

# Forbidden Transactions

Part 4

# **Sales in Islam**

# The Status of Sales in Islam

- **The Qur'an:**

- 1) ((وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا))

- “And Allah has permitted sale and has forbidden interest...” [Al-Baqarah 2: 275]

- 2) ((أَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِنْ رَبِّكُمْ))

- “There is no harm upon you to seek bounty from your Lord...” [Al-Baqarah 2: 198]

- **The Sunnah:**

- ((البيعان بالخيار ما لم يتفرقا))

- “Two parties to a sale have option until they part.”  
[Bukhari]

# The Status of Sales in Islam (Cont.)

- Ijma:
  - Ibn Qudamah (يرحمه الله) said:
  - “Muslims have unanimously agreed upon the permissibility of sale in general...” [Al-Mughni 6/6]

# Pillars of Sale in Islam

- Imam An-Nawawi (يرحمه الله) said in *Al-Majmu' Sharh Al-Mahzab*, 149/9 that the pillars of sale transaction are:
  - The two parties (العاقدان)
  - The agreement (الصيغة)
  - The subject (معقود عليه)

# Conditions of a Sale

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- **There are 2 types of conditions which must be considered:**
  - 1) Conditions concerning the item  
– (الشروط المعتبرة في المعقود عليه)
  - 2) Conditions concerning the buyer and seller  
– (الشروط المعتبرة في المتعقدان)

# Conditions concerning the item (1)

- **The item must exist at the time of transaction:**
  - ((نهى رسول الله صلى عليه و سلم عن بيع المضامين و الملاقيح و حبل الحبله)) 1)
  - The Prophet (peace be upon him) forbade the sale of what is in the wombs of female camels, the sale of the breeding qualities of camels and selling the offspring of the offspring of a pregnant camel. [*Sahih Al-Jami'* 6/62, authenticated by Al-Albaani]
  - ((نهى رسول الله صلى الله عليه و سلم عن بيع الغرر)) 2)
  - The Prophet (peace be upon him) forbade 'Gharar' sales.



# Conditions concerning the item (2)

- **The item must have value.**
  - That is, the item being traded must have benefit.
- **Based on this it is not permitted to sell:**
  - Blood
  - Dead meat

# Conditions concerning the item (3)

- **The item must be owned by the seller.**
  - The Prophet (peace be upon him) said:
  - ((لا تبع ما ليس عندك))
  - “Do not sell that which you do not have.” [Tirmidhi, it was authenticated by Al-Albaani in Sahih Al-Jaami’, no. 7083]

# Conditions concerning the item (4)

- **One must have the ability to deliver the item:**
- **Based on this it is not permitted to sell:**
  - A bird in the sky.
  - A fish in a river

# Conditions concerning the item (5)

- **The item being sold must be known by both parties:**
- **Based on this it is not permitted to sell:**
  - Ambiguous transactions
  - Mystery showbags
  - Mystery tours

# Conditions concerning the item (6)

- **The item being sold must be 'pure':**
- This was a point added by the:
  - Shafis
  - Malikis
- **Based on this it is not permitted to sell:**
  - Pigs
  - Dogs
  - Alcohol
  - Dead flesh before being tanned

# Conditions Concerning the Buyer and Seller (1)

- Both parties must be able to perform transactions, they must be:
  - Free (حر)
  - Over the age of puberty (مكلف)
  - Rasheed (رشيد)

# Conditions Concerning the Buyer and Seller (2)

- That there be no compulsion within the transaction, the proof for this is:
- Allah said:
  - يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ
  - “O you who believe! Do not wrongfully devour each others’ wealth except if it be a trade by mutual consent.” [An-Nisaa 4:29]
- The Prophet (peace be upon him) said:
  - ((إِنَّمَا الْبَيْعُ عَنِ التَّرَاضِي))
  - “Indeed, sale can only be through consent.” [Ibn Majah 1/13, authenticated by Al-Albaani in *Sahih Sunan Ibn Majah*]

# Conditions in a Sale



# Valid Conditions

- **Correct (*Sahih*) Conditions:**
- This refers to conditions:
  - 1) Which are not prohibited.
  - 2) Which must be fulfilled based on the Prophet's (peace be upon him) statement:
    - ((المسلمون على شروطهم))
    - **"Must be upon their conditions."** [Abu Dawud, no. 3594, authentic according to Al-Albaani]
- These are of 3 kinds:
  - 1) Conditions which are necessary for the contract.
  - 2) Conditions which are generally part of the contract.
    - Shart *Jaza'* may fall under this category.
    - Ibn Sirin reported that Shurayh said: ((من شرط على نفسه طائعا غير مكره فهو عليه))
  - 3) Conditions which relate to a benefit.
    - In the hadith of Jaabir: ((باع جملاً و اشترط ظهره إلى المدينة)), Jaabir sold a camel to the Prophet (peace be upon him) on a journey but made the condition that he be allowed to ride it to Madinah.

# Invalid Conditions (1)

- Invalid (*Faasid*) Conditions:
- There are 3 types of invalid conditions:
- 1) That a contract be conditional upon another contract.
  - Ahmed viewed as a *Bai'atayn fil Bai'*
  - Maliks allowed some transactions such as *Sharikah, Nikah, Qiradh* and *Ijarah*.

# Invalid Conditions (2)

- 2) That a contract go against the wisdom of Selling:
  - i.e. Return the object back to the seller if the object loses value.
  - Proof: (( من اشترط شرطاً ليس في كتاب الله فهو باطل و إن ))  
(( كانت مائة شرط ))
  - “Whoever makes a condition that is not in the Book of Allah, then it is invalid even if they are one-hundred conditions.” [Bukhari & Muslim]

# Invalid Conditions (3)

- 3) Bai' Mu'allaq: Conditions that are reliant on something which may or may not happen.
  - i.e. Someone saying: 'If my father agrees, I will sell.'
  - Hanbalis: This is an incorrect condition.
  - Malikis: This is a valid condition.

**Gharar**

- Imam An-Nawawi said in *Sharh Muslim*:
  - **“With regard to the prohibition on *gharar* transactions, this is one of the important principles in the book of financial transactions, and it includes many issues...”**

# What is Gharar?

- Abu Hurayrah (may Allah be pleased with him) that the Prophet (peace be upon him):
  - **“Forbade gharar (ambiguous) transactions.”** [Muslim, no. 1513]
- Gharar can be understood as:
  - **“A risk which is not certain; it may happen or not, such as selling fish in the water or birds in the air, because the purchaser may or may not get it.”** [*Mu’jam Maqaayees al-Lughah* (4/380-381)]
- Al-Azhari said:
  - **“Gharar transactions include any transactions in which something is not known.”** [*Lisaan al-‘Arab* (6/317)]

**All you can eat  
buffets?**



# 'Acceptable Gharar' [1]

- **Al-Quraafi said:**
  - “Ambiguity and unknown matters – i.e., in selling – are of three types: a large degree is forbidden according to consensus, such as selling birds in the air; a small amount is permissible according to consensus, such as the foundations of a house and cotton filling of a quilted garment; there is a difference of opinion concerning a moderate amount...” [*al-Mawsoo'ah al-Fiqhiyyah* (31/151)]
- **Ibn Rushd al-Hafeed said:**
  - “The fuqaha' are agreed that a large degree of ambiguity in transactions is not allowed, and that a little is permissible.” [*al-Mawsoo'ah al-Fiqhiyyah* (31/151)]

# ‘Acceptable Gharar’ [2]

- **Al-Nawawi said in *Sharh Muslim*:**
  - “Similarly the Muslims are unanimously agreed that it is permissible to sell things in which there is slight ambiguity, such as selling a quilted garment with its filling, but if one is buying the filling separately, that is not permissible. And they agreed that it is permissible to rent out a house, an animal or a garment etc for a month, even though the month may be thirty days or it may be twenty-nine. And they agreed that it is permissible to sell admission to bath-houses for a certain amount even though people will differ in how much water they use and how long they stay. “
- **Shaykh Ibn ‘Uthaymeen said:**
  - “There are stores that sell food and say, “Pay twenty riyals and eat all you want”. He said: It seems that this may be tolerated, because the size of an average meal is known and this is something that is allowed by custom. But if a person knows that he eats a lot, then he must tell the restaurant owner, because people vary. [*al-Sharh al-Mumti’* (4/322)]

# **Salam Contracts**

# What is Salam?

- “*Salam* is a sale whereby the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot.”
  - Mufti Taqi Usman (*An Introduction to Islamic Finance*, p. 126)

# Condition for Salam Contract (No difference of Opinion)

- 1) The buyer must pay the full price at the time of the sale.
- 2) Salam can only be effected when the quality and quantity of the commodity is known.
- 3) It is not permissible to condition that Salam be effected on a particular field.
- 4) The quality of the commodity must be specified.
- 5) The quantity must be agreed upon.
- 6) The exact date and place of delivery must be specified.
- 7) Salam cannot be effected in respect to things which must be delivered on spot.

# Condition for Salam Contract (Difference of Opinion)

- **According to Hanafis:**
  - The commodity for which Salam is effected should be available in the market from the day of the contract to delivery. [Al-Kasani, *Bada' Al-Sana' l*, 5/211]
  - The Shafis, Malikis and Hanbalis say that it is only necessary for the commodity that the commodity be available on delivery.
- **According to Hanafis & Hanbalis:**
  - The time of delivery is one month (minimum) from the date of the agreement. If not, then Salam is not valid.
  - Imam Malik says it should be 15 days.
  - Shafis and some Hanafis say that the Prophet (peace be upon him) never specified a time, the only condition is that a time period must be defined.

# **Istisna Contracts**

# What is *Istisna*?

- “*Istisna* is the second kind of sale where a commodity is transacted before it comes into existence. It means to order a manufacturer to manufacture a specific commodity for the purchaser. If the manufacturer undertakes to manufacture the goods for him with material from the manufacturer, the transaction of *istisna* comes into existence.”
  - Mufti Taqi Usman (*An Introduction to Islamic Finance*, p. 135)



# What is the difference between *Istisna* and *Salam*?

- 1) *Istisna* related to manufactured goods.
- 2) The time of delivery must be fixed in *Salam* whilst this is not the case with *Istisna*.
- 3) *Salam* cannot be cancelled unilaterally whilst *Istisna* can be cancelled before the manufacturer starts the work.
- 4) *Salam* requires that price be paid in full in advance, this is not necessary with *Istisna*.