure to pay the amount of the loan on its due time. Thus, such type of lending involves both types of *riba*, namely *ribal-fadl* (excess usury) and *riban-nasî'ah* (delay usury).

Similarly, depositing at banking institutions for a specified period and against a specified interest is considered one of the usurious transactions. During this period, the bank has the right of free disposal, as regards the deposited amount until the maturity date. So, the depositors are paid (by the bank) a fixed interest according to a certain percentage on the total sum of the deposits, such as 5 or 10 percent.

Likewise, the issue of *`înah*[15] transactions is considered amongst the usurious transactions. It refers to a transaction in which one buys a commodity on credit then sells it in cash to the same person but at a less price. In this kind of transactions, the buyer takes an amount of cash against the commodity previously bought on credit, yet it is but a pretext for gaining *ribâ*. There are many *hadîth*s and traditions forbidding dealing in *`înah* transactions. For example, Abû Dâwûd relates a *hadîth*, in which the Prophet (PBUH) says:

> *"If you sell to one another with `înah, hold the tails of cows (i.e. become occupied with worldly gains), are pleased with agriculture, and give up conducting jihâd (fighting in the Cause of Allah), Allah will make disgrace prevail over you, and will not withdraw it until you return (i.e. adhere) to your religion."*[16]

The Prophet (PBUH) also says:

> *"There will come a time for people when they will consider ribâ lawful by means of trade."*

Therefore, every Muslim must take precaution lest *ribâ* should be mingled with his transactions and money. This is because taking *ribâ* and dealing in it are among the major sins. Besides, no people deal in *ribâ* and commit adultery, but Allah, Exalted be He, afflicts them with poverty, incurable diseases and injustice from rulers. Moreover, *ribâ* causes destruction to one's wealth and wipes off its blessing.

Furthermore, Allah strongly warns and threatens Muslims against accepting *ribâ* making it one of the most abominable deeds and one of the most grievous of major sins. Allah, Exalted be He, also demonstrates the penalty be imposed on the usurer in both this life and in the Hereafter, as He stated, in the Glorious Qur'ân, that the usurer wages war against Allah and His Messenger (PBUH). Thus, Allah punishes the usurers in this world through destroying the blessing of their wealth making it subject to damage and ruin. How often we hear about people's huge wealth being damaged by way of fires and flood, thus turning its owners into poor people! However, if those usurious people still keep their wealth acquired through *ribâ*, such wealth will be of no use since Allah takes away its blessing. Besides, those people only suffer the trouble of its collection, bear its imposed punishment (on the Day of Resurrection) as well as become tormented in the Hellfire for it.

In addition, the usurer is hated by Allah as well as by the people, since he takes money but never gives in return, collects wealth and withholds it from people, and spends but never in charity. Moreover, he is a greedy miser who collects money and abstains from spending it in goodness. As a result, people's hearts and the community are disinclined towards such a person. In fact, this is considered the worldly torment for this person while his torment in the Hereafter is more severe and more enduring, as demonstrated in the Glorious Qur'ân. This is because *ribâ* is a prohibited gain that causes a harmful privation and is regarded as a frightening nightmare from which all societies suffer.

Endnotes

1 Al-Bukhârî (2766) [5/481] and Muslim (258) [1/273].
2 Muslim (4069) [6/28] and (4068).
3 A dirham of silver equals 2.975 grams of silver.
4 Ahmad (21855) [5/225] and Ad-Dâraqutnî (2820) [3/13].
5 Ahmad (21854) [5/225], Ad-Dârqutnî (2821) [3/13] and At-Tabarânî in his book "*Al-Awsat*" (7151) [7/158].
6 Ibn Mâjah (2274) [3/72] and (2275).
7 See: "*Majmû'ul Fatâwâ*" (20/341, 347).
8 *Marfû'* (traceable) *hadîth* is whatever word, deed, approval or attribute, traced directly back to the Prophet (PBUH) with a connected or disconnected chain of transmission.
9 Muslim (4039) [6/16] and Ahmad (9605) [2/438].

10 See: *"Majmû'ul Fatâwâ."*
11 Muslim (4039) [6/16] and Ahmad (9605) [2/438].
12 Muslim (4039) [6/16] and Abû Dâwûd (3350) [3/419].
13 Muslim (4540) [6/17].
14 Abû Dâwûd (3331) [3/407], An-Nasâ'î (4467) [4/279] and Ibn Mâjah (2278) [3/74].
15 *'Înah*: A usurious kind of transaction in which a seller sells a commodity on credit to a buyer and then buys it from him at the same time at a lower price. For example, a trader sells a car for twenty thousand pounds on credit then buys it from the same man (who has just bought it) for fifteen thousand pounds cash. Thus, the original buyer owes the seller twenty thousand pounds to be paid at the due time.
16 Abû Dâwûd (3462) [3/477].

CHAPTER 7

Selling Assets

Assets include houses, lands and trees. It can be safely said that whatever is related to these assets when sold, is for the buyer, and whatever is not related to these items remains the property of the seller. When both the buyer and the seller are acquainted with these rulings, they will settle any dispute that may arise between them. They will also recognize each one's duties and obligations. This is because Islam has not left a matter in which there may be a benefit for Muslims or harm but has demonstrated it. Besides, if the rulings of Islam are properly applied, any conflicts or disputes will be properly settled. One of these matters is selling an item while there are other items related to it; auxiliary, complementary or installations attached to or detached from this sold item. Besides, the sold item may be of a continuous growth (e.g., selling a piece of land containing a certain crop that can be harvested for many times; so there is a continual gain) and may not be like that. All of these matters may cause a dispute between the buyer and the seller, as to whom shall all these auxiliaries, complementary items and installations

belong. In order to issue a judgment in this dispute, the *faqîh*s (may Allah have mercy on them) have decided to dedicate a chapter in jurisprudence and be entitled "Selling Assets and Fruits" wherein they have demonstrated all such pertaining rulings.

If someone sells a house, the sale includes the building and roof, since both are included in the appellation of a house. This sale also includes whatever items are attached to the house and considered among its necessities, such as doors, stairs, shelves and machineries installed in the house. These machineries include electrical tools, lifting apparatuses, lamps, water tanks positioned under the ground or above the roofs, pipes specified for distributing water, air-conditioners, etc. This kind of sale will also include whatever the house contains of trees, plants and sunshades setup in it. This sale also includes whatever is inside the land of the house of solid metals.

As for objects lodged in the house and detached from it, the sale does not include them. These detached things include wood, ropes, vessels, furniture and whatever is buried in the ground of the house for keeping, such as stones, treasures and the like. All these items are not to be included in the sale, since they are detached from the house and are not within its appellation, excluding things without which one could not make use of the house, such as keys, even if these things are detached from the house.

If one sells a land, this sale includes whatever is attached to it and which will last for a period, such as trees and buildings. In the case of selling a garden, the sale includes the land, the trees, the walls and the buildings thereof. If one sells a land with plants that are to be harvested for only one time, such as wheat and barley, then these plants belong to the seller and are not to be included in the contract of sale. However, if the land is sold with plants that are frequently cut (like the grass) or picked (such as cucumber or eggplants), the plants belong to the buyer since it is attached to the land. At the time of sale, if there are any plants that are to be harvested, they belong to the seller.

All of this detailed explanation and rulings are applicable to whatever belongs to the seller and the buyer when selling an asset, in case both parties do not agree on other conditions. Hence, if a party makes a condition stating that such objects are possessed by only one of them, both parties must keep to this condition. This is because the Prophet (PBUH) says:

"Muslims must keep to the conditions they make."[1]

If somebody sells pollinated date palms, the dates are for the seller. This is according to the *hadîth*, in which the Prophet (PBUH) says:

> *"If somebody sells pollinated date palms, the fruits will be for the seller unless the buyer stipulates that they will be for himself (and the seller agrees)."*
>
> (Related by Al-Bukhârî and Muslim)[2]

The same applies to other plants, such as grapes, mulberry and pomegranate; if sold after the appearance of their fruits, the fruits are to be for the seller. Thereupon, whatever is sold before the pollination of date palms or the appearance of fruits, as regards grapes and the like, such plants and fruits are for the buyer. This is based on the general meaning of the above-mentioned *hadîth*. Besides, the same ruling pertaining to date palms applies to other objects by means of analogical deduction.

Thus, we realize how complete and perfect is our *Sharî`ah* (Islamic Law), which solves the problems facing people, gives rights to whom are entitled to them in a just manner without causing any harm. There is no problem but our *Sharî`ah* has provided for it a justifying, wise solution. This *Sharî`ah* is a legislation from our Lord, the Wise and the Praiseworthy. Allah knows what benefits His servants and what causes harm to them, in all places and times.

True are the Words of Allah, the Most Great, Who says:

> ***"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result."***
>
> (Qur'ân: An-Nisâ': 59)

Verily, no judgment other than that of Allah and His Messenger (PBUH) can decisively settle any dispute among people, and benefit them and convince the believers.

As for the human systems of legislation, they are as imperfect and incapable as humans themselves are. Besides, these systems are influenced by personal inclinations and tendencies, as Allah, Exalted be He, says:

> ***"But if the Truth [i.e. Allah] had followed their inclinations, the heavens and the earth and whoever is in them would have been ruined..."*** (Qur'ân: Al-Mu'minûn: 71)

Therefore, away with those who have replaced the judgment of Allah and His Messenger (PBUH) with laws of humans! And may they be ruined. In this regard, Allah says:

> ***"Then is it the judgment of [the time of] ignorance they desire? But who is better than Allah in judgment for a people who are certain [in faith]?"*** (Qur'ân: Al-Mâ'idah: 50)

We invoke Allah to render His Religion (Islam) victorious over falsehood, elevate His word, and protect Muslims from whatever plots their enemies contrive; He is the Hearing and the Responsive.

Endnotes

1 Abû Dâwûd (3594) [4/16]. See also At-Tirmidhî (1352) [3/634].
2 Al-Bukhârî (2379) [5/62] and Muslim (3882) [5/432].

CHAPTER

8

Selling Fruits

Fruits are whatever date palms or other kinds of trees carry of edible ripe produce. One of the rulings on selling fruits is that it is impermissible to sell the fruits on trees before the appearance of ripeness. This is because the Prophet (PBUH) forbade the sale of fruits until they are ripe (free from blight). He forbade both the seller and the buyer such a sale[1]. Thereupon, the Prophet forbade the seller from selling his fruits before they become ripe and free from any blight lest he should devour the buyer's money unjustly. The Prophet (PBUH) also forbade the buyer from that kind of transactions since he would thus help the seller in devouring money unjustly. It is also stated in the Two Sahîhs[2] that the Prophet (PBUH) forbade selling fruits until they are almost ripe. When he (PBUH) was asked about the signs of ripeness, he replied, *"They get red or yellow (fit for eating)."*[3] The forbiddance in the two above-stated hadîths indicates the invalidity of any transaction concluded before the signs of ripeness appear.

Besides, it is impermissible to sell plants until they are almost full-grown (safe from blight). This is according to the *hadîth* related by Imâm Muslim on the authority of Ibn `Umar, stating:

> *"The Messenger of Allah (PBUH) forbade selling date palms until the dates are almost ripe, and (he forbade selling) ears of corn until they are white and safe from blight. He forbade both the seller and the buyer from such sale."*[4]

This *hadîth* proves that it is forbidden to sell plants until they are almost full-grown, that is by becoming white (ears of corn) and safe from any plant disease. The wisdom behind forbidding the sale of fruits until they are almost ripe and of plants until they are almost full-grown, is that they are subjected, before their ripeness and full growth, to plant diseases and damage. The Prophet (PBUH) demonstrates this by saying:

> *"If Allah destroyed the fruits (present on the trees), what right would one of you have to take the money of his (Muslim) brother?"*[5]

He has also forbidden us from selling ears of corn *"until they are white and safe from blight."* 'Blight' here means any plant disease which may afflict plants resulting in their destruction. This Prophetic injunction is verily a mercy for people, and a means of preserving their money as well as preventing any conflict that may arise among them, and which may lead to animosity and hatred.

Thereby, it manifestly appears how much attention Islam pays to the sanctity of the Muslim's property. The Prophet (PBUH) says:

> *"If Allah destroyed the fruits (present on the trees), with what right would you (the seller) take the money of your (Muslim) brother?"*

In this *hadîth*, there is a warning for whoever resorts to tricky methods for taking people's money unlawfully. This *hadîth* also urges the Muslim to ensure the safety of his money and keep away from wasting it, as the Prophet (PBUH) forbade the buyer from buying fruits until they are almost ripe and free from blight. This is because if these fruits were damaged and their money was paid by the buyer, the buyer's money would be lost or it would be difficult to return it.

It becomes clear from the above-mentioned *hadîth* that the Prophetic prohibition of selling fruits until they are almost ripe indicates making the ruling dependent on the most probable condition. In other words, it is more probable that fruits be damaged before ripeness; thereupon, it becomes impermissible to sell them. While, the most probable condition is that fruits

be safe from blight after their ripeness, and therefore it becomes permissible to sell them. Moreover, it can be understood from the same *hadîth* that it is impermissible for one to expose one's money to danger or waste, even if both parties agree that there will be a sort of compensation for the damaged fruits, which is considered an unsafe procedure.

Due to the above, it is impermissible to sell fruits before they are almost ripe, namely fruits can be sold alone without the trees (carrying them) provided that these fruits are left (on the trees) until they are ripe before being sold. However, if these fruits are sold along with the trees or sold in their present condition (i.e., before ripeness), this becomes permissible according to three cases mentioned and demonstrated by the *faqîh*s (may Allah have mercy on them).

First: It is permissible to sell fruits before they become ripe with their trees. That is, fruits become part of the sold item (their trees). The same applies to the selling of the unripe plants along with the land, as the unripe plants belong to the land in this case.

Second: It is permissible to sell the fruits or unripe plants before becoming ripe or full-grown to the owner of the land or the fruits. This is because if those fruits are sold to the owner, then he gets the fruits or the unripe plants fully, as he is the actual owner. Though this kind of selling is valid, it is a debatable issue since some scholars maintain that this case implicitly falls under the general meaning of the Prophetic injunction forbidding the sale of fruits before they are almost ripe.

Third: It is permissible to sell fruits and plants (ears of corn for example) before their ripeness and full growth on the condition that they are picked or cut immediately after the sale, and that the buyer can make use of them at that time. This is because the Prophet (PBUH) forbade the sale of fruits (and the like) before they are almost ripe for fear that they may get damaged or blighted; however, this will not be the case when fruits and plants are picked or cut immediately after concluding the sale. By contrast, if the fruits and plants will be of no use if they are cut immediately after concluding the sale, selling them becomes impermissible. This is because this leads to damage and waste of one's money, while the Prophet (PBUH) forbade wasting one's property[6].

Yet, according to the soundest view of scholars in this regard, it is permissible to sell crops that are frequently cut or picked, such as grass plants of the pea family, cucumber, eggplant and the like. So, it is permissible to sell their present or future produce. With regard to this, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) says:

> *"...The soundest view with regard to this issue is that this (the latter) kind of sale is not included in the Prophet's prohibition. The contract of sale is valid when one sells the present produce and the future one whose fruits have not appeared yet, until the frequently cut or picked produce becomes dry, since necessity requires this. Thus, it is permissible to sell the frequently cut or picked produce without their plants."*[7]

Moreover, the great scholar **Ibnul-Qayyim** (may Allah have mercy on him) says:

> *"The Prophet (PBUH) only forbade the selling of fruits which could be sold at a later time until they appear to be almost ripe. However, the frequently cut or picked produce (such as cucumber) is not included in the Prophet's prohibition."*[8]

Endnotes

1 Al-Bukhârî (2194) [4/497] and Muslim (3840) [5/418]..
2 The Two Sahîhs: The Two Authentic Books of Al-Bukhârî and Muslim.
3 Al-Bukhârî (2195) [4/498] and Muslim (3954) [5/460].
4 Muslim (3842) [5/419] and Al-Bukhârî (2197) [4/502].
5 Al-Bukhârî (2208) [4/510] and Muslim (3954) [5/460].
6 Al-Bukhârî (6473) [11/371] and Muslim (4459) [6/238].
7 See: "*Majmû'ul-Fatâwâ*" (37/205).
8 See the footnote of "*Ar-Rawd Al-Murbi'*" [4/546].

CHAPTER

9

Blighted Fruits: Rulings

Blight refers to any plant disease affecting fruits resulting in their destruction. In this regard, fruits may be sold when they are almost ripe, and it is permissible to sell them, and after that, they may be hit by blight. Divine Blights refer to matters that are beyond the powers of human intervention, such as wind, heat, drought, rain, coldness, locusts, etc. If the buyer then could not collect the fruits before being afflicted, the buyer is allowed to take whatever amount of money he had paid for those blighted fruits. This is due to the *hadîth* narrated by Jâbir Ibn `Abdullâh (may Allah be pleased with him) and related by Imâm Muslim, stating that the Prophet (PBUH) has commanded to return the payment of those (fruits) struck with a blight [1].

The aforementioned *hadîth* signifies that the blighted fruits belong to the seller and the buyer is to take whatever price he has paid for them. Thus, if all the (sold) fruits are blighted, the buyer is to be repaid whatever payment he has given, but if some of those fruits are blighted, he is to ask only for what is equal to the value of the blighted fruits. This is based on the general meaning of the above-mentioned *hadîth*. This also applies whether the sale

has been concluded before the ripeness of the fruits or afterwards, according to general meaning of this *hadîth* and according to the *hadîth* in which the Prophet (PBUH) says:

> *"How could you take the money of your (Muslim) brother without a right?"*[2]

However, if the blighted quantity of the sold fruits is little and could not be exactly defined, the buyer, and not the seller, is to bear its responsibility, since this is common among products. Moreover, this damaged quantity is not considered blight and cannot be avoided; for example, it may happen when birds eat from fruits or what may drop on the ground and the like. In this respect, scholars maintain that this quantity is not to be regarded as a blighted produce as long as the damage does not reach the third of the whole quantity. Yet, the most preponderant opinion is that the amount is not to be determined in this manner, but it is to be decided according to the common convention among people in this regard. This is because deciding a certain quantity necessitates the presence of a proof.

Scholars (may Allah have mercy on them) maintain that the seller should bear the responsibility of the blighted fruits because when the seller sells the fruits on the trees by leaving them to the buyer, fruits are not actually handed over. In other words, it is as if he has not given him those fruits from the start. This applies to the fruits struck with a divine blight.

However, if the fruits are damaged by way of a human cause, such as a fire (started willfully), the buyer is to be given the choice between two things. The first is abrogating the sale and asking the seller to repay what he has paid. The seller should then ask the person who caused damage to bear the responsibility for what he has damaged. The second option is concluding the sale and asking the one who has caused the damage to give compensation.

The Prophet (PBUH) stipulated that fruits are not to be sold until they are almost ripe. Actually, the signs through which trees other than palm are known to have reached ripeness differ according to each kind of trees. As for grapes, the sign of ripeness is when their taste becomes sweet. This is due to the *hadîth* narrated by Anas that the Prophet (PBUH) forbade the sale of grapes until they become black (ripen) [3]. (Related by Imâm Ahmad with a trustworthy chain of transmitters)

As for the sign indicating the ripeness of other fruits (such as apples, watermelon, pomegranate, apricots, plum, walnuts and the like), it is the appearance of their ripeness and being fit for eating. This is based on the *hadîth* related by Al-Bukhârî and Muslim in which the Prophet (PBUH) forbade selling fruits until they get ripe[4]. This *hadîth* is narrated in another wording as, "*...when it is fit for eating.*" As for cucumber and the like, the sign of their ripeness is when they become fit for eating. However, grains are known to be ripe when they are fully-grown and white, since the Prophet (PBUH) deems it permissible to sell grains only when they are fully-grown and hard[5].

Endnotes

1 Muslim (3957) [5/462].
2 Muslim (3952) [5/460]. See also Al-Bukhârî (2208) [4/510] and Muslim (3954) [5/460].
3 Abû Dâwûd (3371) [3/432], At-Tirmidhî (1231) [3/530] and Ibn Mâjah (2217) [3/45].
4 Al-Bukhârî (2196) [4/498] and Muslim (3849) [5/421].
5 Related by the Five Compilers of *Hadîth* except An-Nasâ'î.

CHAPTER

10

The *Salam* (Sale of Payment in Advance)

The *salam* is payment in advance with delaying the receipt of the sold item. The Muslim *faqîh*s (may Allah have mercy on them) define the *salam* as:

> *"A contract according to which the price of a clearly defined item is paid in advance at the place of concluding the contract, and the sold item is to be received later."*

This kind of transactions is permissible according to the Qur'ân, the *Sunnah* (Prophetic Tradition) and the consensus of Muslim scholars. What proves that is what Allah, Exalted be He, says:

> ***"O you who have believed, when you contract a debt for a specified term, write it down..."*** (Qur'ân: Al-Baqarah: 282)

Ibn `Abbâs (may Allah be pleased with him) says:

> *"I testify that Allah has made lawful to us (Muslims) to pay in advance for the price of a thing to be delivered later after a specified term. He then recited this above-mentioned verse."*[1]

When the Prophet (PBUH) arrived at Medina and found its people paying in advance the price of fruits to be delivered later after a year, two or three, he said:

> *"Whoever pays in advance the price of a thing - (or "...of fruits..." according to another narration) - to be delivered later should pay it for a specified measure at specified weight for a specified period."*
>
> (Related by Al-Bukhârî and Muslim)[2]

This *hadîth* proves that the *salam* is permissible when these conditions are fulfilled. Besides, Ibnul-Mundhir and other scholars report that scholars uniformly agree that the *salam* is permissible[3]. Moreover, people need the *salam*, since one of the parties of the transaction may be in need for being paid the price of an item in advance while the other may be in need for buying an item for a cheap price.

In addition to the conditions of selling, there are some conditions necessary for validating the *salam*:

First: The sold item whose price is to be paid in advance must have definite properties. This is because items whose properties cannot be defined undergo many changes, which causes disputes between the two parties of the sale (at the time of receiving the sold item). Thereupon, the *salam* is not valid in items whose properties may change, such as pulses, leather, utensils and jewels.

Second: The kind and the class of the sold item must be defined. For example, if the sold item is wheat, the kind must be defined, which is wheat here, and the class of that wheat must be defined such as *As-salamûnî* (a type of wheat).

Third: The sold item must be a specified quantity, weight or measure. This is according to the meaning of the *hadîth* in which the Prophet (PBUH) says:

> *"Whoever pays in advance the price of a thing to be delivered later should pay it for a specified measure or a specified weight and for a specified period."*
> (Related by Al-Bukhârî and Muslim)

Besides, if the quantity of the sold item is unspecified, it becomes difficult to be exact.

Fourth: There must be a specified period for receiving the sold item. This is because the Prophet says in the above-mentioned *hadîth*, "*...for a specified period.*" Besides, Allah, Exalted be He, says:

"O you who have believed, when you contract a debt for a specified term, write it down..." (Qur'ân: Al-Baqarah: 282)

With regard to this issue, both the *hadîth* and the noble verse state that in the *salam* both parties agree to the condition stating that the sold item is to be delivered later according to a specified period known to both of them.

Fifth: The item sold must be present when the time of reception is due, in order to be delivered at the stipulated time. Thereby, if that item is not available when its time of delivery is due, the *salam* does not become valid, such as paying the price of ripe dates and grapes in advance and stipulating that the sold item be delivered in winter, (such crops are not available at such a time).

Sixth: The price of the sold item must be paid fully in advance at the time of concluding the contract. This is according to the *hadîth* in which the Prophet (PBUH) says:

"Whoever pays in advance the price of a thing to be delivered later should pay it for a specified measure..."

In this connection, **Imâm Ash-Shâfi`î** (may Allah have mercy on him) said:

"The transaction of the salam is not valid, except when the price is paid in advance and before the two parties (the seller and the buyer) leave the place where they have concluded the transaction. Besides, if the price of the sold item is not paid at the time of concluding the contract, it will be regarded as selling a debt for a debt, which is impermissible."

Seventh: The sold item is not to be specific (e.g. a certain house or a specified tree). Rather, it should be regarded as a debt in the seller's liability. Thereby, the *salam* is not valid when specifying a certain house or a certain tree to be given, because this tree or house may get damaged before being delivered to the buyer. In this way, the desired purpose for which the *salam* has been decreed will not be fulfilled.

Besides, the delivery of the sold item is to be in the same place where the contract of the *salam* has been concluded, if possible. If this place is not fit for delivery (e.g. they concluded the contract at a certain spot on land or at sea), then the place of delivery must be mentioned in the contract. Moreover, if the two parties agree on the place of delivery, the *salam* becomes permissible. Otherwise, they must resort to the place where the contract has been concluded, for it was fit for concluding the transaction from the start, as mentioned before.

One of the rulings on the *salam* is that it is impermissible to sell the item sold according to the *salam* to someone else (by the buyer) before it is received. This is because the Prophet (PBUH) forbade selling foodstuffs before receiving them[4]. In this case, the *hawâlah*[5] is invalid, since the *hawâlah* is only valid regarding a stable debt while the *salam* can then be annulled.

Another ruling on the *salam* is that if the sold item is not present or available at the due time, such as in cases when the trees have not born fruits at the year of delivery, the one who has paid for the item in advance may choose whether to wait until the fruits are available, or he may ask for annulling the contract and ask for the money he has paid. This is because in case the contract is annulled, it is obligatory for the seller to repay the price paid in advance. If the payment given by the buyer against the sold item is damaged, a compensation for it must be paid. And Allah, Exalted be He, knows best.

In fact, allowing such a kind of transactions is a sign of the facilitation and benevolence by which our *Sharî'ah* is characterized. This is because the *salam* facilitates many things for people and helps them do what benefits them. Besides, the *salam* does not involve *ribâ* or the like of other forbidden transactions. All praise is due to Allah for the facilitation He grants.

Endnotes

1 Al-Hâkim (3189) [2/342], Al-Bayhaqî (11081) [6/30] and 'Abur-Razzâq (14064) [8/5].
2 Al-Bukhârî (2239) [4/540] and Muslim (4094) [6/42]. See also Al-Bukhârî (2253) [4/457].
3 See: "*Al-Ijmâ'*" [p. 54]
4 Ahmad (15253) [3/402] and An-Nasâ'î (4610) [7/329].
5 *Hawâlah*: The transference of a debt from the liability of the debtor to the liability of another person.

CHAPTER

11

Loaning and Loans

The loan means paying an amount of wealth to someone who wants to benefit from it, and then he pays it back later. This is considered a kind of utility so the Prophet (PBUH) calls it *manîhah*[1 2] as the borrower benefits from it and then pays it back to the lender.

Lending is desirable and is greatly rewarded by Allah, as the Prophet (PBUH) says:

> *"No Muslim lends a loan to another Muslim twice but it will be like giving it once in charity."*
>
> (Related by Ibn Mâjah)[3]

It is said that lending a loan is legally better than giving charity, as none borrows except when being in a bad need. In a *sahîh* (authentic) *hadîth*, the Prophet (PBUH) says:

> *"He who relieves a Muslim from hardship Allah will relieve him from the hardships (to which he would be put) on the Day of Resurrection."*[4]

So, lending is considered a good deed as it relieves a Muslim from hardship and meets his bad need. Hence, borrowing is not a detestable act, for it happened that the Prophet (PBUH) borrowed. This is related and stated in many *hadîth*s about the Prophet (PBUH)[5].

Moreover, the loan must be from someone whose loan is legal (valid); it is impermissible for the guardian of an orphan, for example, to take from the orphan's money in order to lend others. The amount and quality of the loan must be known and defined in order to make the receiver able to pay it back. A loan is considered a debt upon the liability of its receiver, and then he has to return it, without delay, as soon as he can afford it.

In addition, it is prohibited upon the lender to stipulate any increase to his loan. Scholars unanimously agree that if the lender stipulates any increase and takes it, it is considered *ribâ*. Nowadays, banks lend money stipulating an interest on money, which is plain *ribâ*, whether the loan is the so-called consumer or developmental loan. It is impermissible for the lender (a bank, a person, or a company) to take a stipulated increase regardless of the name given to it (profit, interest, gift), or to make use of a utility against the loan such as staying in a house or using a car. As long as this profit, gift, or utility is obtained through stipulation, it is considered impermissible. The Prophet (PBUH) says:

> *"Any loan that brings a profit is (a kind of) ribâ."*[6]

Anas (may Allah be pleased with him) narrated that the Prophet (PBUH) said:

> *"If anyone of you gives a loan (to somebody) and there is a gift presented to him or he is asked to be carried on the mount (of the borrower), he should not ride on it nor should he accept the gift except if that used to happen between them (the lender and the borrower) before."*
>
> (Related by Ibn Mâjah as a *marfû'* (traceable) *hadîth*)[7]

There are many similar narrations of this *hadîth*.

Furthermore, it is related about 'Abdullâh Ibn Salâm (may Allah be pleased with him) that he said:

> *"If someone indebted to you gives you a load of hay as a gift, do not accept it, for it is ribâ."*

This tradition is viewed by scholars as a *hadîth* narrated about the Prophet (PBUH). Thus, it is impermissible for the lender to accept a gift or any form

of utility from the debtor. Such a profit is prohibited since lending is supposed to be a kind of leniency on behalf of the Muslim lender towards the needy debtor, and also a means to draw near to Allah. So, if the lender stipulates or anticipates a profit, then he violates the aim of lending; that is to draw near to Allah through relieving the needy instead of seeking a profit from him, as it will not be considered a good loan.

Therefore, Muslims must avoid such transactions that may involve *ribâ*. Moreover, they must have good intentions, as regards giving loans and doing other good deeds. That is, the purpose of giving loans is not directed to material gains; rather, it is a means of gaining a moral benefit through drawing near to Allah. This can be attained by relieving the needy without gaining any profit. If a Muslim lender intends to relieve the needy, Allah will bless his money.

It is worth mentioning that the prohibited profit is the stipulated one. For example, the lender may stipulate that he gets back his money with such and such amount of money as due interest, makes use of a house or a shop of the borrower, or gets a gift from him. It is also forbidden that the lender intends or anticipates taking an increase even if he does not stipulate such an increase. However, if there is some increase given to the lender simply as an act of showing kindness from the borrower not by means of stipulating, there is no harm in that as it is considered of the better ways of repaying loans. Once, the Prophet (PBUH) gave a choice camel in return for a small camel that he had received as a loan. Then he (PBUH) said:

"The best amongst you is he who pays the rights of others handsomely."[8]

According to the *Sharî`ah* (Islamic Law) and common convention, paying the rights of others handsomely is among the good manners and it is not among the prohibited loans that beget benefits as long as such an increase is neither stipulated nor anticipated by the lender, but it is simply a donation from the borrower. Likewise, it is permissible for the lender to accept a benefit which the borrower used to give him before the loan as long as it is not given to him because of the loan.

The borrower must pay back the loan without procrastination or delay as soon as he is able to afford it. Allah, Exalted be He, says:

"Is the reward for good [anything] but good?"

(Qur'ân: Ar-Rahmân: 60)

However, some people are remiss in giving the rights of others especially debts. This is a bad manner that has made many people abstain from lending the needy and relieving them. Thus, the needy Muslim may become obliged to borrow from the usurious banks and commit what Allah prohibits since he finds no one ready to give him a good loan and the lender finds no one trustworthy to repay him on due time. This leads to the absence of kindness among people.

Endnotes

1 The word *manîḫah* in Arabic indicates something gifted to be made use of then returned to its owner.
2 Muslim (3938) [5/452].
3 Ibn Mâjah (2430) [3/153].
4 Al-Bukhârî (2442) [5/121] and Muslim (6793) [9/23].
5 Al-Bukhârî (2305) [4/608] and Muslim (4086) [6/38].
6 Al-Bayhaqî (10933) [5/573].
7 Ibn Mâjah (2432) [3/154].
8 Al-Bukhârî (2305) [4/608] and Muslim (4088) [6/39].

CHAPTER

12

Mortgage

Mortgaging refers to the security for a debt against an article that can cover it or its value (in case of non-fulfillment).

Mortgaging is permissible according to the Noble Qur'ân, the *Sunnah* (Prophetic Tradition) and the consensus of Muslim scholars. Allah, Exalted be He, says:

> ***"...And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken..."***
>
> (Qur'ân: Al-Baqarah: 283)

When the Prophet (PBUH) died, his armor had been mortgaged[1]. Scholars unanimously agree that mortgaging is permissible on journeys and the majority of scholars maintain that mortgaging is also permissible in residence. The wisdom behind the legality of mortgaging is to keep properties and protect them against loss.

Allah, Exalted be He, commands Muslims to write down the debts as He says:

> ***"O you who have believed, when you contract a debt for a specified term, write it down..."*** (Qur'ân: Al-Baqarah: 282)

And He says:

> ***"And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken..."***
>
> (Qur'ân: Al-Baqarah: 283)

Such permissibility is considered of the mercy of Allah upon His servants as He guides them to what benefits them.

The amount, quality, and description of the collateral must be known. The debtor must be legally permitted to contract; he must possess the collateral or have permission to deal conclusively with it. Man is permitted to mortgage his own property for the debt of another. The collateral must be a property valid for selling in order to enable the creditor to make use of it in case of non-fulfillment.

It is permissible to stipulate the collateral in or after concluding the contract as Allah says:

> ***"And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken..."***
>
> (Qur'ân: Al-Baqarah: 283)

Thus, Allah, Exalted be He, has made the stipulation of the collateral a substitute for writing the contract of debt, which is written after the debt becomes in effect and obligatory to be settled by the indebted person.

The collateral is obligatory to be given by the debtor, as he owes the creditor who is not obliged to accept the collateral and is permitted to cancel the mortgaging contract as he alone has a right to claim it. It is permissible for the debtor to mortgage his share of a property owned by him and others because he is permitted to sell his share to pay back his debt.

It is permissible to mortgage the purchased article for its price, as this price is a liability on the debtor, i.e. the mortgagor, and the purchased article is possessed by him, so he can mortgage it. For example, if someone

buys a house or a car on credit or in cash but the price is not paid yet, he is permitted to mortgage it so as to pay its price to the seller. However, neither the debtor nor the creditor is permitted to dispose of the collateral except after getting the permission of the other. If either of them disposes of the collateral, he causes a loss to the other. That is, if the debtor disposes of the collateral without the creditor's permission, he deprives him from securing the deal. Similarly, if the creditor disposes of the collateral (without the debtor's permission), he will be disposing of a property that does not belong to him.

Concerning making use of the collateral, it is to be according to what the two parties (the debtor and the creditor) agree on. So, if they agree on renting or concluding any other transactions with regard to the collateral, it will be permissible. However, if they do not agree (to make use of the collateral), the collateral remains suspended until it is redeemed. The debtor is to be made able to maintain and keep the collateral; for example, watering, pollinating, and treating the trees, as this is done for the benefit of the collateral.

The earnings received from the collateral whether by itself (such as an animal when it becomes fatter or is able to do some work) or through its product (such as offspring, wool and whatever is begotten from it) are considered part of the collateral that can be sold with the collateral for fulfilling the debt. The same ruling applies to the crops of a mortgaged land. Besides, if there is any damage caused to the collateral, the compensation for this damage is to be joined to the collateral, as it is a substitute for part of it.

The debtor must provide the expenditures of the collateral. This is because Sa`îd Ibnul-Musayyab reported on the authority of Abû Hurayrah (may Allah be pleased with them) that the Prophet (PBUH) said:

> *"When someone mortgages an item, it is not to be foreclosed; any increase in its value goes to him and any loss or liability must be borne by him."*
>
> (Related by Ash-Shâfi`î and Ad-Dâraqutnî who grades it as having a good and authentic chain of transmitters)[2]

This is because the collateral is the property of the debtor and it is his responsibility to provide whatever it requires for its maintenance. Also, it is the responsibility of the debtor to pay the rent of the store where the collateral is kept, the wages of guarding it, and the wages of grazing the mortgaged cattle.

If part of the collateral is damaged, the rest is legally considered collateral for the whole debt as the debt is guaranteed by the whole collateral, and as long as part of the collateral is damaged, then the rest is collateral for the whole debt.

If the debtor pays back part of the debt, no part of the collateral is to be redeemed until the debtor pays the whole debt.

When the debt is due, the debtor must pay back the whole debt to comply with the contract, whether he has given a collateral or not. Allah, Exalted be He, says:

> ***"...then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord..."*** (Qur'ân: Al-Baqarah: 283)

And He also says:

> ***"...and not leave anything out of it..."***
>
> (Qur'ân: Al-Baqarah: 282)

If the debtor abstains from paying back the debt to the creditor, he is considered a procrastinator and then the judge is to oblige him to pay back the debt. However, if the debtor still refuses to pay back the debt, the judge must imprison and effect discretionary punishment on him until he pays back the debt. Then, if he does not pay back the debt, the judge is to sell the collateral and pay back the debt. The judge must behave on behalf of the debtor when the latter refuses to pay back, since such a debt is an obligation on the debtor and the collateral is a mere guarantee for the debt to be returned when due. If some money remains after paying back the debt, it must be given to the debtor as it belongs to him. Yet, if the money of the sold collateral does not cover the debt, the rest of the debt is still on the credit of the debtor and he has to return it.

If the collateral is an animal which needs expenditures and is kept by the creditor, the wise Lawgiver permits him to ride it, if it is a riding animal, and to milk it, if it is a milch animal, provided that he provides the expenditures. The Prophet (PBUH) says:

> *"The mortgaged animal can be used for riding as long as it is fed, and the milk of the milch animal can be drunk according to what one spends on it. The one who rides the animal or drinks its milk should provide the expenditures."*
>
> (Related by Al-Bukhârî)[3]

So, whoever rides the animal or drinks its milk must provide the expenditures in return for his making use of it. Any other utility gained from this animal belongs to its owner, the debtor.

Ibnul-Qayyim (may Allah be pleased with him) says:

> *"The hadîth as well as the general principles and the original rules of the Sharî`ah (Islamic Law) indicate that the Muslim must take care of the mortgaged animal in order to observe the orders of Allah. Moreover, the owner of such an animal has the right of ownership and the mortgagee has the right to guarantee his own property (by keeping the collateral). If the mortgagee keeps the animal and neither rides nor milks it, he misses his right to make use of it. Thus, depending on justice, analogical deduction, as well as the interests of the mortgager, mortgagee, and the mortgaged animal, the mortgagee is permitted to ride and milk the mortgaged animal in return for his providing its expenditures. When the mortgagee lawfully makes use of the mortgaged animal and provides the expenditures, this satisfies the interests of both the mortgager and mortgagee and keeps their rights."*[4]

Some of the *faqîhs*[5] (may Allah have mercy on them) maintain that there are two categories of collaterals: The first needs expenditures while the second does not. The first category of collaterals is divided into two subcategories. The first is the animal that can be ridden or milked whose ruling has been explained above. The second subcategory is not to be ridden or milked such as the male or female slave. The mortgagee is not permitted to make use of this kind of collaterals except with the permission of the mortgager. So, if the owner of the slave permits the mortgagee to make use of the slave provided that the mortgagee provides the expenditures, then it is permissible, as this is considered a sort of compensation. The second category of collaterals is the kind that does not need expenditures, such as a house, belongings, and the like. The mortgagee is permitted to make use of this kind of collaterals with the permission of the mortgager except when this collateral guarantees a loan, for it is prohibited to gain any interest out of a loan as we previously explained that it is a kind of *ribâ*.

Endnotes

1 Al-Bukhârî (2915) [6/121]. See also Al-Bukhârî (2068) [4/382] and Muslim (4090) [6/40].
2 Ad-Dâraquṯnî (2897) [3/29] and Al-Bayhaqî (11211) [6/65]. See also Ibn Mâjah (2441) [3/161].
3 Al-Bukhârî (2512) [5/177].
4 See the footnotes in "*Ar-Rawḏ Al-Murbi'*" [5/91].
5 *Faqîh*: A scholar of Islamic Jurisprudence.

CHAPTER

13

Guarantee

Guarantee is one of the legal ways to record debts. In Islamic terminology, it is the guarantor's commitment to pay back the debt of another person while this person is still considered the original debtor. In this case, the guarantor must fulfill the obligations of the debtor. For example, the guarantor may say to the creditor, "I guarantee the debt of so and so." Guarantee is permissible according to the Noble Qur'ân, the *Sunnah* (Prophetic Tradition), and the consensus. Allah, Exalted be He, says:

> ***"...and for he who produces it is [the reward of] a camel's load, and I am responsible for it."*** (Qur'ân: Yûsuf: 72)

The word ***"responsible"*** implies that this person is a guarantor.

Imâm At-Tirmidhî relates, as a *marfû'* (traceable) *hadîth*, that the Prophet (PBUH) says:

> *"The guarantor is responsible for (paying) the thing he guaranteed."*[1]

Scholars unanimously agree that guarantee is generally permissible. The interests and needs of people necessitate the permissibility of a guarantee, as it is a means of cooperation in righteousness and piety so as to relieve Muslims from difficulties.

In order to maintain the validity of the guarantee, the guarantor must be legally permitted to dispose of his assets since guarantee is a form of financial obligation. So, a child or a weak-minded interdicted of his legal capacity is not permitted to be a guarantor. Moreover, the guarantor must accept (willingly) to bear this liability, and if he is forced to do so, then the guarantee becomes void. Since liability is a voluntary declaration to fulfill an obligation, a guarantor's consent is obligatory, as is the case of financial donation.

Furthermore, guarantee is a kind of benevolence to benefit and help the guaranteed person, so it is impermissible to take compensation out of it. That is, compensation resulting from guarantee is as prohibited as a benefit resulting from a loan. The guarantor must pay the debt on behalf of the guaranteed person when time is due for the creditor to ask for it. When the guarantor pays the debt, he is permitted afterwards to take back the same amount of money from the guaranteed person without any interest, since guarantee is legally intended to show leniency and help the needy, not to exploit and place burdens upon them.

Guarantee is valid when the guarantor gives his consent by whatever words indicate this, such as "I am responsible for this debt," "I guarantee this debt," "This debt is on my liability," and the like, since the Lawgiver[2] does not necessitate a specific phrase to be said and it depends on the common convention of the society.

The creditor has the right to ask the guarantor or the guaranteed person to get his money back as it is a debt on the liability of both of them. The Prophet (PBUH) says:

> *"The guarantor is responsible for (paying) the thing he guaranteed."*
>
> (Related by Abû Dâwûd and At-Tirmidhî who grades it a *hasan* (good) *hadîth*)[3]

This is the opinion of the majority of scholars. However, some scholars are of the opinion that the creditor has no right to ask the guarantor to pay him except when it is difficult to ask the guaranteed person for the debt. This is because a guarantor is legally considered subsidiary to the original debtor, and he is not to be asked for anything except when it is impossible to get the debt

from the debtor. Guarantee, like mortgaging, is a way to guarantee the right of the creditor; the collateral is not to be taken by the mortgagee except when the mortgager cannot pay back the debt at its due time. It is not acceptable to ask the guarantor for the debt as long as the guaranteed person can be found and is able to pay. According to common convention, the creditor asks the guarantor for the debt only when the guaranteed is not found or when he is unable to pay it back. This is the meaning implied by **Ibnul-Qayyim** who concludes, "*...This is the preponderant view as you see.*"[4]

The liability of the guarantor is not absolved until the liability of the guaranteed person is discharged whether by paying back his debt to the creditor or by being excused by him.

Moreover, it is permissible for the debtor to have a number of guarantors whether every guarantor claims liability on the whole debt or on only part of it. However, the responsibility of each of the guarantors is not absolved until the responsibilities of all of them are discharged or when the responsibility of the guaranteed person is absolved. It is not necessary for the guarantor to know the guaranteed person to make his guarantee valid. The guarantor can simply say to the creditor, "I guarantee the person who is indebted to you." Likewise, it is not necessary for the guarantor to know the creditor as the consent or knowledge of either the creditor or the guaranteed person is not necessary to make the guarantee valid. In addition, it is permissible to guarantee a known amount or an unknown amount if it is to be known afterwards, as Allah, Exalted be He, says:

> ***"...and for he who produces it is [the reward of] a camel's load, and I am responsible for it."*** (Qur'ân: Yûsuf: 72)

This is because a camel's load is unknown at first but then becomes known. This verse implies the permissibility of guaranteeing a known amount or an unknown amount if it is to be known afterwards.

It is permissible for the guarantor to bear the seller's responsibility if the commodity turns out to be possessed by someone else. Also, it is permissible for a Muslim person to guarantee the obligations of someone else, such as paying back his debt and the like.

Endnotes

1 Ahmad (22195) [5/267], Abû Dâwûd (3565) [3/527], At-Tirmidhî (2125) [3/433] Ibn Mâjah (2405) [3/141].
2 The Lawgiver of *Sharî`ah* (Islamic Law) is Allah, Exalted be He; the term can also refer to the Prophet (PBUH) as he never ordained but what was revealed to him by Allah.
3 *Hasan* (good) *hadîth* is a *hadîth* whose chain of transmission is linked to the narration of an authority with weak exactitude, and the *hadîth* is free from eccentricity or blemish.
4 See: "*I`lâm Al-Mûwaqqi`în*" [3/411].

CHAPTER

14

Suretyship (*Kafâlah*)

Suretyship (*Kafâlah*) is one's commitment to present the indebted person to the creditor. So, suretyship concerns the guaranteed person himself and it is valid for anyone in debt. No suretyship is permissible for prescribed punishments because suretyship depends on certainty while prescribed punishments are not to be executed when combined with suspicious proofs. In addition, suretyship does not apply in a case of legal retribution as it is to be executed only on the offenders. It is impermissible to execute legal retribution on a surety when the one guaranteed cannot be found.

The surety must give his consent in order to make suretyship valid, as he is not obliged to bear the responsibility of suretyship. The obligation of the surety is legally absolved if the guaranteed person dies. Likewise, the surety is legally absolved when the guaranteed person submits himself before the creditor at the due time and place since he then fulfills the obligation of the surety. However, if the surety cannot present the guaranteed person at the due time or if the guaranteed person has been absent for a long period during

which he could have been presented, then the surety must guarantee the debt. This is according to the general meaning of the Prophetic *hadîth* in which he (PBUH) says:

> *"The guarantor (here the surety) is responsible for (paying) the thing he guaranteed."*[1]

It is permissible to guarantee the acquaintance of a person. For example, a person comes to borrow money from another and the latter says, "I do not know you, so I will not lend you", then a third person says, "I guarantee my acquaintance of him to you" meaning "I know who he is and where he lives". In such a case, the surety (who guarantees the acquaintance of the guaranteed person) is not only required to mention the name and address of the guaranteed, but he must also present him to the creditor. If the guaranteed person is alive and the surety cannot present him to the creditor, the surety must guarantee the debt (pay it back) as he is the one who has guaranteed the acquaintance of the debtor (the guaranteed person) and persuaded the creditor to lend him. Such an acquaintance is like saying, "I guarantee to present the debtor to you whenever you want."

Endnotes

1 Ahmad (22195) [5/267], Abû Dâwûd (3565) [3/527], At-Tirmidhî (2125) [3/433] and Ibn Mâjah (2405) [3/141].

CHAPTER

15

Hawâlah (Transference of Debts)

The *faqîh*s define *hawâlah* as the transference of a debt from the liability of the debtor to the liability of another person. The transference of debts is permissible and approved by the *Sunnah* (Prophetic Tradition) and the consensus. The Prophet (PBUH) says:

> *"If the debt of one of you is transferred (from your debtor) to a rich debtor, he should agree."*[1]

The same *hadîth* is narrated with a slight difference in wording as:

> *"Whoever is transferred (from his debtor) to a rich debtor, should agree."*[2]

Many scholars maintain that there is a consensus on the permissibility of the transference of debts. The transference of debts is a kind of leniency legally intended to facilitate the transactions of people and help them meet their needs, pay back their debts and be comfortable.

Some people think that the permissibility of the transference of debts does not accord with analogical deduction. They allege that it is a kind of selling a debt for another debt, which is forbidden. However, the great scholar **Ibnul-Qayyim** argues against this opinion and affirms that the permissibility of the transference of debts is not an exception as it is a kind of paying back debts not of selling. He says:

> *"Even if the transference of debts is a kind of selling a debt for another, the Lawgiver does not prohibit it since the principles of the Sharî`ah (Islamic Law) necessitate the permissibility to transfer a debt from the liability of the original debtor to the liability of a new one (substitute debtor)."*[3]

There are some legal conditions on the transference of debts to make it valid. They are as follows:

First: The debt must be under the responsibility of the substitute debtor since the transference of debts obliges the substitute debtor to pay the debt back. If the debt is not yet determined to be under the responsibility of the original debtor, its transference is not valid as it can be canceled. For example, it is not legal to transfer the price of a purchased article as long as it is still subject to approval. Also, a son cannot transfer his debt to the credit of his father unless his father gives his consent.

Second: The substitute debt must be identical to the transferred debt with regard to the kind, e.g. dirhams for dirhams. Likewise, the substitute debt and the transferred debt must be equal with regard to the description, e.g. Saudi currency for Saudi currency. Also, the two debts must have the same time for due payment; whether they are to be paid in cash or on credit. That is, the transference of debts is not valid if one debt is paid in cash and the other is on credit, or if the due time of one debt is after a month while the time of the other is after two months. Besides, the amounts of the two debts must be the same; it is impermissible to transfer a debt of one hundred riyals, for example, for another debt of only ninety riyals. This is because the transference of debts, like lending loans, is intended to be a kind of leniency not a means to gain profit. Hence, if there is any difference in the value between the two debts, this will violate the legal objective of the transference of debts, which is leniency, and set instead the objective of gaining interests which is impermissible in the transference of debts

and in lending loans. However, it is permissible for the original debtor to transfer only part of his debt to the credit of a substitute debtor, or to transfer his debt to the credit of someone owing him more than the original debt, and the remaining debt in each case is still due for its creditor.

Third: The consent of the original debtor is necessary here, as he is not obliged to pay back his debt through transference. However, the consent of the creditor is not necessary. Also, the consent of the creditor is not necessary in order to transfer the debt to the credit of a rich person who is not procrastinating. Rather, such a creditor must be forced to accept the transference of the debt and then he has the right to claim his loan from the substitute debtor. The Prophet (PBUH) says:

"Procrastination (delay) in paying debts by a wealthy person is injustice. So, if the debt of one of you is transferred (from your debtor) to a rich debtor, he should agree."

(Related by Al-Bukhârî and Muslim)

In another narration of this *hadîth*, the wording is:

"Whoever is transferred (from his debtor) to a rich debtor, should agree."

This means that the creditor should agree on the transference of his debt. If the substitute debtor is not able to fulfill the debt or may procrastinate, then the creditor is not obliged to agree to the transference of the debt to that person as this may damage his interests.

In this respect, the indebted persons who are able to pay back should hasten to be absolved by paying back their debts to the original creditors or the substitute creditors for whom the debt becomes entitled through transference. The indebted persons should not ruin their reputations through procrastination. Often, we hear the creditors' complaints when they suffer from the illegal delay and negligence of the debtors in paying back their debts. Also, we frequently hear the creditors' complaints owing to the procrastination of the rich substitute debtors in paying back their due transferred debts, since they cause a lot of difficulty to the creditors. This has made the transference of debts a repulsive matter which many people dislike because of the injustice of the substitute debtors.

When the transference of debts meets its aforementioned legal conditions, the debt transfers from the liability of the original debtor to the liability of a substitute debtor, and the original debtor becomes absolved. This is because the transference of debts means the transference from one liability to another. Thus, the creditor is not permitted to claim his right from the original debtor; rather, he has to refer to the substitute debtor in order to get back his right or reach an agreement with him. Therefore, the legal transference of debts is a permissible way to pay back the debts, as it makes things easy for people when they make use of it in a good manner without deception or procrastination.

Endnotes

1 Al-Bukhârî (2287) [4/585] and Muslim (3978) [5/471].
2 Mentioned in the book entitled "*Al-Fath*" [5/587].
3 See: "*I`lâm Al-Mûwaqqi`in*" [1/380].

CHAPTER

16

Commissioning (*Wakâlah*)

In Islamic terminology, *wakâlah* (commissioning) refers to the act in which a legally accountable person appoints another legally accountable person to act on his behalf in a certain matter in which such authorization is permissible. Commissioning is permissible according to the Noble Qur'ân, the *Sunnah* (Prophetic Tradition), and the consensus of Muslim scholars. Allah, Exalted be He, says:

> ***"... So send one of you with this silver coin of yours to the city..."***
>
> (Qur'ân: Al-Kahf: 19)

And He says:

> ***"[Joseph] said, 'Appoint me over the storehouses of the land...' "***
>
> (Qur'ân: Yûsuf: 55)

And He also says:

> ***"... and for those employed to collect [Zakâh]..."***
>
> (Qur'ân: At-Tawbah: 60)

Moreover, the Prophet (PBUH) authorized `Urwah Ibnul-Ja`d to buy a ewe,[1] authorized Abû Râfi` to perform the marriage contract on his behalf with Maymûnah,[2] and used to send his men to collect *Zakâh*. In addition, Al-Muwaffaq and other scholars maintain that there is a consensus on the permissibility of commissioning. The wisdom behind this permissibility is that people's needs necessitate the legality of commissioning since not every person can do himself whatever he needs.

What is Required in Order to Make Commissioning Valid and Confirmed

Commissioning is confirmed by any statement that indicates permission for it (e.g. "Do so and so" or "I permit you to do so and so"). It is permissible to accept commissioning instantaneously or to defer it. This is due to the fact that the Prophet's representatives deferred their acceptance when he (PBUH) commissioned them. Furthermore, commissioning can be timed or conditioned. For example, the authorizer may say to the representative, "You will be my representative for one month" or "When the lease period of my house expires, you can sell it."

The authorizer must designate a particular person, so commissioning becomes void if the authorizer says, "I authorize anyone of these two persons to be my representative." Also, commissioning becomes void if the authorizer appoints someone whom he does not know.

Matters in Which Commissioning is Permissible

It is permissible for a person to commission another in matters in which representation is permitted, such as concluding or canceling all kinds of contracts. To clarify, selling, buying, renting, lending loans, and speculating are examples of concluding transactions, while divorce, *khul`* (the wife's release for payment), emancipation, and cancellation of the sale are examples of canceling the transactions.

Commissioning is also permissible in the matters relating to Allah's rights (some acts of worship) in which authorization on behalf of someone is permissible. This is like the distribution of *Zakâh* and charity, fulfillment of vows, expiation, and performing *Hajj* and *`Umrah* (Lesser Pilgrimage), according to the related authentic proofs in this regard. However, designating a representative is not permissible in the matters relating to individual acts of worship, in which authorization on behalf of someone is not permissible,

such as performing prayer, fasting, and the purification of major and minor ritual impurities, since these acts of worship are to be observed by the legally accountable person himself.

In addition, commissioning is permissible in investigating and executing the prescribed punishments as the Prophet (PBUH) said:

> *"O Unays! Go to the wife of this (man) and if she confesses (that she has committed adultery), then stone her to death."*
>
> (Related by Al-Bukhârî and Muslim)[3]

The authorized (commissioned) person has no right to designate another representative to act on his behalf except in the following matters:

First: When the authorizer permits the authorized person to do so by saying something like, "You can designate a representative to act on your behalf if you like) or (Do as you like)."

Second: If the designated act is not to be carried out by the authorized person, as he is an honorable person who is far above doing such an act.

Third: If the authorized person is unable to carry out the designated work.

Fourth: When the authorized person cannot do the designated work properly.

In the aforementioned four cases, it is impermissible for the authorized person to designate anyone except a trustworthy representative.

Commissioning is permissible for both the authorizer and the authorized person as it is considered permission given by the authorizer and a service rendered by the representative, but both are not obligatory; each of the authorizer and authorized person is permitted to cancel commissioning at any time he desires.

Matters Nullifying Commissioning

Commissioning is nullified by cancellation, death, or absolute madness with regard to either of the parties. This is because commissioning depends on the life and sanity of both parties, so when one party lacks either of them, it becomes invalid. Commissioning also becomes invalid if the authorizer discharges the authorized person, or when either of them is interdicted of his legal capacity due to his foolishness, (since he then lacks the authority of disposition).

When Commissioning Becomes Permissible

Whoever has the authority to dispose of something can authorize or be authorized in regard to this same thing. However, whoever has no legal authority to dispose of something, his representative has not the authority to dispose of this same thing, with greater reason. A representative who is authorized for buying and selling is not permitted to sell or buy from himself as the customs necessitate that a person sells and buys from others not from himself lest he should be suspected. Likewise, he is not permitted to sell or buy from his son, father, wife or those whose testimony in his favor is to be rejected because there is suspicion of favoritism and partiality due to family relations.

Actions Related to the Authorizer and the Authorized Person

The authorizer must fulfill some legal commitments with regard to transactions, such as delivering the price, receiving the purchased article, canceling transactions for defects, asking for his rights and guaranteeing the rights of the other party. As for the authorized person who is authorized for selling, he may deliver the purchased article but he is not permitted to receive the price without the permission of his authorizer or at least a situation indicating his permission. For example, the authorized person may receive the price if he sells the article in a store where the price may be lost if he does not receive it. An authorized person who is authorized for buying may deliver the due price to complete the transaction. However, the person authorized for settling a dispute is not permitted to receive the price, but the person authorized for receiving the price is permitted to settle the dispute as it is the only way to receive the price.

Commitments of the Representative

The authorized person is accountable. But, he is not liable for things that are lost or damaged with him as long as he does not neglect or exceed limits with regard to such items. However, if he neglects, exceeds limits or refuses, without any legal excuse, to pay the money due for the authorizer, he is to be liable for what is lost or damaged and legally obliged to pay any money due to the authorizer. The authorized person is to be trusted with regard to the designated work whether it is selling, renting, or the like. In other words, what he says about the price, the rent, or the damaged articles is to be trusted and believed. And Allah knows best.

Endnotes

1 Al-Bukhârî (3642) [6/772].
2 At-Tirmidhî (841) [3/200].
3 Al-Bukhârî (2314) [4/619] and Muslim (4410) [6/204].

CHAPTER

17

Interdiction

Islam has been ordained to protect the properties and rights of people; therefore, interdiction has been legalized on ones who should be prevented from disposing of their properties.

Jurisprudentially speaking, interdiction means preventing someone from disposing of his property. What proves that interdiction is legalized is that Allah, Exalted be He, says in the Noble Qur'ân:

> ***"And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness. And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them..."*** (Qur'ân: An-Nisâ': 5-6)

These two verses prove that Allah, Exalted be He, has decreed interdiction on the weak-minded and the orphans lest they should waste or destroy their properties. Moreover, both are not to be given back their property except when they become of sound judgment. The Prophet (PBUH) himself interdicted some of his Companions (and has sold some of their properties) to settle their debts[1].

Interdiction Is of Two Types

The First Type of Interdiction is the one imposed for safeguarding others' share in the property of the interdicted person, as the case of interdicting the insolvent person for safeguarding the share of the creditors in his existing property. For safeguarding the share of the heirs in the heritage, interdiction is also imposed on the sick person to prevent him from bequeathing more than the third of his property.

The Second Type of Interdiction is the one imposed on the person for his own benefit, lest he should waste his property or destroy it. Interdiction in this case applies to the minor, the weak-minded and the insane, for Allah, Exalted be He, revealed:

> ***"And do not give the weak-minded your property..."***
>
> (Qur'ân: An-Nisâ': 5)

Some scholars maintain that those meant in this verse are the young children and women, thus the guardian should not wastefully give them of his money. Other scholars are of the opinion that those meant in the verse are the weak-minded, the young children and the insane persons; they are to be denied the right to dispose of their properties lest they should waste them. Allah, Exalted be He, makes the property – in the above-mentioned verse – attached to the addressees ***"...your property..."*** since they are appointed as guardians of the property of the interdicted to protect it.

The First Type: Interdiction for Safeguarding Others' Share

This type of interdiction applies to the bankrupt, whose remaining property is insufficient (when sold) to meet all his due debts. Thereupon, he is to be denied the right to dispose of his remaining property lest he should cause harm to his creditors. As for the insolvent debtor who is unable to fulfill any of his debts, he is not to be asked (by his creditors) to pay them, but should rather be granted a grace period until his financial circumstances allow him to pay. With regard to this, Allah, Exalted be He, says:

> ***"And if someone is in hardship, then [let there be] postponement until [a time of] ease..."*** (Qur'ân: Al-Baqarah: 280)

Regarding the favor and reward of granting a grace period for the insolvent person, the Prophet (PBUH) says:

> *"He who is pleased to be granted shade by Allah under the shade granted by Him (on the Day of Resurrection) should relieve an insolvent person."*

Yet, discharging the insolvent person is better than granting him a grace period, in consideration of what Allah, Exalted be He, says:

> ***"...But if you give [from your right as] charity, then it is better for you..."*** (Qur'ân: Al-Baqarah: 280)

As for the debtor who is able to settle his debts, it is impermissible to interdict him, since there is no need for that. However, if his creditors ask him to pay what he owes them, he is to be legally ordered to pay his debts, for the Prophet (PBUH) says:

> *"Procrastination in paying debts by a wealthy man is injustice."*[2]

This *hadîth* signifies that when an indebted wealthy person procrastinates in paying his debts, he is thus causing injustice to his creditors since he refuses to pay what he owes them. If the indebted wealthy person refuses to pay his debts, then he should be imprisoned. In this regard, **Sheikh Taqiyyud-Dîn Ibn Taymiyah** (may Allah have mercy on him) said:

> *"...As for the person who is able to meet his debts and (though) refuses (to pay them), he is to be legally forced to pay by means of beating or imprisoning him. This is also the view of the followers of Mâlik, Ash-Shâfi`î, Ahmad and other scholars."*

He added:

> *"...It has not come to my knowledge that there is a disagreement among scholars in this concern."*[3]

In addition, Imâm Ahmad, Abû Dâwûd and other compilers of *Hadîth* relate that the Prophet (PBUH) says:

> *"Procrastination in paying debts by a wealthy man makes it permissible to be dishonored (by the creditor) and to be punished (by the judge)."*[4]

The word "be dishonored" means to be complained about (by his creditors), and "be punished," means to be imprisoned. The person procrastinating in paying his debts deserves discretionary punishment and imprisonment. He is

to be repeatedly punished in this manner until he fulfills his debts. In case the debtor insists on delaying his debts, those in authority are to intervene and sell his property to pay the debts he owes. This is because those in authority are to take the place of the person who refuses to pay his debts, in order to prevent any harm to the creditors. This is according to the *hadîth* in which the Prophet (PBUH) says:

> *"One should not harm others nor should one seek benefit for oneself by causing harm to others."*[5]

From what has been demonstrated, it appears that there are two states of the debtor:

The first state is when his debt is deferred. Thereby, he is not to be asked to pay it until it is due, nor is he obliged to settle it before that. In case the debtor's property is insufficient to meet his deferred debt, he is not to be interdicted nor be denied the right to dispose of his property.

The second state of the debtor is when his debt is due. In this state, there are two other cases of the debtor:

The first case is when the value of the debtor's property exceeds his payable debt, in which case he is not to be interdicted, but rather be ordered to pay his debt when the creditors ask for that. If the debtor refuses to pay (upon the creditor's demand), he is to be punished with a discretionary punishment and imprisoned until he pays his debts. If the debtor bears both punishments but still refuses to pay, those in authority are to intervene by selling from his property what suffices to cover the debts.

The second case is when the value of the debtor's property is less than his due debt; in this case, he is to be interdicted if his creditors ask for their money lest he should cause harm to the money he owes them. This is according to the *hadîth* narrated by Ka`b Ibn Mâlik (may Allah be pleased with him) which states:

"The Messenger of Allah (PBUH) interdicted Mu`âdh and sold his property (to fulfill the debts Mu`âdh owes)."[6]

(Related by Ad-Dâraqutnî and Al-Hâkim and the latter deems it a *sahîh* (authentic) *hadîth*)

Ibnus-Salâh says, *"This hadîth is surely reported about the Prophet (PBUH)."* In this case, if the debtor is interdicted, it is to be publicly declared lest people should be deceived by him (in financial transactions), causing their property thus to be wasted.

There are Four Rulings on the Interdicted Person

The first ruling is that his debts are to be paid from his property before being interdicted, and from whatever property that comes to his possession afterwards, such as the money he obtains by means of legacy, an injury compensation, a gift, a share from a will and the like. The interdicted person is to be denied the right of disposing of his property possessed before and after being interdicted. Thereby, any disposal of his property becomes ineffective since the rights of his creditors are due on his property. Thus, he has no right to grant any part of his property to anyone by any means. Even before being interdicted, it is prohibited for the indebted to dispose of his property in a way that causes harm to his creditors.

Imâm Ibnul-Qayyim (may Allah have mercy on him) says:

"If the debtor's entire property is required to cover his debts, it will be invalid for him to donate thereof, in a way that causes any harm to the creditors, whether those in authority have interdicted him or not. This is the opinion maintained by Imâm Mâlik and Shaykhul-Islâm Ibn Taymiyah (may Allah have mercy on him). Moreover, it is the soundest view which befits the original rulings of the Hanbalî School and comes in accordance with the principles of Sharî`ah (Islamic Law) and its rulings. This is because the creditors' rights must be paid from the debtor's entire property. That is why those in authority interdict the debtor. If the creditors' money were not to be paid from the debtor's entire property, those in authority would not have the right to interdict him. Therefore, his case resembles that of the person on the deathbed as he is not allowed to dispose of his property. If the indebted person were given the legal right to donate, this would waste the creditors' rights, and the Sharî`ah never legislates something like this, for among the principles of Sharî`ah is safeguarding people's rights by all ways and blocking means leading to wasting them."[7]

The second ruling is when a creditor finds the very piece of merchandise he has sold to a bankrupt person or has given him as a loan or as a rented article before interdiction, in which case the creditor is allowed to take it back. This is because the Prophet (PBUH) says:

"If a man finds his very things with a bankrupt person, then he has more right to take them back than anyone else."
(Related by Al-Bukhârî and Muslim)[8]

In addition, *faqîh*s (may Allah have mercy on them) have stipulated six conditions for taking back an amount of money (a property or a piece of merchandise) given to the bankrupt person before he is interdicted.

The first condition is that the bankrupt person be alive until the owner of the piece of merchandise takes back his property from him, for Abû Dâwûd related that the Prophet (PBUH) said:

"...If he (the bankrupt buyer) dies, then the owner of the property (i.e. the seller) is to be treated equally like the creditors (with regard to distributing the estate)."

The second condition is that the bankrupt person still owes the whole price. Thereby, if the owner of the property is paid a part of its price, it will not be valid for him to take it (the property) back.

The third condition is that the bankrupt person still has the very property (he took from its owner). If the owner of that property finds only part of it, he is not to take it back, since he has not found all his piece of merchandise but only part of it.

The fourth condition is that the piece of merchandise be intact and nothing of its properties has changed.

The fifth condition is that none has any right to claim with regard to that piece of merchandise, for the bankrupt person may have mortgaged it or have used it in any other transaction.

The sixth condition is that the piece of merchandise must not have increased a continual increase, as in the case of animals that fatten and increase in weight[9].

If all the above-mentioned conditions are fulfilled, it becomes permissible for the owner of the piece of merchandise to take it back from the indebted person when the latter is declared legally bankrupt. This is according to the aforesaid *ḥadîth*, in which the Prophet (PBUH) says:

"If a man finds his very things with a bankrupt, then he has more right to take them back than anyone else."

The third ruling on the interdicted person is that the creditors are not to ask him to pay his debts after being interdicted until the interdiction ends. During the period of interdiction, if one sells a piece of merchandise for the interdicted or lends him an amount of money, one is to ask him to pay only after the interdiction has ended.

The fourth ruling is that those in authority are to sell the interdicted person's property and divide its price among the creditors, to pay his due debts, according to the amount of debts he owes to each. This is because it is for this purpose he has been interdicted. Thus, it will be procrastination and injustice to them if the payment of debts is delayed.

Those in authority are permitted to let the bankrupt person keep what he is in need of; his house, provisions and the like. As for the deferred debt, it does not become due when one becomes bankrupt. Besides, the deferred debt is not to be part of the due ones, since the bankrupt person has the right to delay the payment of a deferred debt until it becomes due; yet, he is still obliged to pay it. Moreover, this right to delay the payment of a deferred debt is not to be violated, unlike his other rights to dispose of his remaining property.

After dividing the property of the bankrupt person to settle his due debts, interdiction ends without a legal verdict from those in authority if the property covers all his debts, since there is no more reason for it and debts are settled. In case the sold property of the bankrupt person does not cover all his debts, interdiction does not end except with a legal verdict from those in authority, who have interdicted him and thus they alone can legally end this interdiction.

The Second Type of Interdiction

This type has been established in the *Sharî'ah* (Islamic Law) for the benefit of the interdicted person for safeguarding his property. This is because Islam is the religion of mercy and it does not leave a useful matter but urges people to do it, nor does it leave a harmful matter but warns against it. Among the things that show the leniency of Islam is giving the person who is legally competent the right to dispose of his property and carry on commercial transactions, within the allowable limits, to gain a legal profit, since this will benefit both the individual and the society. However, if a person is unfit to gain profits and to carry on trade due to being a minor, weak-minded or insane, Islam denies him the right of disposing of his own property, and appoints a guardian to protect, keep safe and increase his property. This is to continue until there is no legal impediment; only at that time, he is given back his property in full. Concerning this, Allah, Exalted be He, says:

> ***"And do not give the weak-minded your property, which Allah has made a means of sustenance for you..."*** (Qur'ân: An-Nisâ': 5)

And:

> ***"...And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them..."*** (Qur'ân: An-Nisâ': 6)

These two noble verses refer to the interdiction decreed for the benefit of the person (who is unable to dispose of his property) since this protects his interests.

This type of interdiction is imposed on one's property and liability. Thus, the interdicted person does not have the right to dispose of his own property through selling, donating or other kinds of transactions. Therefore, it is legally invalid for him to be responsible for paying a debt, guarantee, sponsorship or the like, lest he should cause a loss to other people's properties.

It is invalid for one to be involved with a weak-minded person in financial affairs, such as buying, lending (money or objects) or depositing. In case one does, one is allowed to take back one's property if it is still intact. If such a property is damaged intentionally or unintentionally, it will deserve no compensation since the weak-minded person is not legally required to be liable for such dealings. In such a case, one is considered neglectful as one willingly and voluntarily has concluded transaction with an interdicted person. If the interdicted person (such as a minor or a weak-minded person) causes harm to a person or a property, he is to bear the consequences and be liable to any consequent fines, since the wronged party has not been neglectful nor has he given the interdicted person the permission. Besides, the juristic rule states that in responsibility for damage, both those with legal capacity and those without are equal before the law. With regard to this, the great scholar **Ibnul-Qayyim** said:

> *"The child, the insane and the sleeping person are to compensate for what they spoil of properties. This is one of the commonly agreed upon rulings without which people's interests would not be fulfilled. If those without legal capacity were not to compensate for what they damage, people would damage each other's properties pretending that it is accidentally and unintentionally done."*[10]

Interdicting the Minor Ends in Two Cases:

The first case is reaching puberty, which is known by some signs:

The first sign for the male is discharging semen in wakefulness or during sleep; Allah, Exalted be He, says:

"And when the children among you reach puberty, let them ask permission [at all times]..." (Qur'ân: An-Nûr: 59)

Puberty applies to a male person after the first wet dream.

The second sign is the growth of the pubic hair.

The third sign is becoming fifteen years old. What proves this is what `Abdullâh Ibn `Umar (may Allah be pleased with him) said:

"The Messenger of Allah (PBUH) called me to present myself in front of him on the Day of (the Battle of) Uhud while I was fourteen years of age at that time, and he did not allow me (to join the battle). Then he called me in front of him on the Day of (the Battle) of the Al-Khandaq (the Trench) when I was fifteen years old, and he allowed me (to join the battle)."

(Related by Al-Bukhârî and Muslim)[11]

This *hadîth* proves that a child reaches puberty when he is fifteen years old. In another narration, `Abdullâh Ibn `Umar explained the reason behind being forbidden from joining the Battle of Uhud saying:

"...He (the Prophet) saw that I had not reached the age of maturity (to be able to fight)."[12]

The fourth sign concerns the young girl, for she is known to have reached puberty when she has her first menstrual period, for the Prophet (PBUH) said:

"Allah does not accept the prayer of a woman who has reached puberty unless she wears a veil."

(Related by At-Tirmidhî who deemed it a *hasan* (good) *hadîth*)[13]

The second case is sound judgment along with reaching puberty, which means displaying competence in handling one's property, for Allah, Exalted be He, says:

"And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them..."

(Qur'ân: An-Nisâ': 6)

Sound judgment is recognized by testing a person's abilities concerning financial dealings (handling property). To prove a person's sound judgment, he is to be allowed to conclude business deals repeatedly, and if he is not excessively cheated, and he does not spend his money on prohibited or useless matters, he thus shows sound judgment.

Interdicting an insane person of his legal capacity ends in two cases; the first is regaining sanity and the second is being of sound judgment, as previously stipulated with regard to the minor. Interdiction of the weak-minded person ends when he comes to his senses and becomes reasonable in financial transactions. The guardianship of the financial affairs of any of such three kinds of persons (the child, the insane person and the weak-minded person) is carried out during their interdiction by such a person's father if he is just and of sound judgment. This is because a father is the nearest one to show mercy towards his charge. After the father comes the one stated in the father's will as the guardian, for this guardian will be taking the father's place, acting as if he is the father's representative during his lifetime.

The guardian ought to deal with his ward's property in the ward's best financial interest. Allah, Exalted be He, says:

> ***"And do not approach the orphan's property except in a way that is best [i.e. intending improvement]..."***
>
> (Qur'ân: Al-An`âm: 152)

This means that the guardian must not manage or administer the property of the orphan except in a way that benefits the orphan and makes his property legally increase. Though this noble verse refers only to the property of the orphan, it refers, by analogical deduction, to the property of both the weak-minded and the insane. Moreover, the guardian as well, must preserve and look after the property of the orphan or the like and never expose it to risk or devour it unjustly, for Allah, Exalted be He, says:

> ***"Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze [i.e. Hellfire]."*** (Qur'ân: An-Nisâ': 10)

Allah, Exalted be He, advised the guardians about orphans to consider the fact that their own children could be under the guardianship of other people at any time in the future; thus, since they like that their children be treated kindly (when they are wards), they must treat other people's children in the same manner. In this regard, Allah, Exalted be He, says:

> ***"And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice."*** (Qur'ân: An-Nisâ': 9)

Since the wards are unable either to preserve their property or to conclude business deals in a way that would increase property, Allah has appointed guardians over them to take care of their financial transactions on their behalf and to act to their best financial advantage. Allah has given those guardians commands to abide by; He has forbidden the guardians to give the minors their (the minors') property lest they should waste or spoil it.

On the other hand, Allah, Exalted be He, says:

> ***"And do not give the weak-minded your property, which Allah has made a means of sustenance for you..."***
>
> (Qur'ân: An-Nisâ': 5)

Al-Hâfiz Ibn Kathîr (may Allah have mercy on him) said:

> *"Allah, Glorified and Exalted be He, forbids that the weak-minded be given the right of disposing of the people's property, which Allah has made a means of livelihood and sustenance for people, through transactions and other ways of investment. Hence, interdicting the weak-minded of their legal capacity has been introduced."*[14]

Just as Allah, Exalted be He, has forbidden allowing the minors to handle their own property and has ordained that upright and sagacious guardians take care of it instead, He warns those guardians against dealing with that property except in a way that legally improves it and makes it grow. Allah, Exalted be He, says:

> ***"And do not approach the orphan's property except in a way that is best [i.e. intending improvement] until he reaches maturity..."***
>
> (Qur'ân: Al-An`âm: 152)

In this verse, Allah, Exalted be He, orders Muslims to deal with the orphan's property in his best interest. `Abdullâh Ibn `Abbâs (may Allah be pleased with him) narrated:

> *"When Allah, Exalted be He, revealed the verse, **'And do not approach the orphan's property except in a way that is best [i.e. intending improvement]...'** "* (Qur'ân: Al-An`âm: 152) *and the verse, **'Indeed, those who devour the property of orphans unjustly***

> ***are only consuming into their bellies fire...'*** (Qur'ân: An-Nisâ': 10), *every one (of the Companions) who had an orphan with him (under his guardianship) hastened to separate his food and drink from the orphan's. Thereupon, the orphan's food used to be kept until it was eaten (by the orphan) or got spoiled. This was difficult for them so they mentioned this to the Messenger of Allah (PBUH). Thus, Allah, Exalted be He, revealed the verse, '...**And they ask you about orphans. Say, 'Improvement for them is best. And if you mix your affairs with theirs - they are your brothers...**"* (Qur'ân: Al-Baqarah: 220) *Thereupon, they (the Companions) mixed their food with the orphans' food and their drink with the orphans' drink."*

In addition, among the deeds through which one could deal kindly and fairly in the orphan's property is employing it in trade to gain profits and make it increase. Thus, the guardian is entitled to trade in the orphan's property or give it to another person sharing the profit and the loss, for `Â'ishah (may Allah be pleased with her) used the money of Muhammad Ibn Abû Bakr (may Allah be pleased with him) in trade on his behalf[15]. Besides, `Umar Ibnul-Khattâb (may Allah be pleased with him) said:

> *"Trade in the property of orphans; otherwise, it will be consumed by means of (paying from it for) Zakâh."*[16]

In addition, the guardian is entitled to spend (reasonably) from the orphan's property to cover the latter's expenses. In this regard, **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

> *"It is desirable to honor the orphan, make him glad and protect him from being humiliated; since protecting and looking after him is for his best benefits."*[17]

The guardian of the orphan is also entitled to buy the sacrificial animal on the Feast of Sacrifice (*`Îdul-Adhâ*) from the orphan's property if he is wealthy, since this is a day of happiness and joy. The guardian is entitled as well to spend on the education of the orphan from the latter's property, since this benefits the orphan.

In case the guardian is poor, he is entitled to take from the orphan's property as a fee for managing and administering it, for Allah, Exalted be He, says:

> ***"...and whoever is poor – let him take according to what is acceptable..."*** (Qur'ân: An-Nisâ': 6)

This verse means that when the guardian needs money, he is permitted to take from the orphan's property according to what is acceptable. In this concern, **Imâm Ibn Kathîr** said:

> *"This verse was revealed concerning the guardian of the orphan, who maintains and manages the latter's property and takes thereof in case he needs. As for the verse, '**...And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor – let him take according to what is acceptable...**'* (Qur'ân: An-Nisâ': 6), *'Â'ishah said, 'It was revealed regarding the case of the orphan's guardian; he is permitted to take from the orphan's property a fee equivalent to managing and protecting his (the orphan's) property.'* "[18]

*Faqîh*s maintain that the guardian over the orphan may take the least of either his due fee (for managing the orphan's property) or the sum that meets his needs. It is narrated that a man came to the Prophet (PBUH) and said:

> *"I have an orphan who has a property but I have nothing. May I spend from his property?" The Prophet (PBUH) replied, "Use the property of your orphan without spending it lavishly."*[19]

Thus, it is impermissible for the guardian to spend from the orphan's property more than the limit Allah has made allowable. Allah warns those using the orphan's property lavishly with the severest threat revealing:

> ***"...And do not consume it excessively and quickly, [anticipating] that they will grow up..."*** (Qur'ân: An-Nisâ': 6)

Allah, Exalted be He, also says:

> ***"...And do not consume their properties into your own. Indeed, that is ever a great sin."*** (Qur'ân: An-Nisâ': 2)

In this verse, Allah means that it is a great sin to consume the orphans' properties into those of their guardians, thus Muslims must be keen on abiding by Allah's order and avoiding that great sin. Furthermore, Allah, Exalted be He, says:

> ***"Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze [i.e. Hellfire]."*** (Qur'ân: An-Nisâ': 10)

Imâm Ibn Kathîr interprets this verse saying:

> *"It means when the guardians eat up (i.e. take unlawfully) the orphans' properties without an acceptable reason (i.e. unjustly), it is fire, in fact, which they are eating up in their bellies, and will blaze on the Day of Resurrection."*[20]

It is related in the Two Sahîhs[21] on the authority of Abû Hurayrah:

> *"The Prophet (PBUH) said, 'Avoid the seven great destructive sins.' The people asked, 'O Messenger of Allah! What are they?' He said, 'To associate others in worship along with Allah, to practice sorcery, to kill the soul which Allah has forbidden (to be killed) except by (legal) right, to eat up ribâ,[22] to eat up an orphan's wealth, to flee from the battlefield at the time of fighting, and to accuse chaste women, who are good believers and never even think of anything touching chastity.' "*

Besides, Allah, Exalted be He, commands that the orphans' properties be returned to them in full when they are competent; become mentally and physically mature to dispose of them. Allah, Exalted be He, says:

> ***"And give to the orphans their properties..."***
>
> (Qur'ân: An-Nisâ': 2)

He also says:

> ***"...until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them..."***
>
> (Qur'ân: An-Nisâ': 6)

Moreover, Allah, Exalted be He, says:

> ***"...Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant."***
>
> (Qur'ân: An-Nisâ': 6)

The verse indicates that Sufficient is Allah as Accountant, Witness and Observer over the guardians when conducting the affairs of the orphans and when returning them their properties, whether in full or incomplete.

Endnotes

1 Ad-Dâraqutnî (4505) [4/148] and Al-Hâkim (2403) [2/75].
2 Al-Bukhârî (2287) [4/585] and Muslim (3978) [5/471].
3 See: "*Majmû`ul-Fatâwâ*" [2/512, 513].
4 Ahmad (19355) [4/389], Abû Dâwûd (3628) [4/31], An-Nasâ'î (4703) [4/363] and Ibn Mâjah (2427) [3/151].
5 Ahmad (2867) [1/313], and Ibn Mâjah (2340) [3/106] and (2341).

6 Ad-Dâraqutnî (4505) [4/148] and (2403) [2/75].
7 See: "*I`lâm Al-Mûwaqqi`în*" [4/8-9].
8 Al-Bukhârî (2402) [5/79] and Muslim (3963) [5/465]
9 Abû Dâwûd (3520) [3/508].
10 See the footnote in "*Ar-Rawd Al-Murbi`* " [5/183].
11 Al-Bukhârî (2664) [5/340] and Muslim (4814) [7/15].
12 Ad-Dâraqutnî (4156) [4/64].
13 Ahmad (25710), Abû Dâwûd (641) [1/298], At-Tirmidhî (377) [1/215] and Ibn Mâjah (655) [1/362].
14 See: "*Tafsîr Ibn Kathîr*" (1/428).
15 `Abdur-Razzâq (6983) [3/66].
16 Ad-Dâraqutnî (1954) [2/95], Al-Bayhaqî (7340) [4/179] and `Abdur-Razzâq (6990) [4/68]. See also At-Tirmidhî (640) [3/32] and Al-Bayhaqî (7339) [4/179].
17 See the footnote in "*Ar-Rawd Al-Murbi`* " [5/194].
18 See: "*Tafsîr Ibn Kathîr*" [1/428].
19 Ahmad (6747) [2/186], Abû Dâwûd (2872) [3/197], An-Nasâ'î (3670) [3/567] and Ibn Mâjah (2718) [3/313].
20 See: "*Tafsîr Ibn Kathîr*" [1/595].
21 The Two *Sahîhs*: The Two Authentic Books of Al-Bukhârî and Muslim.
22 *Ribâ*: A term that includes usury and usurious gain and interest.

CHAPTER

18

Conciliation

Conciliation is an agreement on the basis of which settlement is reached between two disputing parties. In fact, conciliation is of the greatest useful contracts. Therefore, it is advisable to lie a little, if necessary, when making settlement between two parties in a disagreement.

Conciliation is legalized according to the Qur'ân, the *Sunnah* (Prophetic Tradition) and consensus. There are numerous verses which prove Conciliation; Allah, Exalted be He, says,

> ***"...and settlement is best..."*** (Qur'ân: An-Nisâ': 128)

He also says:

> ***"And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly."*** (Qur'ân: Al-Hujurât: 9)

Moreover, Allah, Exalted be He, says:

> ***"No good is there in much of their private conversation, except for those who enjoin charity or that which is right or conciliation between people. And whoever does that seeking means of the approval of Allah – then We are going to give him a great reward."*** (Qur'ân: An-Nisâ': 114)

He also says:

> ***"...So fear Allah and amend that which is between you..."***
>
> (Qur'ân: Al-Anfâl: 1)

Besides, the Prophet (PBUH) said in a *hadîth* regarded as *sahîh* (authentic) by At-Tirmidhî:

> *"Conciliation is permissible among Muslims except the conciliation that makes what is lawful prohibited or makes what is prohibited lawful."*[1]

In addition, the Prophet (PBUH) used to make settlement between people who were in disagreement[2].

The permissible conciliation here is the one which is justly arranged, as ordained by Allah and His Messenger (PBUH), and in which one seeks Allah's pleasure and then that of those in dispute.

The one who undertakes conciliation between people ought to be well-informed of the circumstances of the disagreement, aware of what he ought to do in that regard and intending justice when arranging a settlement. In fact, the degree of the Muslim who makes peace among Muslims is better than that of the Muslim who fasts and performs prayer continuously. Yet, if peacemaking is done without justice, it will turn into oppression and doing wrong to the right of the oppressed party; such as making peace between a powerful unjust person and a weak helpless wronged one in a way that pleases the powerful one enabling him to violate and deny the right of the weak one.

Besides, peacemaking is arranged only with regard to the rights of people, when the wronged one could give it up or be compensated for it. However, as for the rights of Allah, Exalted be He, such as the prescribed punishments and the *Zakâh*, there is no way whatsoever to handle it with conciliation, for conciliation with Allah in these cases can be reached by performing these very acts of worship (i.e. prescribed punishments and *Zakâh* etc.)

Conciliation is of Five Types

The First Type: Conciliation between Muslims and non-Muslims who show hostility to Muslims

The Second Type: Conciliation between the Muslim community and rebellious Muslims

The Third Type: Conciliation between the husband and his wife for fear of dissension

The Fourth Type: Conciliation between two parties regarding a matter other than financial affairs

The Fifth Type: Conciliation between two parties disputing over property, which will be demonstrated here. This type is divided into two other types:

1- Conciliation of acknowledgment: Which is of two kinds:

The first kind is to arrange conciliation between the two parties in order to return the very type of the object of disagreement.

The second kind is to arrange conciliation for returning a thing other than the object of disagreement.

The first kind of conciliation of acknowledgment is conciliation to return the very type of the object of disagreement is in cases when one, for example, acknowledges owing another person a debt or acknowledges owing him a sum of money, which is in one's possession. Both parties then agree to conciliate when the indebted party pays part of the debt and the creditor, on his side, relinquishes the rest thereof. Also, this kind of conciliation may happen when the creditor cedes to the debtor an amount of the owed object and takes the rest thereof. This type of conciliation is valid unless the acknowledgment is stipulated. For example, the debtor may say that he acknowledges owing money to the creditor provided that the latter gives him so and so or compensates him with so and so, or the creditor may release the debtor from the debt stipulating that the debtor gives him a certain thing. Arranging conciliation in this manner is invalid, for the creditor has the right to ask for all his rights (all that which the debtor owes him). For rendering this type of conciliation valid, the debtor is not to refuse to give the creditor what he owes him in case there is no conciliation, for this would be an act of consuming people's wealth

unjustly, which is forbidden by Allah. Also, the debtor is to pay what he owes unconditionally (whether there is conciliation or not). In addition, for validating this type of conciliation, the creditor must be of those whose donation is valid; if not, this conciliation would be then invalid. An example for this is the donation given by a guardian of an orphan or an insane person, since the guardian would be donating something that does not belong to him.

In a few words, it is permissible to arrange conciliation between two disputing parties to return the established object of conciliation by part of the same type provided that the debtor does not refuse to give back his debt in case there is no conciliation. Besides, the creditor must be of those whose donation is valid. It is permissible as well to effect conciliation in case the aforesaid requirements are fulfilled, since this would be a donation and one is not to be prevented from relinquishing part of what he lends or from having it back in full. This is because the Prophet (PBUH) asked the creditors of Jâbir Ibn `Abdullâh to make some reduction in his debts[3].

The second kind of conciliation of acknowledgment is conciliation to substitute an object of a different type for the object of disagreement. This happens in cases when someone acknowledges that he owes another person a debt or an object, and both agree that the creditor is to take an object as compensation for a different one. Thus, if conciliation is to be arranged to return money for money, then this will be considered an exchange whose rulings are to be applied in this transaction. If conciliation is to be arranged to give back an object in return for money, this will be considered selling whose rulings are to be applied in this transaction. Moreover, if conciliation is agreed upon for establishing a benefit, as in the case when the creditor hires a place belonging to the debtor, it will be a kind of renting whose rulings are to be applied. If conciliation is arranged to give back money in return for the disputed object, it will be considered selling.

2- Conciliation of Denial

It refers to a person claiming that another person owes him an object or a debt; upon that claim, the other person does not deny the claim but is ignorant of the claimed object. The respondent then asks the claimer to relinquish his claim and to arrange conciliation in which the claimer will obtain a sum of money, whether paid on the spot or deferred. Conciliation in this case is valid according to the majority of the people of knowledge, for the Prophet (PBUH) said:

"Conciliation is permissible among Muslims except the conciliation that makes what is lawful prohibited or makes what is prohibited lawful."

(Related by Abû Dâwûd and **At-Tirmidhî,** and the latter said, *"This is a hasan (good), sahîh (authentic) hadîth."* Al-Hâkim regards this *hadîth* as *sahîh*)[4]

'Umar Ibnul-Khattâb sent this *hadîth* (in a letter) as a proof of effecting conciliation) to Abû Mûsâ[5]. Thus, this *hadîth* can be safely applied as a proof in this regard because of the aforesaid considerations.

The benefit of this type of conciliation which the respondent gains is avoiding the legal proceedings and taking an oath before the judge. As for the claimer, it spares him the trouble of establishing evidence and helps him obtain what he claims to be his as soon as possible.

In conciliation of denial, the claimer is regarded as selling the claimed object since he believes that what he takes is compensation for his money (the claimed object), thereby he ought to abide by what he believes. It is as if the respondent had bought the claimed object from the claimer, thus the rulings on selling apply to this transaction. Among these rulings is the right to return the sold item for being faulty and the right of preemption, if the right of preemption can be applied therein.

As for the respondent, he is considered, after effecting conciliation with the claimer, acquitted from the claim. He has paid money (for the claimed object) to avoid taking an oath, remove harm that may afflict him, end the dispute, and protect himself against being indulged in disputes. Besides, honorable people reject being involved in such matters and would rather pay money to avoid such claims. If the claimer (who becomes a buyer in this case) finds a defect in the object (given to him in compensation for the disputed one), he does not have the right to return it, and it cannot be taken by preemption from the respondent, as he does not consider it a real compensation for anything.

Conciliation of denial becomes invalid in case either party lies to the other. The claimer may lie claiming his right to an object which he knows well that it does not belong to him. Likewise, the respondent may deny whatever claim is advanced by the claimer though he knows that he is lying and he owes the claimer such a thing. Conciliation thus becomes null for the one who lies concealing the truth, since he knows the truth, and is able to give the right to its owner, and does not believe that he is in the right. Thus, whatever he takes

or obtains in this case by means of the conciliation is prohibited, for he takes it unjustly and wrongfully and not in compensations for something he deserves. Allah, Exalted be He, says in this concern:

"And do not consume one another's wealth unjustly..."

(Qur'ân: Al-Baqarah: 188)

This conciliation appears to be valid since people do not know the hidden truth, yet, Allah, from Whom nothing is hidden in the earth nor in the heaven, invalidates it. Therefore, Muslims must be keen on avoiding such prohibited actions and should keep away from obtaining money fraudulently.

One of the rulings on conciliation of denial is that conciliation is valid if a third party takes the place of the denying party (the respondent) in the conciliation without his permission. This is because the third party intends to acquit the denying party in order to avoid any dispute with the claimer. It is as if the third party had paid the debts of the denying party on his behalf. Yet, the third party is not to ask the denying party to pay what he has granted, since he does not have the right to do so; the third party in this case is considered a donator.

Another ruling is that conciliation is valid when being arranged to end a disagreement over an unknown object whether both parties owe one another or one of them owes the other. That is, conciliation is applicable if it is difficult to know this object such as the cases of unsettled account from a long time ago and neither of the parties knows what he owes the other. Once, two men disputed over their heritage which was a long time ago. The Prophet (PBUH) said to both of them:

"Draw lots, seek the truth, and then let everyone of you absolve his companion (from any right on his side)."

(Related by Abû Dâwûd and other compilers of *Hadîth*)[6]

In this case, since one of the two parties absolves the other from his right on his liability, conciliation becomes valid. In spite of the fact that the dispute is over an unknown object, it is valid here for necessity, in order to avoid wasting money or being burdened by rights of others. The Prophetic order, in the above-mentioned *hadîth* of absolving one another from any liabilities, signifies that one should be concerned with being absolved from people's rights in order to free one's liability. It also signifies how great and inviolable the rights of people are.

Another ruling on conciliation is that it is valid in cases of *qiṣâṣ* (legal retribution) through the payment of *diyah*[7] as a substitute according to the

amount of *diyah* stated in the *Sharî`ah* (Islamic Law), or less or more dependent on the agreement of both parties. Since the object of dispute is not a property that can be compensated for, as it is a human soul, so there cannot be compensation based on human estimation in this case. Rather, the blood money is to be paid according to the *Sharî`ah*.

It is not valid to conciliate something related to the prescribed punishments (punishments enshrined in the Qur'ân and the *Sunnah*), since Allah, Exalted be He, has prescribed these punishments for deterrence. Besides, these punishments are the right of Allah, Exalted be He, and among the rights of the community. Thereby, conciliating something related to these punishments renders them invalid, denies the community of their benefits and opens the way for those intending corruption.

Endnotes

1 Ahmad (8770) [2/366], At-Tirmidhî (1356) [3/634], Ibn Mâjah (2353) [3/112] and Abû Dâwûd (3594) [4/16].
2 Al-Bukhârî (684) [2/217] and Muslim (948) [2/365].
3 Al-Bukhârî (2127) [4/435]
4 Ahmad (8770) [2/366], At-Tirmidhî (1356) [3/634], Ibn Mâjah (2353) [3/112] and Abû Dâwûd (3594) [4/16].
5 Ad-Dâraqutnî (4425) [4/132] and Al-Bayhaqî (20537) [10/252].
6 Ahmad (26596) [6/320] and Abû Dâwûd (3584) [4/13].
7 *Diyah* in Arabic means a compensation payment for a murder or an injury; it mainly means "blood money", and it can also mean "indemnity".

CHAPTER

19

Neighborhood and Roadways

Faqîhs[1] have dealt with the issue of neighborhood and roadways and the rulings related thereof because of the great importance this issue has. Problems may arise between neighbors and ought to be immediately solved lest they should cause dispute and hostility.

Muslims ought to solve these problems by arranging conciliation between neighbors who are in disagreement in a way that achieves justice and benefit. If someone makes conciliation, for example, to allow water to pass to him through the land of the neighbor or over his housetop (by means of a water pipe, for example), in return for compensation, this conciliation is valid since it is necessary. If this compensation is to be paid in return for a benefit or for making use of the land or the housetop while they still belong to their owner, this is considered renting. If one wishes to possess the part of his neighbor's housetop or land through which water passes, then this is considered selling. If a neighbor is in need of a passage through a property of the neighbor in return for a compensation or through conciliation, this will be permissible since it is necessary.

The owner of the land or the housetop should not take advantage of his neighbor's need, by asking for a high compensation or refusing to let him make use of that passageway; thus, the owner causes hardship to his neighbor and prevents him from fulfilling his needs. Moreover, if a branch of one's tree (in his land or his house) extends to reach the land or the house of the person next to him, it becomes obligatory on the owner to remove it, either by cutting or bending it toward another direction to pull it away from the land or house of the neighbor. If the owner of the branch refuses to do one of the aforesaid actions, the landowner or the house owner is entitled to remove the harm caused by that branch with one of these actions, since this branch is thus a violation which is to be removed by an action that causes the least damage. If both agree by means of conciliation to leave the branch in its place, this will be permissible, whether in return for a compensation, according to the soundest view of scholars in this regard, or on the basis of sharing the fruit of the branch. The same ruling on a branch applies to the case when a wooden column extends and reaches the land or house of one's neighbor.

It is impermissible to have in one's property that which may cause harm to one's neighbor(s), such as having a bathroom, a kitchen, a bakery or a café whose harms may extend to reach one's neighbor(s) or having a factory whose noise and working of machinery could disturb one's neighbor(s). Even having a window overlooking the house of one's neighbor may cause harm to him.

Moreover, if there is a joint wall between two persons, it is prohibited to open a window through it without the neighbor's permission. Furthermore, it is impermissible to put or fix wooden pegs in the joint wall or in that of the neighbor, except when necessary, and when the wall could bear those wooden pegs and the roof cannot stand without them. This is according to a *marfû'* (traceable) *ḫadîth* narrated by Abû Hurayrah, in which the Prophet (PBUH) says:

> *"No one should prevent his neighbor from fixing a wooden peg in his wall." Abû Hurayrah then said (to his Companions), 'Why do I find you averse to it? By Allah, I certainly will narrate it to you.'"*
>
> (Related by Al-Bukhârî and Muslim)[2]

This *ḫadîth* proves that it is impermissible to prevent one's neighbor from fixing wooden pegs in one's wall. If one refuses, those in authority are to force him to accept, since it is a permanent right of one's neighbor.

What is mentioned above are some of the rulings on neighborhood. As for the rulings with respect to roadways, they are as follows:

- It is impermissible to annoy people on the roadways; one should rather clear a passage for people and remove harmful things from the road, since these deeds are parts of faith as the Prophet (PBUH) stated in his *hadîths*.
- It is impermissible as well for a person to build in his land what may cause trouble to the passage of vehicles, people or animals, such as building a roof (to be shaded by in the road) which prevents the passage of people riding vehicles or animals, or what they carry.
- It is impermissible also to specify a parking place on the road (or the street) for one's riding animal or one's vehicle as long as this may make the road narrow or result in accidents.
- **Shaykhul-Islâm Ibn Taymiyah** (may Allah have mercy on him) said:

  "It is impermissible to have any thing protruding from one's building into the road. It is even forbidden to plaster one's wall (that is next to the street or the road) except when leaving a space (equal to the thickness of plastering) to the inside of one's house and plastering the wall as wide as one has left of space..."

- One is also prohibited to do certain things on the road (or on the street), such as planting, building, digging, putting firewood, slaughtering, throwing garbage and ashes or the like, which may cause harm to the passers-by. Municipality officials are to prevent such actions and inflict a deterring punishment upon whoever acts contrarily, for many people do not take this matter seriously. Some of them occupy the roads to serve their own interests; they use the road for parking their vehicles, putting their construction materials such as bricks, iron or cement, digging the roads, and doing many other violating actions. Others throw harmful things, such as food wastes, rubbish and impure objects in marketplaces without any concern for harming other Muslims. All of these actions are prohibited by Allah and His Messenger (PBUH); Allah, Exalted be He, says:

  "And those who harm believing men and believing women for [something] other than what they have earned [i.e. deserved] have certainly born upon themselves a slander and manifest sin."

  (Qur'ân: Al-Ahzâb: 58)

The Prophet (PBUH) also said:

"A Muslim is he from whose hand and tongue Muslims are safe."[3]

Moreover, he (PBUH) said:

"Faith has over sixty branches, the most excellent of which is declaring that there is no deity but Allah, and the lowest of which is removing harmful things from the way; and modesty is a branch of faith."[4]

There are numerous *hadîths* in which the Prophet (PBUH) urges Muslims to respect each other's rights and to keep away from causing any harm to one another. In fact, one of the things that harm Muslims most is causing them troubles on their way and putting obstacles therein.

Endnotes

1 *Faqîh*: A scholar of Islamic Jurisprudence.
2 Al-Bukhârî (2463) [5/136] and Muslim (4106) [6/48].
3 Al-Bukhârî (10) [1/74] and Muslim (161) [1/22].
4 Al-Bukhârî (9) [1/72] and Muslim (152) [1/195].

CHAPTER

20

Preemption

Preemption is authentically stated in the *Sunnah* (Prophetic Tradition) and Allah, Exalted be He, has ordained it for blocking evil means related to partnership.

The great **Imâm Ibnul-Qayyim** (may Allah have mercy on him) said:

> *"Preemption is one of the merits of Sharî'ah (Islamic Law) which proves its justice and ability to fulfill people's interests and needs. The wisdom behind legislating preemption is the necessity to prevent any harm caused to people as far as possible. Since partnership, in most cases, results in harm (dispute), such harm can be removed either by dividing the property or by preemption. When a partner wishes to sell his share taking recompense (its due price), the other co-owner is legally more entitled to buy it than any other strange party. Therefore, the buyer prevents the harm caused to him from partnership; and the seller is paid his due right of the price and hence he is not harmed. Preemption also protects the buyer against the harm caused by sharing*

the property with a strange party. Thus, preemption is characterized with great justice and is one of the best rulings which are in conformity with sound minds, natural dispositions and interests of people."[1]

Thus, it becomes clear that trying by fraudulent means to invalidate the right to preempt contradicts the purpose for which preemption has been legislated.

At the Pre-Islamic Period of Ignorance (*Al-Jâhiliyyah*), the right of preemption had been common. So, if one wanted to sell one's house or garden, the neighbor or the co-owner would demand the right of preemption to buy the sold share, for such people more entitled to buy it.

According to the *faqîhs*, preemption means that the partner is more entitled to take his counterpart's share sold to another person (a third party) for recompense which is the same price agreed upon by the third party and the other partner. Thus, the buyer has to sell the share he bought to the preemptor against the price upon which both (the buyer and the seller) agreed. This is according to what Imâm Ahmad and Al-Bukhârî related on the authority of Jâbir (may Allah be pleased with him) that:

"The Prophet (PBUH) decided the validity of preemption in every joint undivided property, but if the boundaries are well marked and the ways and streets are fixed, then there is no preemption."[2]

This above-mentioned *hadîth* proves that the co-owner has the right to preempt, and that preemption is only applicable and valid in land and real estates (immovable properties) but not in movable possessions, furniture, animals and the like. The Prophet (PBUH) also said:

"...It is not lawful for him (the partner) to sell that until the other partner gives his consent."[3]

This *hadîth* proves that it is impermissible for the partner to sell his share (to a person other than his counterpart) unless he informs his counterpart about that sale.

In this regard, **Ibnul-Qayyim** said:

"It is impermissible for the partner to sell his share without informing the other partner. If he does, the other partner is more entitled to buy that share. If the partner has asked the permission of the other partner before selling a co-owned property and the latter expresses no intention to buy it, then he does not have the right to preempt it after the sale. This is the conclusive ruling which the Sharî`ah (Islamic Law) has stated and there are no other contradictory views in this regard."[4]

Ibnul-Qayyim maintains that the partner has no right to preempt a sold property as long as he has been asked permission before the sale and showed no intention for buying. In fact, this view is only one of two views of scholars on preemption. However, the majority of scholars are of the view that the partner still has the right to preempt, and his being asked permission does not nullify his right to preempt. Allah, Exalted be He, knows best.

Preemption is a legal right that must be observed, and it is impermissible to try deceitfully to make the other partner lose it, for preemption has been ordained to save the partner from any harm. Thus, if someone uses deceitful ways and plays tricks to deprive his partner from this right, he will harm such a partner and violate his legal right. **Imâm Ahmad** (may Allah have mercy on him) in this concern says:

> *"It is impermissible to use deceitful ways in order to nullify the right of preemption or any other right due to a Muslim. This is because the Prophet (PBUH) said, 'Do not commit what the Jews had committed in order to make lawful what Allah has prohibited, through the lowest tricks.'"*[5 6]

One of the tricks that the partner may do to nullify the right of preemption is to pretend to have given his share to a third party as a gift, while he has sold it for a price. Also, the partner may ask for a high price from the other partner to make him unable to pay and thus prevents him from preempting. **Shaykhul-Islâm Ibn Taymiyah** said:

> *"Deceitful actions and tricks played by the partner to deny the preemptor his right to preempt, invalidate the contract of sale (with the buyer), besides, whatever words are written do not change the facts of the contracts."*[7]

Preemption, in fact, is valid in joint land if undivided, and whatever trees and buildings there are part of the land. Moreover, if the land has been divided and there are still some joint utilities, such as a joint walkway or a joint source of water or the like, the preemptor still has the right to preempt according to the soundest view of scholars in this regard. It is also according to the general meaning of the *hadîth* in which the Prophet (PBUH) says:

> *"...if the boundaries are well marked and the ways and streets are fixed, then there is no preemption."*

This *hadîth* signifies that preemption is valid and applicable in divisible things whose boundaries are established and whose roads have not been designated. In this concern, **Ibnul-Qayyim** says:

> *"This is the soundest view as far as the preemption of neighborhood is concerned. It is also the view maintained by the People of Basra and Shaykhul-Islâm Ibn Taymiyah, and is one of the two views reported about the school of Imâm Ahmad."*

Furthermore, **Sheikh Taqiyyud-Dîn** said:

> *"Preemption of neighborhood is valid in case of sharing one of the rights of ownership; such as sharing in a utility of a real estate, a joint waterway or a walkway or the like. This is the view maintained by Imâm Ahmad."*

The same view is also maintained by Ibn `Aqîl, Abû Muhammad and others. In addition, **Al-Hârithî** said:

> *"Preemption of neighborhood is valid when bringing about a benefit and preventing a harm, and there are numerous hadîths supporting this view. This is because neighborhood does not necessitate preemption except when neighbors share the walkway or the like. Besides, preemption has been ordained for preventing harm, which occurs in most cases of co-ownership, or sharing the same utility such as a walkway, a waterway or the like."*

Preemption is valid when someone claims it immediately after having been informed that his partner (or his neighbor) has sold his share (of a real estate) to another party. If the other partner (preemptor) does not demand the right of preemption, he will then lose it. However, if the preemptor does not know about the sale, he still has the right to preempt, even if he remains uninformed about it for years. In this concern, **Ibn Hubayrah** says:

> *"...Muslim scholars uniformly agree that when the preemptor is absent (and thus uninformed about the sale), he is still entitled to demand his right of preemption to buy the sold share as soon as he returns."*

If there are several partners, then they are entitled to preempt according to the shares each possesses of the whole property, since they enjoy their right of preemption by virtue of their ownership. If a partner gives up his right to preempt, the other partner is entitled to buy the rest of the property or relinquish it all, since taking only part of the property will harm the buyer, and harm is not to be removed by causing harm.

Endnotes

1 See: "*I'lâm Al-Mûwaqi'în*" [2/119].
2 Al-Bukhârî (2214) [4/515] and Muslim (4104) [6/46].
3 Muslim (4103) [6/46].
4 See: "*I'lâm Al-Mûwaqqi'în*" [2/121-207].
5 Related by Ibn Battah.
6 See: "*I'lâm Al-Mûwaqqi'în*" (3/299).
7 See: *'Majmû'ul-Fatâwâ'* (30/286).

II:PARTNERSHIP

CHAPTER

1

Kinds of Partnership

Some light should be thrown on the issue of partnership and its rulings, as partnership is obviously widespread nowadays. People still practice dealing and trading with each other, and this is considered a means of cooperation, with the purpose of attaining common interests through developing and investing wealth and exchanging experiences.

Partnership in trade and the like is deemed permissible according to the Book (the Qur'ân) and the *Sunnah* (Prophetic Tradition). Allah, Exalted be He, says:

> ***"...And indeed, many associates oppress one another..."***
>
> (Qur'ân: Sâd: 24)

Here, the word "associates" refers to partners. The noble verse proves the permissibility of partnership and the prohibition of oppressing one another as partners.

The proof of the permissibility of partnership is also stated in the *Sunnah*, as the Prophet (PBUH) said:

> *"Allah, Exalted be He, says, 'I am the third of the two partners (i.e. Allah is with them, taking care of, keeping, supporting, and sending down blessing upon their trade) as long as one of them does not cheat the other. But when he cheats him, I depart from them (i.e. to take blessing away from their trade).'"*[1]

The *hadîth* involves the legality of partnership and exhorts people to maintain it provided they do not cheat one another. This is because partnership involves cooperation and assistance, and the Prophet (PBUH) said:

> *"Allah assists the person so long as he assists his (Muslim) brother."*[2]

The person has to choose the one whose wealth is lawfully obtained in order to set up a partnership with him. In addition, he is to keep away from the people whose wealth is completely or partially ill-gotten. It is permissible for a Muslim to go into partnership with a disbeliever, provided that the disbeliever is not to be given full authority to run the business alone. That is, partnership is to be under the supervision of the Muslim partner so as not to let that disbeliever deal in *ribâ*[3] or any kind of prohibited matters, so making use of his Muslim partner's absence of supervision.

Partnership is divided into two sections: **Partnership in properties** and **partnership in contracts**. As for the first, it implies sharing the ownership of a real estate, factory, automobiles, etc. However, the second section of partnership involves sharing in running the business, such as sharing in selling, purchasing, renting, etc. It can be by sharing in both capital and work, or sharing in work without capital.

Partnership in Contracts Consists of Five Types

1- ***'Inân* (Cooperative) Partnership:** It involves equal sharing in both capital and work.

2- ***Mudârabah* (Speculative) Partnership:** It refers to partnership in which one of the two parties is a silent partner, who only provides capital, while the other runs the business.

3- **Reputable Partner Partnership:** It refers to partnership in trade based on the reputation, not the capital, of the partners.

4- **Manual Partnership:** It refers to partnership in which the two partners share whatever they earn by their own work, not by their wealth.

5- **Comprehensive Partnership:** It includes all the aforesaid types of partnership; cooperative, reputable partner, manual, and speculative partnerships. In this kind of partnership, each partner authorizes the other to freely handle every aspect of the capital and labor.

This is just a summary of the types of partnership, and we shall deal with each in detail below.

Endnotes

1 Abû Dâwûd (3383) [3/438].
2 Muslim (6793) [9/23].
3 *Ribâ*: A term that includes usury and usurious gain and interest.