

Forbidden Transactions

Part 5

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.

Selling upon the Sale of Your Brother

- It is not permissible for a Muslim to undersell his brother, because it is proven in *al-Saheehayn* that the Prophet (peace be upon him) said:
 - **“No man should sell over his brother.”**
- The wisdom behind this prohibition is that it:
 - Provokes enmity and hatred among Muslims.
 - Everything that leads to enmity and hatred among Muslims is *haram*.

Is the Sale still Valid?

- Ibn Qudamah (may Allah have mercy on him) said in *al-Mughni* (4/149):
 - “If he goes against that and does the transaction, then the transaction is **invalid, because it is forbidden**, and the prohibition implies that it is invalid.”
- Al-Mardawi said in *al-Insaf* (4/331):
 - “It is not permissible for a man to undersell his brother, which means saying to one who has bought a product for ten: I will give you something similar for nine. And it is not permissible for a man to falsely tempt (outbid) his brother, which is when he says to someone who has bought a product for nine: I will give ten for it, in order to cancel the sale and make a deal with him. There is no difference of scholarly opinion concerning this.”

Najsh

***Najsh*: Artificial Inflation**

- **“The Messenger of Allaah (peace be upon him) forbade artificial inflation of prices.”**
(Narrated by al-Bukhaari, 2035; Muslim, 1516).
 - In Arabic the word *najsh* means provoking, and is also used to refer to the action of prodding a bird to enter a trap.
 - It refers to pushing the purchaser to fall into the vendor’s trap so that he buys at an inflated price.

**City Dweller Selling
the Goods of a Desert
Dweller**

- **Narrated Abu Huraira:** Allah's Messenger (ﷺ) said:
 - “A buyer should not urge a seller to restore a purchase so as to buy it himself, and do not practice *Najsh*; **and a town dweller should not sell goods of a desert dweller.**” [Bukhari]

Conditions

- This prohibition applies if:
 - The Desert dweller brings goods for sale only.
 - If the Desert dweller is taking the time to study the market, there is no prohibition.
 - The City dweller should not approach the Desert dweller, but vice versa is permissible.

Auctions in Islam

Auctions

- Jaabir said: A man had decided that a slave of his would be manumitted after his death, but later on he was in need of money, so the Prophet (peace be upon him) took the slave and said, “Who will buy this slave from me?” Nu’aym ibn ‘Abd-Allaah bought him, and he (the Prophet (peace be upon him) handed the slave over to him. (Narrated by al-Bukhaari, 2034; Muslim, 997).
 - Al-Bukhaari included this hadeeth in a chapter titled “*Baab bay’ al-Muzaayadah* (Chapter: selling by auction).”
 - Ibn Hajar said: Ibn Battaal replied that the words of the Prophet (peace be upon him) in this *hadith*, “Who will buy this slave from me?” indicate that he was offering him to the highest bidder so that the needs of the bankrupt man for whom he was selling him could be met. (*Fath al-Baari*, 4/354).

Scholarly Criticisms towards Auctions

- **Some scholars, such as Al-Awza'i and Ishaq ibn Raahawayh, said that auctions can be used only to sell booty and inherited goods. Their evidence was the following *hadith*:**
 - “The Messenger of Allah (peace be upon him) forbade anyone of you from seeking to outbid one another, except in the case of booty and inherited goods.” (Narrated by Ahmad, 5398; al-Daaraqutni, 3/11; al-Bayhaqi, 5/344; al-Tabaraani in *al-Awsat*, 8/198).
- **The response to the view is:**
 - The *hadith* is weak, because it includes 'Abd-Allaah ibn Lahee'ah.
 - The *hadith* of Jaabir is general, and the ruling remains general in application.
- **Hence Imaam al-Tirmidhi said:**
 - On the basis of the hadeeth of Jaabir, some scholars did not see anything wrong with selling booty or inherited goods to the highest bidder.
- **Ibn al-'Arabi (may Allah have mercy on him) said:**
 - There is no point on restricting auctions only to these two kinds of goods. There is no difference between these goods and others; they are all the same. (See *Fath al-Baari*, 4/354).

“Auctions are *Makruh*”

- **Some scholars, including Ibrahim al-Nakha'i, regarded this kind of sale as makrooh. Their evidence was the *hadith* of Sufyaan ibn Wahb:**
 - “I heard the Messenger of Allah (peace be upon him) forbid selling by auction.”
- **Response:**
 - The hadeeth was narrated by al-Bazzaar, but it is weak, because it includes Ibn Lahee'ah. (See *Fath al-Baari*, 4/354).