

A Brief Discussion on Business Transactions in Islamic Jurisprudence with a view to the Status of Riba

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Abstract: Business or trading is permitted in Islamic laws. But the accounts and transactions have some rules and regulations prescribed by Islamic laws. The sole purpose of this article to discuss briefly about what type of business transactions are permitted and prohibited under Sharia law. Options and conditions in business dealings, transferring money, payment in advance and some other commercial terms are defined under Islamic jurisprudence. As *riba* (usury) is prohibited under Islamic laws, the controversy of defining usury will be interpreted in this paper. Islamic finance with the interpretation of usury has common dilemma. The rulings about loans, mortgage, partnership, etc. in Islamic laws will be discussed shortly. At the present time of global economy, the Muslim world has to cope with business and transactions under the rules and laws of Islamic jurisprudence.

Key Words: *Islamic Jurisprudence, Business Transaction, Usury, Prohibited Trade, Sharia.*

Introduction

Business is an economic system where goods or services are exchanged for money or for one another. People needs foods, clothes, medicines, house, etc. and other necessities in their life for living generally. And people can obtain these goods and services through trade. Trade or business transactions are permitted in Islamic laws within the proceedings and rules of Islamic jurisprudence. As long as the transactions or business itself are undertaken according to the rules and regulations of the *Sharia* (Islamic Laws) they are permitted.

“But Allah has permitted trade and has forbidden *riba* (usury).”²

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² Al Quran, 2:275.

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.³ The basic theme of business transactions is the interdependence of people's needs. And Islamic laws do not forbid business because it needs for people living.

But these trade transactions must be followed by some rules, most of them are derived from the Quran and some comes from the Hadiths of Prophet. There are also some rules and conditions for special circumstances from the consensus of Muslim scholars. Man needs such transactions which are based on exchange of benefits, and the legality of these transactions secures a legal way for undertaking the relevant interests without harm.⁴

A trustful and trustworthy trader who is also tolerant during the transactions or trade will bestow mercy of Allah. They will also grant a very special position, i.e. with martyrs on the day of resurrection⁵ in the Hereafter.

A human being's self-esteem as a whole connected with his work no matter what kind of work as long as it is lawful. As the Prophet (PBUH) in his early life and many of his companions were directly involved in trade transactions. A Muslim can earn his living through business, trade or any other profession as long as it does not involve doing, supporting or promulgating anything that is prohibited in Islam.

Conditions Related To Business Transactions

Trade transactions are mainly a contract between seller and buyer. This contract can be both verbal and written. Both oral and written contracts are creating a binding obligation on both buyer and seller to perform upon their agreement. There are

³ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-10.

⁴ See Fathul-Bari, 4/287.

⁵ Narrated by Ibn Majah (no, 2139) , al Hakim (no. 2142) and ad Daruquthni (no. 17)

certain conditions to be satisfied to make a valid transaction in Islamic jurisprudence.

Mutual consent is the first condition to make a valid transaction. If there can be found any coercion or force behind any transaction that will become void.

If the seller or buyer without their consent or by force, have to take part in a trade that will be invalid. Selling should be only by mutual consent.⁶ However, a transaction concluded through just compulsion is deemed valid, as in the case when the (or the one in authority) force a bankrupt person to sell his remaining property in order to pay off his debts.⁷

To make a transaction valid both the seller and buyer has to be in sound mind and become obtain the majority by age. They also have to be free; a slave cannot make any transaction without his master's permission. Any lunatic or insane person also cannot make any trade transaction.

It is not permissible for a Muslim trader to sell any goods which he has not possessed. If a person does not have possession of certain goods or product and he sells it to another person, and after the transaction he goes out to find it or buy it for his customer, the transaction will become void. Prophet (PBUH) has prohibited this type of transaction.⁸

To complete a valid transaction in Islamic laws, a seller has to sell that is only permissible. The items which are not permissible in Islamic jurisprudence are not permitted to sell or trade. For example, flesh of swine, musical instruments, alcohol, etc. Allah and His messenger prohibited the trade of intoxicants, dead animals, pigs and idols.⁹

⁶ Ibn Majah (2185) [3/209] and Ibn Hibban (4967) [11/340]

⁷ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-11.

⁸ "Do not sell what you do not have (or possess)."- Abu Dawud (3505), At-tirmijj (1235), AN Nasai (4627) & Ibn Majah (2187)

⁹ Al Bukhari (2236) & Muslim (4024)

Here one thing has to mention that, the items or products which are not prohibited from trading, the money or price using in that type of trading are *haram* or prohibited. When Allah prohibits something, He prohibits the price paid for it.¹⁰

The price and product must be available. If the product is not available during the trade, it will be invalid. For example, it is illegal to sell a runaway camel or a bird in the sky. The price and product must be known to the seller and buyer. For hiding, any part of a product is considered as fraud and this type of transactions are prohibited in Islam.

Prohibited Business Transactions

As business or trade is permitted in Islam for good and benefit for mankind, so as long as it does not cause harm or injury to others, the business transactions are permissible. The product or item which is subject to the transactions must be permissible to *Sharia*. The forbidden or impermissible products or items related to any business transactions are completely forbidden or *haram*.

There are some impermissible forms of business transactions existed in Islamic Jurisprudence. Firstly, when *Jumuah* prayer is obligatory on a Muslim, it is impermissible for that person to involve in any business transactions.¹¹ When *Jumuah* prayer is declared, Muslims should be busy with the prayer rather than any other acts or business. Secondly, it is forbidden to trade any products which can be used for sin and aggression. For illustration, it is forbidden for sale any food or flower which can be used for intoxicants. It is also impermissible to sale weapon or ammunition which can be used for killing Muslims. It is mentionable here that, the permissibility in a business transaction depends upon the intention and usage. Thirdly, a Muslim must not try to cancel the sales of his Muslim brother.¹² For example, one seller cannot say to his customers that he can sell certain product in fewer prices than the other Muslim seller. In a counter, a Muslim cannot cancel the buy of his Muslim

¹⁰ Abu Dawud (3488)

¹¹ Al Quran, Sura Jumuah: 09

¹² Al Bukhari (5142) [9/249] & Muslim (3441) [5/201]

brother. Fourthly, town dweller is prohibited to do any transaction on behalf of desert dwellers. Fifthly, when a seller sells a product on credit to a buyer and then buys it from the same time at a lower price. This transaction is called *inah*. Narrated Abdullah Ibn Umar: “I heard the Messenger of Allah, (PBUH) says: When you enter into the inah transaction, hold the tails of oxen, are pleased with agriculture, and give up conducting jihad (struggle in the way of Allah). Allah will make disgrace prevail over you, and will not withdraw it until you return to your original religion.”¹³

Business Monopoly

A monopoly means the supply chain of a certain product is concentrated by one hand or a group like cartel, trusts, etc. and the price, availability, supply would depend upon that hand or group. The economic system which is controlled or dominated by monopoly breaks the synchronization of social good. As the main aim of Islamic jurisprudence is for greater good, and monopoly dominated business transactions are contrary to that aim, the monopoly form of business is prohibited in Islamic jurisprudence.

Speculative Business Transactions

Speculation has several meanings in an economic sense. In Islamic Jurisprudence, speculative business means, buying some commodity cheaply in a bulk amount and stored the product for a time period to create artificial scarcity and sell the commodity later with high price.

These speculative forms of business are prohibited in Islam. This is the form of a business which controlled the market to achieve personal achievement. Speculators are only interested in personal gain rather than the social good. And the poorer portion of the society has to pay for the high pricing, it is prohibited in Islam.

¹³ Sunan Abu Dawud - Book 24, Hadith 47

Interest-based Transactions

Every interest involving transactions is strictly prohibited and forbidden in Islamic Laws. Here one thing is mentionable that, profit and interest is not the same thing. Profit based business transactions are relevant to risk of loss and it is productive. But in the interest based or involving trade there is no risk of loss and furthermore, it is strictly prohibited by almighty Allah.

Transactions Relating to Gambling

Gambling or *maysir* means gaining something without working for it and too easily. The interpretation behind the principle is that one gaining without earning it. Any gain involving money, which comes too easily without working for, it is prohibited and unlawful. Lottery, prize bonds, dice, etc. with betting on any types of acts including sports, are termed as gambling and it is prohibited.

Fraudulent Transactions

It is prohibited in Islam any trade relating to fraud. It is not relevant the fraud is in which degree. The least degree of fraud in any transactions are prohibited. Fraud can be in various types in business transactions. There are two types of sale contracts *Munabadhah* and *Muslamasah* which are forbidden in Islamic laws and relevant to fraud.

Munabadhah means seller should throw a piece of cloth to the buyer before the buyer has examined it. It means the bargain has been struck. On the other hand, *Muslamasah* means touching the folded cloth without examining it. Both these types of transactions are prohibited in Islam. Because, here the buyer cannot properly examine the product he wants to buy.

There are other forms of fraudulent transactions which are prohibited in Islam. *Muzabanah* means the exchange of fresh fruits which are still on trees for dry one. In this case, the amount of dry or ripened fruits or fruits which are in counted state can be measured, but the fruits which are still on trees or

in un-gathered state by guessing the amount cannot be properly measured.

Muawamah is other types of transaction which is prohibited in *Sharia*. *Muawamah* consists in selling the fruit on the trees before the fruits have made its appearance. For example, selling the fruits in two years or more. This type of transactions may result bitterness and frustration.

Gharar Trade

Possession is the basic condition for sale in Islamic Jurisprudence. One person cannot sell anything without having possession of such thing. *Gharar* trade is that type of trade where someone sale some commodity without having possession of it. The Prophet (PBUH) forbade sale by means of pebbles and the *gharar* trade (the type which involves some uncertainty).¹⁴

Sale by means of pebbles means throwing pebbles or stones on goods and buy and sell will be depends upon the hit and miss. When the buyer or seller agrees upon that certain goods will be bought or sold by throwing pebbles and the contract of sale will be depends upon the hit or miss of the pebble. As sale contract is a serious matter and sale by means of pebbles may lead to injustice and hardship to one side.

Trade Conducted By Force

When someone purchases some goods or sells some goods to another person, it has to be free from any force or coercion. By enforcing force any type of trade contract will be invalid. The purchaser and the seller both have to be free from any force to make any trade transaction.

The Prohibited Things for Trade

There are some things or products which are forbidden and prohibited for any trade transactions for Muslims. These things

¹⁴ Sahih Muslim Book 10, Hadith 3614.

and products are forbidden by the verses of Quran and Hadiths of Prophet.

Intoxicant

Every intoxicant is termed as *khamr* in Islamic Sharia and every *khamr* is prohibited. Every drink or everything that causes intoxication is forbidden.¹⁵ And all types of *khamr* trade is prohibited in Islam.

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.”¹⁶

Carcass, Idols & Swine

Jabir Ibn 'Abdullah (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying in the Year of Victory while he was in Mecca: Verily Allah and His Messenger have forbidden the sale of wine, carcass, swine and idols, It was said: Allah's Messenger, you see that the fat of the carcass is used for coating the boats and varnishing the hides and people use it for lighting purposes, whereupon he said: No, it is forbidden, Then Allah's Messenger (may peace be upon him) said: May Allah the Exalted and Majestic destroy the Jews; when Allah forbade the use of fat of the carcass for them, they melted it, and then sold it and made use of its price (received from it).¹⁷

Dogs

It is not permissible for a Muslim to keep a dog, unless he needs this dog for hunting, guarding livestock or guarding crops.¹⁸ It is also forbidden for Muslims to trade dogs. The Prophet (PBUH) forbade the price of a dog.¹⁹ The Messenger of Allah (PBUH) also

¹⁵ Sahih Muslim Volume: The Book of Drinks, Hadith 4956 & 4957.

¹⁶ Al Quran, 5:90.

¹⁷ Sahih Muslim Volume: The Book of Transactions, Hadith 3840.

¹⁸ See on: <http://islamqa.info/en/69777>

¹⁹ Sahih Al Bukhari, Hadith no. 1944.

forbade the price of a dog, and if a person comes asking for the price of a dog, then he ordered to fill his hand with dust.²⁰

Unripe Fruit and Foods

It is prohibited in Islam to sell the fruits before it has ripened. The sale of grapes or before they become darker or sale of corns before they become yellow is prohibited by the Prophet (PBUH). So the selling of fruits before they become ripen is strictly prohibited. The fruits must have come to its ripping color to sell it. Otherwise the transaction related the fruits will be *haram*.

Pictures & Statues

Islam prohibits the making and procurement of statues. All statues of animate beings are equally *haram*, regardless of whether they are made in the images of a Muslim or a Non-Muslim. Making images of animate beings is extremely *haram* and it is also forbidden to sell it. When Allah forbids eating a thing, He also forbids its price.”²¹

It is also not permissible for a Muslim to deal in statues, because it is proven in the *Saheeh* hadith that it is *haram* to make images or statues of animate beings at all or to keep them. Undoubtedly dealing in them means that one is propagating them and helping others to make images and set them up in homes, clubs and so on.²²

Options in Trade Transactions

Islam is a complete and compassionate code for mankind. This religion cares for the greater good and the interests of Muslims and tries to make things easy for them.

There are some rulings about business transactions because Islam gives the right to choose one's own interest. The buyer and seller both have their interest in a business transaction and

²⁰ Sunan Abu Dawud, Hadith No. 3021.

²¹ Musnad Ahmad, no. 2223

²² see on: <http://islamqa.info/en/49676>

Islam has given the opportunity to seek which is better for the transaction. So there are some options for the seller and buyer in a trade transaction to make it successful and avoid any harm or loss to another.

Firstly, both the buyer and the seller have the option of cancelling or confirming the bargain, as long as they are still together; and unless they separate or one of them gives the other option of keeping or returning the things and a decision is concluded then, in which case the bargain is considered final. If they separate after the bargain and none of them has rejected it, then the bargain is rendered final.²³ In a business transaction, both the parties need time to consider or review the deal. And both the buyer and seller have the choice or right to confirm or cancel the deal as long as they have not separated from the business taking place.

Secondly, in a business transaction, both the parties can stipulate time to conclude the contract. The certain period of time can be agreed by both the parties that they have the right to accept or reject the deal in the time period. As the Prophet (PBUH) said, Muslims must keep to the conditions they make.²⁴ It is permissible to make a special condition to fulfil in a specific time period and both the seller and the buyer have to perform upon the mutual consent and have to fulfil all contracts.

Thirdly, both the buyer and the seller have to right or option to confirm or cancel the deal if any one of them is gravely deceived by the misjudgement of the sale. There are three cases where misjudgement or cases of deception is applicable:

If a enters into a business transaction with a seller, and later the seller finds out that he has been paid less, then he legally has the option to cancel or confirm the transaction.

If any buyer is deceived by a fake buyer to raise the price of a product he has the option to cancel or confirm the transaction.

²³ Sahih al-Bukhari 2112, Vol. 3, Book 34, Hadith 325.

²⁴ Hadith: Abu Dawud (3456) [4/16].

If a buyer who has no knowledge about the product and does not know the actual price of the product and the buyer by his innocence and kind nature trusts the seller about the price and the product, and if such buyer deceived by the seller, the buyer has the option to cancel or confirm the transaction.

Fourthly, if the product's quality has been changed from the time of examination and the time of delivery, the buyer has the option to cancel the transaction. If the buyer and seller differ about the price, product, quality or any other thing and one of them is not satisfied with other than each of them has the right to cancel the transaction.

Fifthly, in case of cheating for example, hiding the defect of the product or displaying the product in a way to raise the price or telling lies about the product or any other way is prohibited. And in every such way, the buyer has the choice to cancel the transaction. If the product has any defect, it is the responsibility of the seller to describe it or if he does not, then he must have to show or display or give a chance to the buyer to examine it.

Sixth, if the seller says that he sells the product at the same price he has bought it, and after it has discovered that the seller lies about it, or if in partnership any partner put less money than what he has claimed, or if the seller says that he will gain only certain amount of money but later discovered that is false, or if any seller claims that he will sell the product less than what he has paid for it but later discovered that is a lie, then the buyer has option to cancel the transaction or deal. Though there is another opinion that, the buyer cannot cancel the deal as the deal must be done with the actual price, not the false one claimed by the seller.

***Riba* or Usury**

The issue of *riba* or usury is one of the most serious matters in Islamic Jurisprudence. The divine revelations have prohibited any dealings relating to *riba*. And Allah almighty warns those who deal with it. Islam forbids all forms of *riba* and this is confirmed in the Quran and Sunnah.

“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest.”²⁵

Riba, or commonly known as interest is simply an excessive or illegally high rate of interest charged on borrowed money. *Riba* is also included in the taking of a superior thing of the same kind of goods and giving more same kind of goods of inferior quality.²⁶

All forms of *riba* or other terms (whoever wants to define *riba* any other term to make it valid) are forbidden in Islam and Allah almighty have declared war against them who deals with it.

“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.”²⁷

“Allah destroys interest and gives increase for charities. And Allah does not like every sinning disbeliever.”²⁸

The above mentioned verse of the Quran means that Allah wipes out the blessing of money or *barakah* that with mixed with interest gained from *riba*. Though the usurer may be rich and richer, but there will be no good in it and he will be punished hereafter. And Allah does not like those people who deal with *riba*.

There are several *hadiths* of Prophet (PBUH) related *riba* also. He (PBUH) has stated *riba* as one of the great destructive sins.²⁹

²⁵ Al Quran, 2:275.

²⁶ M. Abdul-Fattah, Muhammad, (2004), Simplified Islamic Jurisprudence Based on the Quran and the Sunnah, Dar Al-Manarah, Volume 2, Page 1042.

²⁷ Al Quran, 2:278, 279.

²⁸ Al Quran, 2:276.

²⁹ Al Bukhari (2766) [5/481] & Muslim (258) [1/273]

The Prophet (PBUH) also cursed the one who accepts *riba*, the one who pays it, the one who records it and the two witnesses to it.³⁰ He (PBUH) also said that, *riba* is seventy two degrees (of evil), the least of which resembles (in its sinfulness) committing adultery with one's mother.³¹

Why *Riba* Is Prohibited?

There may be questions why *the ribbon* is not only prohibited, but also strictly forbidden and Almighty Allah declared war against the persons who deals with *riba*. Islam prohibited those things which only causes harm to mankind and which causes injustice to the society and Muslims. Dealing in *riba* involves injustice because the usurer takes *riba* from people without giving them anything in exchange.

Riba causing harm to those in needs and by increasing the debts because of interest rate they are unable to pay their debts as it increases in cycle. It also prevents kindness among people and blocks *sadaqah jariyah* (good loans i.e. loans without interest) to another. Dependence on interest prevent people from working to earn money as it is easy to get money by dealing in *riba* though this money will be no good.

The lender is very likely to be wealthier and the borrower poorer. If interest is allowed, the rich will exploit the poor, and this is against the spirit of mercy and charity.³²

Divisions of *Riba*

The increase of particular things or *riba* is divided into two kinds. They are *riban-nasiah* or delay usury and *ribal-fadl* or excess usury.

Riban-nasiah - This is the interest that the lender stipulates that the borrower must pay in return of the delay of payment.³³

³⁰ Muslim (4069) [6/28] & (4068)

³¹ Ibn Majah (2274) [3/72] & (2275)

³² Ar - Razi, Tafsir, 7/4.

³³ M. Abdul-Fattah, Muhammad, (2004), Simplified Islamic Jurisprudence Based on the Quran and the Sunnah, Dar Al-Manarah, Volume 2, Page 1046.

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.³⁴

Ribal-fadl - This is the interest based on superiority. This means selling an item for another of the same type but in excess. This kind of transactions is prohibited in six items according to the Prophet (PBUH) are gold, silver, wheat, barley, dates and salt. If any of these six categories is sold for same category with increase e.g., gold for gold to increase then it is prohibited. But if any of the six categories is sold for different categories, e.g., gold for barley, then it is permissible to trade with increase.

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 other banking institutions, as they conclude transactions through lending loans for those needing them. Similarly, depositing at banking institutions for a specified period and against a specified interest is considered one of the usurious transactions.³⁵

Payment in Advance

Payment in advance or *Salam* is defined as selling some product whose price is paid in advance and the product will be delivered later. It is a contract by which the price of a clearly defined item is paid in advance at the place of the concluding the contract, and the sold item is to be received later.

³⁴ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-39.

³⁵ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-44.

This transaction method is permitted by the almighty Allah in the Quran.

“O you who have believed, when you contract a debt for a specified term, write it down.....”³⁶

It has been narrated by Ibn Abbas (may Allah be pleased with him) said,

“I testify that debt, which is guaranteed for a fixed period, has been made lawful and permitted by Allah in His Book.”³⁷ But whoever pays in advance the price of something to be delivered later should pay it for a specified measure at specified weight for a specified period.³⁸

It is not stipulated that the person who is to deliver the thing which has been bought through *salam* has this thing in his possession at the time of the deal.³⁹

There are some conditions relating the payment in advance like as, the sold item must be definite properties or products, the kind and the class of the product must be defined and the sold item must be a specific quantity, weight and measure. There must be a specified period of time for receiving the item and the price must be paid fully advance at the time of contract.

Selling Assets & Fruits

If someone sells a house, it means the things which are attached to the house and necessities for the house and the appellation of the house will be included in the sale.

For example, the rooftop and building as an appellation of the house, machineries, tools which are attached to the house and the doors, windows, stairs, water reservoir etc. which are necessities for the house, will be included in the sale. If there are

³⁶ Al Quran, 2:282.

³⁷ Al-Irwa, 1369.

³⁸ Narrated by Al Bukhari, Muslim & others.

³⁹ M. Abdul-Fattah, Muhammad, (2004), Simplified Islamic Jurisprudence Based on the Quran and the Sunnah, Dar Al-Manarah, Volume 2, Page 1025.

any trees, plants or solid metals in the house they will also be the part of the sale.

The things which are detached from the house cannot be included in the sale. But some things such as keys, which are detached from the house, but for its appellation they has been included in the sale.

If someone sells a land, all things which are attached to the land and last for a period of time will be included in the sale. For example, any house or trees attached to the land will be also included in the sale. If one sales, land with plants which will be harvested for only one time such as rice or wheat, then these plants will not be included in the sale and these plants will belong to the seller. But if the plants attached to the land are frequently cut or picked, such as grass or vegetables like cucumber are belongs to the buyer. If there any plants attached to the land and at the time of the sale the plants are going to be harvested, they belong to the seller.

If someone sells pollinated plants are sold after the appearance of the fruits, the fruits belong to the seller. But before the pollination or appearance of the fruits whatever is sold the fruits belong to the buyer.

It is impermissible for selling fruits before its appearance of ripeness. Prophet of Allah forbade both seller and the buyer, such a sale.⁴⁰ It is also forbidden for the seller to sell his fruits before they become ripe.

It is stated in both Al Bukhari and Muslim that, the Prophet (PBUH) forbade selling fruits until they are almost ripe. And he replied to the question about the sign if the ripeness as they get red or yellow.⁴¹

It is also impermissible to sell plants until they are safe from blight or on the other hand they are full grown.⁴²

⁴⁰ AL Bukhari 2194 [4/497] & Muslim 3840 [5/418]

⁴¹ AL Bukhari 2195 [4/498] & Muslim 3954 [5/460]

⁴² AL Bukhari 2197 [4/502] & Muslim 3842 [5/419]

Sharing Venture

Sharing venture or in Arabic term *mudarabah* means through which the Muslim “seeks of Allah’s bounty.”⁴³ Sharing venture or *mudarabah* is a contract constituted by two persons agreeing on one person pay to the other person a sum of money in order to business and the profits will result from this are to be shared between the two according to the proportions which they have agreed upon the time of the contract.

Ibnul Mundhir in his Al-Ijma⁴⁴ has stated that, it is permissible to undertake *qirad* or *mudarabah* with *dinars* and *dirhams* (money in cash), and that the person who is to trade in this money has the right to stipulate conditions of its own about the sharing profit whatever they may agree with, as long as this is defined.

Though *mudarabah* was practiced by the companions of the Prophet (PBUH) and it is valid in Islam, but if the financier (the person who pay the money) to another on the basis that he will take it back in instalments with an increase of the money then this will be *riba* (usury) based loan and it is strictly *haraam* or prohibited.

Ibn Qudaamah (may Allah have mercy on him) said: Any loan in which it is stipulated that more (than the original amount) be paid back is *haraam*, and there is no difference of scholarly opinion concerning that. Ibn al-Mundhir said:

They are unanimously agreed that if the lender stipulates that the borrower must pay back more or give a gift, and he gives the loan on that basis, if he takes anything additional to that, it is *riba*.

It was narrated from Ubayy ibn Ka'b, Ibn 'Abbaas and Ibn Mas'ood that they forbade loans that bring benefits.⁴⁵

⁴³ Al Quran, 73:20.

⁴⁴ Al-Ijma, 124.

⁴⁵ Al-Mughni, 6/436.

If the financier set certain conditions when giving his money to a person in *mudarabah* and tell him that if he violated those conditions he would be liable for the money.⁴⁶

Loaning & Loans

Loan or *Manihah* is termed by the Prophet (PBUH) as paying or giving an amount of money or product, or any wealth to someone who needs it and by having it he benefitted from it and after he pays it back. Lending is a great work and it is rewarded by Allah. The Prophet of Allah (PBUH) describes it be like giving charity.⁴⁷ It is also said that lending a loan is legally better than giving charity, as none borrows except when being in a bad need.⁴⁸

Giving a loan is considered a good deed and it relieves a Muslim from adversity and helps him to overcome his bad need. Borrowing is not a despicable act as the Prophet (PBUH) himself borrowed sometimes as it is stated in many hadiths.⁴⁹

There are some principles regarding loan and lending. Paying back the debt is mandatory for every Muslim as Allah will never forgive the debt of a person. Loan must be from someone whose loan is legal. For example, one cannot lend orphan's money as it is impermissible. The amount of the loan must be defined.

Any loan that brings a profit is a kind of *riba*.⁵⁰ It is strictly prohibited to stipulate any increase to the loan. The loans given by the banks are plain *riba* as it stipulated increase the money. If someone gives a loan and the borrower gives any gift or present or the lender asked to be carried on the mount of the borrower, the lender is not permitted to accept the gift.⁵¹ Thus, it is impermissible for the lender to accept a gift or any form of

⁴⁶ Narrated by Al Bayhaqi & others.

⁴⁷ Ibn Majah (2430) [3/153]

⁴⁸ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-63.

⁴⁹ Al Bukhari (2305) [4/608] and Muslim (4086) [6/38]

⁵⁰ Al- Bayhaqi (10933) [5/573]

⁵¹ Ibn Majah (2432) [3/154]

utility from the debtor as it is prohibited by hadiths of the Prophet and many scholars opined it as one kind of *riba*.

On the other hand, the borrower must pay back the loan without procrastination or delay as soon as he is able to afford it.⁵²

Mortgage

Mortgage or *Rahn* is putting up collateral connected to a debt so that it can be used to take one's due in full if the indebted person cannot pay the debt back.⁵³ The mortgage is permissible according to the Quran and Sunnah.

“And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken...”⁵⁴

So, according to the Quran, mortgaging is permissible during journeys. And according to the Hadith it is also permitted in residence as the Prophet (PBUH) purchased food grains from a Jew on credit and mortgaged his iron armor to him.⁵⁵

Like other business transactions, mortgage has also some principles has to follow according to the Islamic Jurisprudence. The amount, quality and description of the security must be known and it has to be free from *riba*. To enter into a mortgage contract the mortgagor must possess the security or have the permission to deal with it. It is permissible to mortgaging one's property for the debt of another.

It is not permissible for the mortgagee to benefit from the mortgaged thing because of the general rule stating whenever a loan brings about interest this becomes a form of *riba*. However, if the mortgaged thing is a thing that can be taken as a mount or milk it if he spends on it. Mortgaging becomes ineffective once

⁵² Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-65.

⁵³ Fathul Bari, 5/140.

⁵⁴ Al Quran, 2:283

⁵⁵ Narrated by Bukhari.

the mortgaged thing is returned to the mortgagor according to the mortgagee's will.⁵⁶

Transference of Debts

Transference of debts or *hawalah* means when a person who is in trouble transferring the right to collect the debt to another person from whom the creditor can get his money back. As the Prophet (PBUH) said, "Delay (in the payment of debt) on the part of a rich man is injustice. SO, if any one of you is transferred to a well to do person (to collect his debt from him), he should accept the transfer."⁵⁷

There are some conditions relating *hawalah*. The person who transfers the right to collect a debt and the person to whom it is transferred must be accepted and concerned. The money cannot be stipulated from the person whom the debt is to be collected.

The person from whom the debt will be collected must be equal in terms of type, amount, time of payment, delay and quality as the person who transfers the right. *Hawalah* will not valid if the two rights are different in terms of superiority and inferiority.⁵⁸

The debt must be stable, in the meaning that if the right to collect a debt is transferred to an employee who has not received his salary yet, that *hawalah* will not be valid. And both the right must be known and defined.⁵⁹

Pre-emption

Pre-emption is the right to purchase something before any other. It is authentically stated in the Sunnah. Prophet (PBUH) gave a verdict regarding pre-emption or *shuf'ah* in every undivided joint thing (property), but if the limits are defined (or

⁵⁶ Abdul-Fattah, Muhammad, (2004), Simplified Islamic Jurisprudence Based on the Quran and the Sunnah, Dar Al-Manarah, Volume 2, Page 1056.

⁵⁷ Narrated by Ibn Majah.

⁵⁸ Abdul-Fattah, Muhammad, (2004), Simplified Islamic Jurisprudence Based on the Quran and the Sunnah, Dar Al-Manarah, Volume 2, Page 1060.

⁵⁹ Ibid.

demarcated) or the ways and streets are fixed, then there is no pre-emption.⁶⁰

Pre-emption means that the partner is more entitled to take his counterpart's share sold to another person (third person) 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 pre-emptor against the price upon which both (the buyer and the seller agreed).⁶¹

It is proved by the hadith that the co-owner has the right to pre-empt, and that pre-emption is only applicable and valid in land and real estates (immovable properties) but not in movable possessions, furniture, animals and the like.⁶²

The Prophet (PBUH) also said it unlawful for the partner to sell that until the other partner gives his consent.⁶³

Pre-emption is valid in joint land if the land is undivided. If the land is divided and if the boundaries are well marked and the ways and streets are fixed, then there is no pre-emption.

Pre-emption is valid when someone claims it immediately after having been informed that his partner (or his neighbour) has sold the property to another. If the pre-emptor does not demand the right of pre-emption, he will then lose it.

If the pre-emptor does not know about the sale, he still has the right to pre-empt, even if he is remained uninformed about it for years.⁶⁴

Conclusion

The Islamic business system is more than profit or loss. It is a system that involves charity, good for humanity, justice to the

⁶⁰ Al Bukhari (2214) [4/515].

⁶¹ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-118.

⁶² Ibid.

⁶³ Muslim (4103) [6/46]

⁶⁴ Dr. Al-Fawzan, Salih, A Summary of Islamic Jurisprudence, Al Maiman Publishing House, 2009, Volume 2, p-120.

society, etc. Though, the profit-loss sharing between parties is involved in Islamic Jurisprudence. One of the major Islamic principles regarding business is that no money should sit idle and an honest trader or businessman should suffer from the liquidity of cash money. The Islamic business system also prohibits some types of business and it strictly forbids any types of *riba*. The main reason why *riba* was forbidden was its manipulative nature to make so many people broke at the hands of a few rich.

Islamic Jurisprudence immensely discusses about every portion of the business system and has guidelines and principles regarding the issues. Quran, Sunnah and the consensus of Jurists must be followed in any type of issue which has arisen due to the newly developed global economic world.