

**Business Dealings
By
Installments
The Shariah Standpoint**

ISLAMIC FIQH ACADEMY OF INDIA

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

فلولا نفر من كل فرقة منهم طائفة
ليتفقهوا في الدين
وليُنذروا قومهم إذا رجعوا إليهم
لعلهم يَحذرون
(التوبة: ١٢٢)

**So, why, then, a contingent
from every faction did not go
forth to devote themselves to
studies in religion, and
admonish the people when
they return to them, that thus
they (may learn) o guard
themselves (against evil.)
(S.9 A.122)**

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Questionnaire

Sales and Purchase by Installments

Inventions are born out of necessity. It is the necessity which gives birth to new and new inventions; new modes of transaction come in to vogue; and complex problems take birth. From among such new modes of business transactions an important one is the sale and purchase by installments. A person feels the need of an item and wants to purchase it but the item prices so high as to be beyond his purchase power and he fails to purchase it and satisfy his need. The shrewd business persons, having sense of the public needs, have devised a new solution to this problem. That is, they offer the requisite item(s) to the needy on condition that he pay the price of the item by installments, choosing the mode, number and quantum of the installments according to his convenience. This prevalent mode of business gives rise to following various questions:

- (1) Does it violate any rule of the *Shariat* to enhance the price of a commodity being sold on credit as against the price of the cash sale of the same commodity?
- (2) It is necessary for the defrayal of the credit sale to be made in one time; or the purchaser is at liberty to make the defrayal by installments. E.g. the sold

commodity prices Rs. 10000 /- and the mode of defrayal is agreed upon to be made, for instance, in ten installments during the period of ten months, one thousand monthly?

(3) A businessman sells his merchandise both in cash and on credit. His mode of transaction is that he makes cash sale, for instance, in Rs 100 /- but the credit sale is Rs 200/.What is the position of the *Shariat* on this mode of transaction? Is it necessary for him to mention only the credit sale price and make the sale deal accordingly?

(4) Charging a higher price for the credit sale of a commodity than that of its spot sale price involves the interest or not? This mode of transaction smacks of the interest as the extra portion of the price seems to be charged for the time.

(5) A businessman adopts two modes for credit sale: first is that he sells the commodity on credit on that he will receive the total price (e.g., eleven thousand rupees) in six installments during the time period of six months. But for the same commodity he charges, for instance, eleven thousand and two hundred rupees if the defrayal of the price is made in twelve installments over a period of one year. After the negotiation both the parties reach either one mode of the transaction. What is the position of the Islamic *Shariat* on this mode of business transaction?

(6) One commodity is sold, e.g. for ten Rs. and the payment is fixed to be made in one month. But if the purchaser failed to make the defrayal within the duration of one month, he shall have to pay two

rupees extra, and for the delay of each month in the future he shall have to add two rupees to the actual price of the commodity. What is the ruling of the *shariat* on this mode of transaction?

(7) Both the price and the duration of the defrayal of a commodity's credit sale are fixed, either by installments or in one time. But, simultaneously, the seller and the purchaser reach an agreement on that in case the purchaser failed to pay the price in one time within the period stipulated or the installments are not made according to the agreement of the selling and purchasing parties, the purchasing party shall have to add some extra amount to the actual price. The extra money might be fixed in quantum or on percentage. Does this mode of transaction violate any established principle of the Shariah; and will this extra amount be termed as financial fine or something else?

(8) To ensure the realization of his payment of the commodity sold on credit, sometimes the seller asks the purchaser to mortgage some goods. Such a mode of business gives rise to following three sub questions:

(a) Is the seller rightful to benefit from the mortgaged goods or use it, in any way, for his advantage?

(b) what will be the ruling of the *Shariat* if the mortgaged goods are lost(or damaged) while being with the seller?

(c) what if the purchaser failed to make the defrayal in due time agreed? How will the seller realize his due payment through the mortgaged goods?

(9) Is the vendor rightful to withhold the sold commodity till he receives full price or, at least, several installments of it? What is the position of the *Shariat* on the vendor's so doing? Apparently, the vendor's withholding the sold commodity may have two aspects:

(a) with holding the sold item as mortgage;

(b) with holding it only to ensure the realization of the payment. The same way of withholding the sold commodity has been expressed in the Fiqhi literature as *حبس المبيع لاستيفاء الثمن*. What is the position of the *Shariat* on these two modes of withholding the sold commodity? In case of its permissibility, what restrictions may be put to such a type of withholding?

(10) To ensure the payment of the sold commodity by installment according to the agreement the vendor keeps the sold commodity in his possession and in the event of non-payment the sold commodity again turns to his ownership and the received installment(s) too are not returned to the (failed) purchaser. Is this right from *Shariat* viewpoint? If so, then what about the installment(s) he has thus far received from the buyer? In such a mode of transaction the sold commodity again returns to the seller and the paid installments stand forfeited by

him. That is, he again becomes the owner of the item he has already to some body.

(11) Could the sold commodity which is in the use of the purchaser, be regarded as mortgaged with all right of selling and utilization reserved in favour of the vendor, for the advantage of whom the sold commodity has been declared to be mortgaged?

(12) Guarantee of payment on behalf of the purchaser falls under the well-known law of SURETY. Today there are institutions and individuals who provide guarantee and charge something for providing such services. What is the ruling of *Shariat* on the charges for such services? Is it permissible by any way? The credit letter has gained currency now and has become a commoner thing in this age?

(13) There is a yet another mode which is also adopted for the purpose. The complete documents of such credit deals are prepared. In the event of non-payment of the price within the time stipulated, or to realize the due payment before due time. These documents are generally sold and purchased for a price less than that they actually carry what is the ruling of the Shariat?

(14) A very important aspect of the credit sale transactions is that the seller wants to realize his payment before the stipulated time and remit a portion of the total payment for the early realization. Such a practice is technically termed *Za'a wa Ta'ajjal* (reduce (the price)to instantantly realize the payment).It is a known fact of the Islamic law that

demanding any extra amount in the event of late payment is absolutely impermissible as it is a sort of interest. What about such a reduction?

(15) The deal is struck on credit to make the payment latter but without fixing a future period in clear terms. What will be the position of the *Shariat* if the due amount is reduced for an immediate realization of the payment?

(16) What is the position of the *Shariat* on demanding immediate payment of the rest amount, withdrawing the grace time in the event of failure of the purchaser to deliver one installment in due time?

(17) A very important aspect of the deal of sale and purchase by installments in that if either party, out the seller and purchaser, suffered death, what about the rest of the deal? Will the deal remain as it is or its nature will change?

(18) Nowadays it is gaining currency that the business persons dealing in the *sale and purchase on installments* arranges the distribution of prizes on receiving every installment (monthly, half yearly or yearly, as the case may be). For this they make prior announcement and select one or more purchasers for the price through the process of drawing lots. What is the ruling of the *Shariat* on associating such a system of prize distribution with the sale and purchase - on - installment mode of business and benefiting from it? Does it fall under gambling or securing interest?

(19) A similar practice is also gaining currency. That is, the buyer asks all the purchases to deliver

their installments in due time; after receiving the installment from all the purchasers the lots are cast and the purchaser on whose name fell the lot secures the commodity and then stands detached from the deal. (In other words, he becomes the owner of the commodity having paid a few or only one installment, and he then needs not pay any other installment in future.) All the rest purchasers shall have to pay the installments according to the agreement and each time the lots shall be drawn and the successful purchasers will be taking the possession of the sold commodity and then stand detached from the deal. What is the *Shariat* position on such a system of drawing lots and securing the possession of the item for the payment of only one or more than one installments?

Summary of the Detailed Papers

(1) As far as the first question, i.e. the permissibility or otherwise of enhancing the price of a commodity sold on credit as against the cash price of the same commodity, is concerned, most contributor Ulama and discussants are unanimously agreed to the permissibility of that the credit price of a commodity might be taken more than that of the cash price of the same commodity. The discussants, for the most part, base their view of permissibility on the following juristic material:

On the authority of Haz. Abu Hurairah it is reported that the Holy Prophet صلى الله عليه وسلم has declared it unlawful to make two sales (of one commodity). (Vending the same thing in two ways :). Imam Abu Isa, the author of the Tirmidhi Sharif, said that the narration of Haz Abu Hurairah was acceptable; and the man of Islamic learning has been following it. The two sales of one commodity' has been explained that the seller said: I sell this garment for ten in cash but for twenty on credit and leaves the purchasing party without agreeing upon either one mode of sell. But if the parties are agreed to one mode out of the two ones, there will be nothing wrong in the deal.¹ The Shafites, Hanafites, Zaid b. Ali,

¹ Tirmidhi with commentary of Ibne Arabi al-Maliki: 5/239,40

Muayyad Billah and the majority of the jurists say that it is permissible as the arguments decidedly favor the permissibility. Obviously, this view is based on the narration reported on the authority of H. Abu Hurairah ^{رضى الله عنه}.² However, contrary to this majority view, M. Shams Pirzada and Hakeem Zillur Rahman hold such a mode of business to be unlawful. They maintain that all such mode of business are only the tricks of trade devised by the interest-loving mentality. Hence unlawful.

(2) The second question is: is it the demand of the *Shariat* that the price of the credit sale be paid in one time or the payment might be made by installments? Regarding this, there exists general consensus of opinion amongst all the contributors and the learned participants, excepting Maulana Shams Pirzada, that it is perfectly lawful to pay the due amount of price of the commodity sold and purchased on credit in one attempt or by installments. The permitors generally base their view on the following textual expressions:

(١) من باع سلعة بثمن على أن تعطيني كل يوم درهماً وكل يومين درهمين،

“He who sold a commodity on that the purchaser should pay him one *dirham* daily or

² Shukani, Nailul Awtar: 5/152

two *dirhams* each two days the deal shall be regarded fully valid.³

(٢) ومن كانت عليه دنانير منجّمة أو دراهم فأراد أن يقبضها جملة، فذلك له،

And the person who owes sundry *dinars* or *dirhams* to any one else and wants to realize (his debt) in one attempt, he may do so.⁴

(٣) وفي الملتقط: عليه ألف ثمن جعله الطالب نجوما، إن أخلّ بنجم حل الباقي كما شرط،

If a person is under the credit of one thousand (*dinars* or *dirhams* and the creditor wants to realize his credit by installments on that in the event of disrupting single installment the remaining price shall have to be paid immediately according to the provision of the agreement.⁵

(3) Is it necessary for the vendor to mention only the credit price of the commodity to be sold on credit and that the credit price is to be paid by installments or he has the right to mention both the credit and cash prices of it?

To the majority of the participators the seller has the right to make mention of both the credit and cash prices of the commodity on sale. However, for the validity of the deal he will have to determine either one price or one

³ Minhatal Khaliq on Al-Bahrur Raiq 5/280, Fatwa Tatar Khania with the Fatawa Alamgiri 2/269

⁴ Ibid

⁵ Al Bahrur Raiq: 280

mode of dealing to which both the parties are agreed. This view is based on the following arguments:

"عن أبي هريرة رضي الله عنه قال: نهى رسول الله صلى الله عليه وسلم عن بيعتين في بيعة، وفي رواية عن صفقتين في صفقة وعن شرط في بيع،،"

Abu Hurairah (may Allah be pleased with him) said that the Holy Prophet صلى الله عليه وسلم has declared it unlawful to make two sales of a single commodity or putting two conditions on single sale. Another version of the narration has the word *Safaqatain fi safaqatin* in place of *baiatain fi baiatin*

"والعمل على هذا عند أهل العلم، قالوا بيعتين في بيعة أن يقول أبيعك هذا الثوب بنقد بعشرة وبنسيئة بعشرين ولا يفارقه على إحدى البيعتين، فإذا فارقه على إحدى منهما فلا بأس إذا كانت العقدة على واحدةٍ منها،،"

However, Moulana Abu Sufyan Miftahi, Maulana Abdul Azim Islahi and Mufti Abdur Rahim Qasmi hold otherwise. To them the said mode of transaction is not lawful basing their view on the following juristic expression:

"رجل باع على أنه با لنقد بكذا وبا لنسيئة بكذا، وإلى شهر بكذا و إلى شهرين بكذا، لم يجز،،"

If the vendor sold a commodity on that it prices so and so in cash but so and so if it is sold on credit; and for one month the credit price is so and so and for two months it will be so and so, such a sale deal is impermissible.⁷

⁶ Shukani, Nailul Awtar: 5/152

⁷ Fatwa Alamgiri: 3/136

(4) Does the enhancing of the credit sale price of a commodity in comparison to its cash sale price constitute a sort of interest?

The majority of the contributors regards the enhanced price of the commodity sold on credit as its actual price, excluding the possibility that the mode of the deal involves any sort of interest.

قال مالك أيضاً فيمن اشترى سلعةً بأجلٍ فباعها مرابحةً أنه لا يجوز حتى يعلم بالأجل،

Imam Malik (may Allah deal him with mercy) said about the person who purchased an item on credit to be paid within a well defined timeframe and then he sold it to another person with profit that such a deal will not be lawful unless the timeframe is clearly defined.⁸

To the view of Maulana Shams Pirzada, however, such an enhancement is definitely a sort of *riba* (interest).

(5) There are two time-frames, shorter and longer for the payment of the price installments of a commodity sold on credit, e.g., the shorter term is six months and the total payment is to be made by six installments within the term, and the longer term is twelve months within which the total payment has to be made in twelve installments and the parties reach an agreement over either one term and

⁸ Badai us Sanai: 5/224

the mode of payment. Is this mode of business according to the law of Shariat?

About this question the preferred view, held by the majority of the participants, is of validity, based on the following excerpt:

و كذا إذا قال: بعثك هذا العبد بألف درهم إلى سنة أو بألف وخمس مائة إلى سنتين، لأن الثمن مجهول، وقيل هو الشرطان في البيع. وقد روى أن رسول الله صلى الله عليه وسلم عن شرطين في البيع، فإذا علم ورضي به جاز البيع، لأن المانع من الجواز هو الجهالة عند العقد، وقد زالت في المجلس،

However, Hakim Zillur Rahman, Maulana Abu Sufyan Miftahi, Maulana Shams Pirzada and Maulana Dr Abdul Azim Islahi are opposed to the majority view. They hold that the enhancement of credit cost as against of the cash sale constitutes a sort of interest charge, hence unlawful.

(6) Regarding the sixth question, i.e., charging more amount if the purchaser failed to pay the installment(s) in due time all the participants, excepting Hakim Zillur Rahman and Maulana Sultan Ahmad Islahi, have a complete unanimity on the point that demanding any extra amount to the fixed installment is indeed unlawful and falls under interest apart from that the amount demanded extra is fixed or charged on percent rate. The two exceptions, Hakim Zillur Rahman and Maulana Sultan Ahmad Islahi regard the extra amount to be the enhancement of price of credit sale mode of business, and hence lawful.

(7) The seventh question is about including the condition of charging extra money to add to the actual price in the event of non payment of the due price of the credit sale within the stipulated timeframe. A business transaction with a condition is legal or not: will such extra money be termed as financial fine or something else? Most participants regard the extra money to be unlawful. They hold that it is not a financial fine; it is of course a type of interest. Their view is based on the following *hadith*:

عن فضالة بن العبيد صاحب النبي صلى الله عليه وسلم إنه قال: كل قرض جرّ نفعاً فهو وجه من وجوه الربا،

Fuzala b. Ubaid, a Companion of the Holy Prophet صلى الله عليه وسلم, reported the Prophet صلى الله عليه وسلم to have said: Every loan fetching any type of profit involves an element of interest⁹.

Hakim Zillur Rahman, Md. Abrar Khan Nadwi and Maulana Sultan Ahmad Islahi are of the opinion that the money charged extra in this way will be lawful.

(8) (a) The eighth question is: Is the mortgagee rightful to benefit from the goods kept in mortgage?

The majority of the participant *Ulama* holds that the mortgagee has no right to benefit from

⁹ Baihaqi, al Sunanul Kubra: 5/35

the item(s) kept in mortgage. This view is based on the following *hadiths*:

(١) عن النبي صلى الله عليه وسلم: إذا أقرض أحدكم أحداً فأهدى له أو حمّله على الدابة فلا يركبها ولا يقبله إلا أن يكون.....بينه وبينه قبل ذلك ،

The Holy Prophet (SAWS) is reported to have said: “When one out of you lends (money or something else) to any other person and he (the second party) presents (something) to the lender or gave him a ride on his (animal), he neither should ride the animal nor accept the present, except that there already exists such a practice between the parties.”¹⁰

(٢) كل قرض جرّ منفعة فهو وجه من وجوه الرباء

Fuzala b. Ubaid, a Companion of the Holy Prophet, صلى الله عليه وسلم, reported the Prophet صلى الله عليه وسلم to have said: Every loan fetching any type of profit involves an element of interest”¹¹.

The same *hadith* has been rephrased and incorporated by Durre Mukhtar as follows:

كل قرض جرّ نفعاً حرام

Every loan attracting any type of benefit is unlawful.¹²

¹⁰ Ibne Majah, Chap. Loaning: p.177

¹¹ Baihaqi, al Sunanul Kubra: 5/35

¹² Durre Mukhtar with Shami:4/174

The following expressions also have been quoted by the Ulama subscribing to the viewpoint mentioned above:

أجمع أهل العلم على أن نفقة الرهن على الراهن لا على المرتهن وأن ليس للمرتهن استعمال الرهن،

The men of the Islamic knowledge are agreed on the point that the responsibility of maintenance of the mortgage is on the mortgagor and not on the mortgagee; and the mortgagee has no right to use (or benefit from) the pawned property.¹³

عن النبي صلى الله عليه وسلم: الرهن من الراهن، له غنمه وعليه غرمه ومنا فعه من غنمه،

The Holy Prophet صلى الله عليه وسلم is reported to have said: “The mortgage is of the mortgagor; for him is its merits as well as its benefits and disadvantages only he is entitled to secure its benefits.¹⁴

However, Mufti Anwar Ali Azami, Maulana Khurshid Ahmad Azami, Ml.Md. Jamal Akbar, And Mufti Habibullah Qasmi hold that the mortgagee may benefit from the mortgage provided that:

- (1) no condition of the type was introduced while striking the credit deal; and
- (2) mortgager permitted so.

¹³ Sharh maaniul Athar: 2/252

¹⁴ Al-Mughni 2/147

Shaikh Wahaba Zuhaili, (a jurist of note enjoying outstanding position amongst the men of Islamic learning of our age,) subscriber to a rather modified viewpoint. He holds that if the mortgage is about the sale deal, the mortgagee can benefit from it if the mortgager has so allowed. This is the Maliki and Hanafi standpoint and benefiting from the mortgage shall be considered a part of the price the purchaser owes to the vendor. But if the mortgage is about the cash loan, no benefit could be sought from the mortgage even after the permission of the mortgager as it by no way is consistent with the spirit of the Islamic *Shariat*.

(b) Will the mortgagee bear the loss of the object kept in pawn if it is lost from his custody?

Regarding the question all the participants are agreed on that being of the object kept in pawn in possession of the vendor is of course the security at his hand. So, if it is lost with the fault of the mortgagee, i.e., his negligence and carelessness, he shall be held liable to return it back to the actual owner. Many participant *Ulama* have explained that if the object kept in pawn priced the same as the item sold to the mortgager, the purchaser or seller will owe nothing to each other; if it priced more than the item sold to the purchaser, the vender will have to repay the excess to the purchaser; if the case is vice versa, the purchaser will be required to repay to the seller the portion of the price not covered by the value of the object kept in pledge. This explanation is based on the following excerpt:

وإذا هلك المراهن في يد المرتهن أو بيد العدل ينظر إلى قيمته يوم القبض وإلى الدين، فإن كانت مثل الدين سقط الدين بهلاكه، وإن كانت قيمته أكثر، سقط الدين، وهو في الفضل أمين، وإن كانت قيمته أقل من الدين، سقط من الدين قدر قيمة الرهن، ويرجع المرتهن على المراهن بفضل الدين.

If the object at pawn suffered destruction under the possession of the mortgagee or of the pawn broker, its value shall have to be assessed as it valued on the day when it was kept in pawn. If it priced the value of the borrowed money, the debt shall be regarded as paid; if it valued more than the value of the debt, the debt will lapse and the excess price shall be a deposit with the vendor. But if the object kept in pawn valued less than the value of the debt the debt will lapse equal to the value of the object, and the mortgagee shall be right but to demand the rest value if his commodity from the purchaser.¹⁵

(c).How the seller is to realize his due payment from the purchaser who failed to pay it according to the time frame stipulated and the seller has an object of the purchaser in his possession as security? About this important question the participant Ulama stand divided into two groups holding two different viewpoints. First, the object lying in pawn shall be disposed of and thus the seller will realize his due payment. To this view subscribes the majority of the participators.

Another standpoint is that the goods kept in pledge shall be trusted to the *Qazi* who, having disposed it

¹⁵ Fatwa Hindiya. 5/447, Ibne Qudama, Al-Kafi: 3/135

of, shall give the price to the seller. This view is held by Ml. Abdullah Qasmi and Ml. Habibur Rahman Qasmi.

Ml. Muhammad Jamal Akbar and Ml. Md. Iqbal Qasmi are of the view that the pawned item may be sold by the seller if the purchaser (the real owner of the pawned property) has so allowed Ml. Khurshid Ahmad Azmi says in such a case the purchaser shall be forced to sell off the pawned goods.

In order to avoid the purchaser's evasive tactics and his dodging of the due payment, Ml. Khalid Saifullah Rahmani, Ml. Abdul Jalil Qasmi and Mufti Ahmad Nadir Qasmi tend to propose that it would be the better course for the seller and purchaser to engage a third person as their attorney with the authority of selling off the pawned object in the event of not receiving the due payment within time-frame agreed upon or the disappearance of the purchaser. They base their view on the following juristic expression:

فإن وكّل الراهن المرتهن أو العدل أو غيرهما ببيعه عنه عند حلول الدين صحّ، لأنّ الراهن مالك فله أن يؤكّل من شاء من الأهل ببيع ماله مطلقاً ومنجزاً.

It is right for the mortgager to appoint the mortgagee or the broker or a third person as his attorney with the power to sell off the pawned object in the event of his failure to make the payment in due time. It is so because of the fact that the mortgager is the actual owner: he has

the right to engage anyone else as his attorney to sell off his possession, property, wealth with full freedom of action.¹⁶

(9) The ninth question is: Is the seller entitled to withhold the sold commodity until he realizes his full payment or, at least, till he receives several installments of the price? In such a case the sold item may be withheld for either one reason out of the following:

(a) of pawning it;

(b) of withholding it in order to realize the payment of the sold commodity.

So far as the first reason, i.e. withholding the sold commodity as mortgage, is concerned, most contributors are of the view that the sold commodity cannot be held in pawn unless the purchaser takes its possession. Once the purchased item fell into the possession of the vendee, the sold object might be kept in pawn by the seller even though the possession is only implied and not physical.

Regarding the reason put above under (b), almost all the contributors hold that to ensure the realization of the price money of the sold article the sold article might be withheld if the business transaction is being struck hand to hand; in the event of credit business

¹⁶ Al- Bahrur Raiq: 8/256, Raddul Muhtar: 4/324 Qazi Khan with Fatwa Alamgiri:3/606

transaction, however, it cannot be withheld. Since the sale and purchase by installments is a modern mode of the credit business transactions, the sold object cannot be held. To substantiate their standpoint, the supporters of this view have put forward the following citation:

قال أصحابنا: للبائع حق حبس المبيع لاستيفاء الثمن إذا كان حالاً (كذافي المحيط)، وإن كان مؤجلاً فليس للبائع حق حبس المبيع قبل حلول الأجل ولا بعده.

The seller has the right to withhold the sold object so as to ensure the realization of the full payment provided that the business transaction is struck hand to hand. In case the payment is to be made later, the seller has no right of withholding the sold object neither before nor after the due date of the payment.¹⁷

Mr. Md. Ibrahim Falahi, however, tends to allow the vendor not to release the sold goods before the receipt of the full payment.

(10) The tenth question is: what about non-returning of the paid installments if the purchaser failed to repay the due installments according to the timeframe agreed upon by the parties. Regarding this question all the participating men of Islamic learning unanimously hold that the seller has no right to forfeit the received installment(s) in the event of failure of the purchaser to deliver the

¹⁷ Al-Fatawa Al-Hindia3/15

installment. Such a kind of forfeiture will doubtlessly constitute a sort of usurping the wealth of others quite illegally. The Holy Quran has proscribed it in the following *ayat*:

يأيتهاالذين آمنوا لاتأكلوا أموالكم بينكم با لباطل إلا أن تكون تجارة عن تراضٍ منكم.

O those who believe! Eat not up your properties among yourselves in vanities; but let there be amongst you traffic and trade by mutual consent.¹⁸

عن عمروبن شعيب عن أبيه عن جدّه أنه قال: نهى رسول الله صلى الله عليه وسلم عن بيع العربان.

The Holy Prophet صلى الله عليه وسلم has declared the *aran* sale transaction to be unlawful.¹⁹

Mr. Md. Noor Qasmi, however, regards the forfeiture to be lawful as is the standpoint of the Hambalites. Actually, he regards it a case very much similar to that of the *arbun* sale transaction.

(11) Regarding the eleventh question, i.e., could the sold goods in use of the purchaser himself be treated as pawned goods, of which the sole rights of sale and utilization rest with the seller the majority of the contributors seems agreed upon that the sold object in the use of the purchaser cannot be treated as the pawned goods except that the purchaser, first, takes possession of the object, entrusts it to the

¹⁸ Al-Qur'an, S.4 A.29

¹⁹ Abu Dawood 3/283

seller and then he lends it again to the purchaser.

Various contributors have cited the following juristic references to substantiate their standpoint:

ولوتعاقد على أن يكون الرهن في يد صاحبه لايجوز الرهن، إلا إذا قبضه المرتهن أو العدل ثم تراضيا على أن يكون الرهن في يد الراهن جاز.

If the transactors agreed to that the goods would be in pawn at the hand of its owner, the pawn will not be lawful. But if the sold goods are in possession of the mortgagee or the middle man and the parties get agreed to that the goods would remain in possession of the mortgager, the transaction would be lawful.²⁰

وإذا أعار المرتهن الراهن للراهن ليخدمه أو ليعمل له عملاً فقبضه خرج من ضمان المرتهن لمنافاة بين يد العارية ويد المرتهن، فإن هلك في يد الراهن هلك بغير شيء لفوات القبض المضمون، وللمرتهن أن يسترجعه إلى يده لأن عقد الرهن باق.

In case the mortgagee lent the mortgaged goods to the mortgager so that to use and employ for his benefit and he took its possession, the object shall be out of the mortgagee's liability because the mutual incompatibility between the concepts of leasing and mortgaging. In the event of the destruction of the lent object in the hand of the mortgager, he will not be liable because of the absence of the possession ensuing in the liability. The mortgagee, however, has the

²⁰ Badaius Sanai.....

right to demand it back to his possession as the pawn transaction still continues.²¹

Mr. Md. Noor Qasmi, Mr. Sultan Ahmad Islahi and Mr. Azizur Rahman, however, exclude every possibility of being it a pawn transaction, hence unlawful. They base their view on the following juristic reference:

ولا يصح أن يكون وكيله هو الراهن، لأن المقصود من القبض تأمين المرتهن، ولا يتم القبض مع بقاء الرهن في يد الراهن.

It will not be right to be his attorney for the mortgager himself, as the meaning of possession is ensuring the dues of the mortgagee; and the possession will not be complete as long as the mortgage is in the hand of the mortgager.²²

(12) Charging for providing the services like credit letter and the guarantee papers has now become a very common practice, what is the position of the *Shariat* on such types of charges? Is there any possibility of lawfulness of such charges?

Responding this question most contributors hold that, as a matter of principle, no charge could be secured for the security and guarantee. However, in our age, which is witnessing an acute dearth of the feelings like kindness and owing gratitude to good doers,

²¹ Hidayah : 4/530

²² Al Fiqhul Islami wa Adillatuhu: 5/216

labour charges for such services have become lawful. This view is founded on the following juristic reference:

جاز دفع الأجرة للضرورة أو الحاجة العامة لما يترتب على عدم الدفع من تعطيل المصالح..... وأساس القول بالجواز فيه أن الفقهاء أجازوا دفع الأجر للحاجة لأداء القربات والطاعات من تعليم القرآن وممارسة الشعائر الدينية، كما أنهم أجازوا دفع شيء من المال على سبيل الرشوة للحصول إلى الحق أو دفع الظلم.

labour charges may be paid if the circumstances so necessitate, or the need has become commonly widespread. For the non-payment of (such) labour charges (often) is bound to result in the suspension of expediencies..... The base of this opinion is that the *Fuqaha*, under compelling circumstances, have permitted to take the labour charges for offering the acts of worship and virtue (of religious importance) as, for example, the teaching of the Qur'an and exercising the deeds emblematic to Islam. More so, the *Fuqaha* have allowed the bribing so as to secure one's right or repeal the wrong.²³

Mr. Muhammad Umar b. Yusuf Falahi, Mufti Abdul Rahim Qasmi (of Bhopal) and Mr. Azizur Rahman are opposed to the majority view: to their opinion nothing could be charged for the issuance of the credit letters, guarantee papers, etc.

²³ Al Fiqahul Islami wa Adillatuhu: 5/161

(13) The next question is about the position of the Shari'at on the sale and purchase of the transaction documents.

In response to this question most participants are agreed to that the sale and purchase of the documents falls under the *baiud dain ma'a ghairi man alaihiddain* (selling the debt to a person who does not owe the debt), hence unlawful. However, to make it lawful, they suggest a trick, that the holder of the documents should make bank his attorney to receive the payment from the purchaser and, contracting a loan transaction anew, borrow as much money as written on the documents from the bank, authorizing it to receive the payment from the purchaser; and after the realization of the payment as contained by the documents, recover its credit.

However, Ml. Khalid Saifullah Rahman, Ml. Anisur Rahman Qasmi, Ml. Amir Hussain Nadvi, Ml. Md. Jamal Akbar, Ml. Sultan Ahmad Islahi, Ml. Abrarul Haq Qasmi, Ml. Abdul Azim Islahi, Mufti Mahboob Ali Wajihi, Hakeem Zil ur Rahman, Ml. Akhtar Hussain Rizvi, Ml. Mufti Akhtar Imam Adil, Ml. Fazlur Rahman Qasmi, Ml. Akhtar Ziya Qasmi, Ml. Md. Umar b. Yusuf Falahi, Ml. Ibrahim Falahi, Ml. Md Noor Qasmi and Ml. Md. Abrar Kahn Nadwi are of the opinion that the sale and purchase of the documents is totally unlawful even under the trick suggested above. The

latter view is based on the following quotation:

والتعامل بالأسهم جائز شرعاً، أما التعامل بالسندات فحرام لا شتما لها على الفائدة الربوية.

Dealing in the shares is lawful. But the dealing in the documents is unlawful as it involves interest.²⁴

ويشترط التعامل والتقابض قبل الافتراق إن اتحدا جنساً، وإن اختلفا جودة وصياغة.

(In business) the dealing and mutual possession is prerequisite required if (the item changed) are of the same category, even though different in respect of manufacturing and perfection.²⁵

(14) -15 The fourteenth and the fifteenth questions are meant to know the position of the *shariat* on reducing the amount of the total payment so as to realize the deferred payment immediately or on a short notice. In the Fiqhi terminology this is expressed as *Za'a wa Ta'ajjal* (reduce the amount of credit and hasten to recover the rest credit.)

Regarding this question the discussant Ulama stand divided into two groups. That is:

(1) If the reduction is offered on the part of the seller, it will be lawful. This forms the

²⁴ Al-Fiqhul Islami wa Adillatuhu: 2/774

²⁵ Raddul Muhtar: 4/261

opinion of the majority. The adherents to this view base it on the following *hadith*:

عن ابن عباس أنّ النبي صلى الله عليه وسلم لما أمر بإخراج بني نضير جاءه أناس منهم فقالوا: يا بني الله! إنك أمرت بإخراجنا ولنا على الناس ديون لم تحل، فقال رسول الله صلى الله عليه وسلم: ضعوا وتعجلوا.

Abdullah b. Abbas (may Allah be pleased with them) said that when the Prophet صلى الله عليه وسلم ordered the expulsion of the Bani Nazir (a Jewish clan residing in *Yathrib* when the Holy Prophet صلى الله عليه وسلم migrated to it) from Madinah a band of their people approached him and said: O the Prophet of Allah! You have decreed our expulsion and the people owe credit to us not realized yet." The Prophet said "Reduce the amount and hasten to realize the rest".²⁶

(2) Such a reduction is not lawful. This is the opinion of the following *Ulama*:

Ml. Khalid Saifullah Rahmani, Ml. Abu Sufyan Miftahi, Ml. Mufti Jamil Ahmad Naziri, Ml. Abdullah Quasmi (Saharanpur), Ml. Ishtiyaq Ahmad Azami, Ml. Anwar Ali Azami, Ml. Akhtar Imam Adil, Ml. Abdul Azim Islahi, Ml. Zafarul Islam, Ml. Abdul Latif Mazahiri, Ml. S. Aqil Ahmad Qasmi , Ml. Akhtar Husain Rizwi, Mufti Nasim Ahmad Qasmi, Ml. Jamal Akbar, Ml. Md. Umar Falahi and Ml. Muhammad Junaid Ahmad Falahi

²⁶ Fiqhus Sunnah 3/167

This opinion is based on the following:

عن ابن المسيب عن ابن عمر قالاً "من كان له حق على رجل إلى أجل معلوم فتعجل بعضه وترك له بعضه فهو ربا" قال معمر: ولا أعلم أحداً قبلنا إلا وهو يكره.

Saied b. Al. Musayyab and Abdullah b. Umar (may Allah be pleased with them) said: if a person has his right on another person to be recovered according to a time-frame, but the creditor reduced a part of it and received the rest immediately, such a reduction is (a short of) interest and usury. Commenting on the narration, Mamar said: "So far as I know, nobody out of our forerunners pleased so doing."²⁷

Sheikh Wahaba Zuhaili, Ml. Obaidullah As'adi, Ml. Abdul Qayyum of Palanpur, stick to a modified version of the same view. That is, if the time-frame is agreed upon between the parties for the payment (as is the case in the sale and purchase by installments), such a reduction shall be unlawful; but in the absence of such a timeframe it is undoubtedly right, acceptable to the law of the *Shariat*.

(16)The sixteenth question is:, the purchaser failed to deliver the installment(s) in due time and the seller demanded the immediate payment from him ending the respite.

Regarding this question most participant Ulama hold that the seller has the right to demand the immediate

²⁷Musannaf Ibne Abi Shaiba

payment of the rest price and end the respite if the purchaser failed to pay the installments according to the timeframe. Their opinion is based on the following juristic reference:

إنَّ المشتري إذا لم يؤد قسطاً من الثمن في موعده محدود فإنَّ بقية الأقساط تصير حالةً ويجوز للبائع أن يطالب بها في الحال.

If the purchaser did not pay the installment(s) during the timeframe fixed, the rest part of the price shall turn urgent and the seller will have the right to demand the immediate payment of the rest.”²⁸

However, the following Ulama hold otherwise:

Ml. Obaidullah As’adi, Ml. Zubair Ahmad Qasmi, Ml. Tanweer Alam Qasmi, Ml. Md. Ayub Nadvi, Ml. Ibrahim Falahi, Ml. Anwar Ali Azami and Ml. Noor al-Qasmi

They are of the opinion that in such a situation the seller should stick to the timeframe, demanding not the immediate payment of the rest part of the price. To substantiate their standpoint they have put forward the following *hadith* as their sole argument:

عن كثيرين عبدالله المزني عن أبيه عن جده قال: قال رسول الله صلى الله عليه وسلم المسلمون على شروطهم إلا ما حرّم حلالاً أو أحلّ حراماً.

The Prophet صلى الله عليه وسلم is reported to have said: The Muslims are bound to their stipulations excepting the one(s) which seeks

²⁸ Majmu,a Fiqhia Muasarah

to make unlawful as lawful or makes the lawful as unlawful.²⁹

(17)The seventeenth question is about the death of one party before approaching the time fixed. Will the credit transaction stay as it is or undergo any change?

In response to this important question the majority of the participants hold that payment timeframe shall stay unchanged in the event of death of the seller/ creditor. However, if the purchaser suffered death the credit payment timeframe will change into the instant one and the creditor will have the right to ask the heirs of the deceased to immediately pay the rest part of the price. Many participants subscribing to this view have offered the following reference as their argument:

وبموت البائع لا يحلّ الثمن المؤجل وبموت المشتري يحلّ

With the death of the seller the credit timeframe shall remain unchanged; with the death of the purchaser, however, it will become instant.³⁰

But many Ulama driven by different reasons prefer the Hambalite standpoint That is, the transaction agreement shall stand as it is the adherents to this view include:

Shaikh Wahaba Zuhaili, Ml. Mufti Nasir Ahmad Qasmi, Ml. Sultan Ahmad Islahi, Ml.

²⁹ Baihaqi, al-Sunanul Kubra, also Dare Qutni

³⁰ Al-Fatwa

Abu Sufyan Miftahi, Ml. Abdul Latif Mazahiri, Mufti Mahboob Ali Wajihi , Ml. Ishtiyaq Ahmad Azami, Ml. Tanveer Alam Qasmi, Ml. S. Aqil Ahmad Qasmi; and Ml. Md. Jamal Akbar

They base their opinion on the following edict of Imam Ahmad b. Hambal:

لا تحل إذا وثق الورثة، وهو قول ابن سيرين وعبد الله بن الحسين وأبي عبيد وإسحاق -

The debt shall not turn into the instant one in the event of death of the debtor if the heirs declare their sticking to the deal contracted by their deceased inheritor. The same opinion is shared by Ibne Sirin, Abdullah b. al-Husain, Abu Ubaid and Ishaq (May Allah deal him with mercy)³¹

(18). what is the position of the Shariat on the system of prize distribution among the purchasers under the sale and purchase on installments mode of business transaction, associating this system with this mode of business? Does it form a sort of gambling?

Regarding the question the discussants stand divided into two differing groups: one group holds that the purchasers may benefit from such schemes; this constitutes no form of gambling. This view is based on the following reference:

³¹ al-Mughni

وصح التصرف فى الثمن قبل قبضه والزيادة فيه والحط منه والزيادة فى المبيع-

Any change and modification in the price may be done before its receiving: it may be increased or decreased as the sold goods may also be increased.³²

MI. Khalid Saifullah Rahmani and Mufti Ahmad Nadir al-Qasmi hold such systems as undesirable as they smack of gambling. The sale transaction, however, shall be valid with shades of sinfulness.³³

The following Ulama are opposed to the view mentioned above; they are definitely sure that such system constitutes a form of gambling and usury. Hence unlawful.

MI. Ubaidullah As'adi, MI. Akhlaqur Rahman, MI. Shams Pirzada, MI. Jamal Akbar, MI. Sultan Ahmad Islahi, MI. Ayub Nadvi, MI. Abu Sufyan Miftahi, Hakim Zillur Rahman, MI. Akhtar Husain, Mufti Abdur Rahim Qasmi, MI. Ishtiyah Ahmad Azami; and MI. Anwar Ali

(19). The last question is meant to ask the position of the *Shariat* regarding a system of business which is gaining popularity now a days. That is, the seller asks the purchasers to deposit the installments within a fixed time as the price of a commodity to be given to the purchasers on a given time. And for the selection

³² al-Bahrur Raiq

³³ Umdatul Qari

of the recipient(s) from among the host of the purchasers the lots are drawn and the successful person(s) are given the commodity merely for the installments(s) they have deposited thus far, and they will have to pay nothing in future. Vis-à-vis this question the participants stand divided into two groups, holding two distinct views. The majority of the participants Ulama regard such dealing as a sort of gambling and usurpation in transactions of sale and purchase by installments. Another standpoint holds it right and regards it free of gambling and usury. The latter opinion is of the following Ulama:

MI. Khalid Saifullah Rahmani, MI. Khurshid Ahmad Azami, Shaikh Whaba al-Zuhaili, MI. Akhtar Imam Adil, MI. Abrarul Haq Qasmi, MI. Abdur Rashid Qasmi, MI. Abdul Latif Mazihiri, MI. Akhtar Husain Rizvi, MI. Abdul Fattah Adil, MI. Fazlur Rahman Afzal, MI. Akhtar Ziya Qasmi, MI. Md. Umar b. Yusuf: and MI. Junaid Ahmad Falahi

This standpoint is based on the following Fiqhi reference:

إذا قال بعثك شاةً من هذا القطيع فالبيع فاسد، فإن عيّن شاةً وسلمه إليه ورضي به جاز -

If the seller said, "I sold you a goat from this herd, the sale is invalid. But if he fixed the goat and gave it to the buyer and him so willed, the sale transaction shall be valid."³⁴

³⁴ Badaius Sanai

Decisions

The following decisions were adopted by the Academy after discussing the various aspects of the issue of the sale and purchase on installments.(Translator)

1. It is doubtlessly valid and permissible to enhance the price of an item if the deal is struck on credit as compared to that of cash transaction in matters of buying and selling. Such a mode of buying and selling is also valid provide that the terms and conditions regarding the price of the item at the time of credit and the duration of its payment are clearly specified before finalizing the agreement.
2. Whether the credit amount is repaid in one attempt or in installments, both modes are valid.
3. For the sake of such business deals, it will be indispensably required that the price is fixed while coming up with an agreement. Initially, only the credit price may be ascertained or both the cash and credit price.
4. In buying and selling on credit the escalation in prices does not come under *Riba* (interest, usury) as compared to a cash deal. In cash transactions, the item purchased has a value, whatever is the price of the item may be. On similar lines, the price agreed upon is the product value in credit business deals.

5. The demand of any excess money in the event of non-repayment of the product valid or installment within the stipulated period of time falls under the category of interest notwithstanding the fact that such a condition was spelt out at the time of agreement or later on.
6. If a person keeps something as mortgage with himself and profits out of it somehow, such a profit is nothing but an interest, which is impermissible under any circumstance.
7. In case the product kept for mortgage gets damaged or destroyed in the custody of the mortgagee, then it is considered that if the product value is equal to the lent amount, there is no obligation on anybody. However, if the product value is less than the balance amount due has to be paid by the mortgager. In the third case, if the product value is more and the mortgagee is found to have behaved in a callous and careless manner, then the balance amount has to be paid by the mortgagee himself.
8. If the requisite amount is not repaid within the time-frame and the mortgager turns a deaf ear to the creditors/seller's repeated reminders, in such a case the mortgagee is permitted to sell off the mortgaged property at a workable value and realize his money.
9. It is not desirable for the seller to keep the sold item with himself until all the installments are

received by him in the case of a credit deal. Both the parties may decide whether the sold item shall remain in the custody of the seller as a mortgaged property until the entire installments are paid.

10. In a situation where the buyer has given some of the installments and the remaining amount is not paid, he seller has no right to take back the already sold item without returning back the paid installment.(s)
11. It is not proper to give the purchased item in the custody of the buyer and term it as mortgage, although it is possible that the seller might take it from the buyer as mortgage and then lend it to the buyer.
12. Selling off the documents pertaining to credit deals (receipts, share certificates, etc.) to a third person so that he may extract the amount and become the owner, the seller or the person who is entitled to get the money back accepts a lesser amount than the requisite amount and thereby isolates himself from the deal. Such transactions are impermissible.
13. It is valid and permissible if the amount due is reduced and collected instantaneously. Such a deal is valid if there is no fixed timeframe for the repayment of the debt because it is a sort of *Tabarru* (gift, donation). Nevertheless, if the time duration has been pre-specified, such a deal will be invalid since the person supposed to repay back might be taking undue

advantage of the time period and coaxing the seller to reduce the due amount.

14. It is, however, certainly permissible to demand for the repayment of the entire amount even before the stipulated time period of repayment if the installments are not being delivered on time. It is so because if one of the parties involved in the deal breaches upon, the other party needs not stick to the agreement.
15. In case the buyer suffered death before the repayment of all the installments, the agreement shall stand the way it stands valid in the event of the seller's death, provided that the seller agrees upon it
16. The committee formed to look into the various aspects of the credit letter charges has decided to further ponder over this issue.

Credit Sale Transactions and the Sale and Purchase on Installments

MI. Khalid Saifullah Rahmani³⁵

Prefatorily Note

From among the issues and problems the modern age has given birth to many are related to sale and purchase and the business transactions. Sale and purchase on installments is a very important issue on which the position of the *Shariat* is often sought. This mode of business transactions not just is often adopted by individuals, many financial institutions and monetary establishments too choose this way of business and avail of it. The financial institutions making investments along the lines of the Islamic Shariat have a safer way of securing benefit through the sale on profit (*baie murabaha*). For the customers it is undoubtedly more attractive to purchase an object of their need with the facility to pay the price by installments.

The *questionnaire*, served to all the participants, contains two very important points. First to determine all the possible sorts of transacting which may involve the interest and usury. For the involvement of usury and interest is more than sufficient to render whole the transaction as invalid

³⁵ Rector al-Ma'ahadul Aali al-Islami, Hyderabad, A P, India

and unlawful even though the parties (the seller and purchaser) are agreed to. Second, to determine the sorts of transactions which might possibly involve the elements of ignorance, lack of *ta'ayyun* and ambiguity which are feared to lead to disputes and disagreements. The types of ambiguity normally bearable are only those which are not feared lead to later serious disputes. To determine whether an ambiguity is of serious, unignorable consequences or not the custom and usage too will play a role. If the custom and usage has established a sort of transaction with an element of ambiguity, it shall carry full legal validity. Given the perspective as above, it will be advisable to ponder over the *questionnaire*.

Ans. to question no. 1 and 4

It is perfectly lawful to sell an object on credit for more price than that of the spot sale of the same object. Since it is an established juristic fact, we need not discuss it directly and separately. In the juristic literature we encounter much clear indication in this regard. To quote a few of them here.

لامساواة بين النقد والنسيئة لأنّ العين خير من الدّين، والمعجل أكثر قيمةً.

The cash payment and the deferred payment

are not the same; the cash undoubtedly is far better than the credit; and the immediate payment carries more value than the deferred one.³⁶

³⁶ Badaius Sanai: 5/187

That is why the *fuqaha* regard it important in the case of the Sale-with-Profit (*Bay Murabaha*), that the seller, while mentioning the value in terms of quantum, must also mention whether he purchased it in cash or the transaction was struck on credit. For the cash price usually differs from the credit price of the same commodity. To quote other references again:

لو اشترى شيئاً نسيئاً لم يبعه مرابحة حتى يبيّن لأن الأجل شبهة المبيع، وإن لم يكن جميعاً حقيقة لأنه مرغوب فيه، ألا ترى أنّ الثمن قد يزداد لمكان الأجل-

“If somebody purchased an object on credit, he cannot sell it with profit unless he explains the matter to the vendee. It is so because of the fact that the time period of the sold commodity is indeed a thing to be wished for. Don't you see that the price sometime is enhanced in consideration to the time period”³⁷

A Maliki jurist, Ibne Rushd, writes:

قال مالك أيضاً فيمن اشترى سلعةً بأجل فباعها مرابحة إنه لا يجوز حتى يعلم بالأجل-

“About the purchaser who purchased a commodity on credit and then sold it with profit (to another person) Imam Malik has said that the transaction shall remain invalid unless the credit duration is expressed.”³⁸

Rafie, a Shafie jurist of note writes:

إذا اشترى بثمن مؤجل وجب الإخبار عنه للتفاوت الظاهر بين المعجل والمؤجل في المالية-

³⁷ Kasani, Badaius Sanai: 5/224

³⁸ Bidayatul Mujtahid: 2/215

“If the purchaser has purchased a product on credit, he will be required to inform the second purchaser of that. For the cash value is clearly different from the credit value.”³⁹

The same view is shared by the Hambalites. To quote an authority of theirs here:

وإن اشترى شيئاً بثمن مؤجل لم يجز بيعه مرابحة حتى يبين ذلك-

“If a person purchased a product on credit, its sale with profit shall not be lawful unless the seller so mentions.”⁴⁰

The juristic citations furnished above clearly establish the difference between the cash price and the credit price of one item as an established and well-acknowledged fact: the enhancement in price in the case of credit sale deal does not constitute any sort of usury/interest. For the interest is an enhancement done to an object of the same category with no exchange against it from the other side. In business, the price, whether cash or credit, is against the item and commodity and not definitely against the object of the same nature and category. Hence lawful.

Ans. to question. 2 (payment of price by installments)

“If the business deal is struck on credit the price may be paid in single attempt as well as by installments. What is indispensably required is a clear and

³⁹ Fathul Aziz printed on al-Majmu: 9/12

⁴⁰ al-Mughari: 4/132

unambiguous mention of the price and the duration of payment so as to avert or, at least, minimize the possibilities of any dispute in future. Much as the sale and purchase on installments is by far a new business mode, gaining more and more currency in the present age, a mode rarely witnessed by the preceding ages, still we find the Fiqhi literature discussing it. The Shami, an authoritative work on the Islamic law, mentions a similar matter in the following words:

ومن باع سلعة بثمنعلى أن تعطيني كل يوم درهماً وكل يوم درهمين
...

“And if a person sold a commodity for a price with a mode of payment that “you will pay me one *dirham* daily or two *dirham* daily, the dealing shall be valid.⁴¹

There exist more examples of the type in the very book as well.

Imam Shafie writes:

ومن كانت عليه دنا نير منجّمةً أو دراهم فأراد أن يقبضها جملة فذلك له-

If a person owes retail *dinars* to somebody else, and the creditor wants to receive them all collectively, he may do so.⁴²

In short, the sale and purchase on installments has full endorsement of the Islamic Shariah and this mode of business violates no established principle of

⁴¹ Minhatul Khaliq ala al-Bahrur Raiq 5/280

⁴² al-umm 3/33

the law of Islam and, apparently, there exists no difference of opinion in the *Fuqaha* in this regard.

Ans. to question no. 3 and 5(cash and credit prices)

In case the cash and the credit prices were separately mentioned but the parties could not finalize the deal according to either cash or credit mode in the same sitting, the sale deal shall be considered agreed to either one mode of the payment and will stand valid. The following quotation casts light on such a business matter.

فإذا علم ورضى به جاز البيع، لأنَّ المانع من الجواز هو الجهالة عند العقد، وقد زالت في المجلس، وله حكم حالة العقد، فصار كأنَّه كان معلوماً عند العقد.

As soon as he knew it and approved it, the sale deal will gather validity. For the main problem leading to invalidity is the ignorance, which has now disappeared in the same sitting. This situation too will share the sitting of dealing. So, it has turned out as if it was known the moment the deal was being finalized.⁴³

To the same view do subscribe the Shafites. That is, if the value of the item is not determined, or the purchaser gave his approval to both cash and credit prices in the same sitting, the sale deal shall be regarded invalid. If otherwise, the deal will carry full legal validity.⁴⁴

⁴³ Badaius Sanai: 5/258

⁴⁴ Hashia Shirwani and of Ibne Qasim on Tuhfatul-Muhtaj: 4/294

The same is the opinion of the Hambalites. To quote a Hambali authority here:

لابأس به أنه بقول: أبيعك بالنقد كذا وبالنسيئة بكذا فيذهب إلى أحدهما-

There is nothing wrong in saying: I sell it in cash for so and so and on credit for so and so," and the purchaser, then, chose either one mode.⁴⁵

So far as the Malikites are concerned, they hold an even broader view. They are of the opinion that if the selling and purchasing parties could reach an agreement either to cash or credit price of the item on sale in the sitting of transaction, the deal is still valid and the purchaser will be at liberty to pay according to either one mode out of the cash or credit ones.

وجعله مالك رحمة الله عليه من باب الخيار-

And Imam Malik leaves it to the discretion and option of the purchaser.⁴⁶

The ruling applicable to the cash and credit prices shall be applied to two different prices for two different durations. If the parties reached an agreement choosing either one mode or duration of the payment in the same sitting, the transaction will carry full value as both the price and duration are clearly expressed. But if the mode of sale and the price and the duration for the payment are not clearly mentioned in the very sitting of striking the deal, the

⁴⁵ Ibne Qudama: al-Mughni: 4/161

⁴⁶ Bidyatul Mujtahid 2/154

deal shall carry no legal value according to the Hanafi, Shafie and Hambali viewpoints. According to the Malikis, however such a deal is valid and the purchaser is at liberty to choose either one mode or duration for the payment. The above citation from the Badaius Sanai, is actually related to a similar business matter.

Ans. to question nos. 6 and 7

Charging extra amount in the event of delay in making payment

Charging more amount beside the due price if the payment could not be made according to the timeframe undoubtedly constitutes a sort of interest. Hence unlawful. This is a unanimously agreed upon proposition amongst all the *Fuqaha*. The same sort of *riba* was in vogue before the advent of Islam. To quote Imam Malik:

وكان رباالجاهلية في الديون أن يكون للرجل على الرجل الدين، فإذا حلَّ قال له "أتقضى أم تربي" فإن قضاها أخذها وإلا ازدادته في الحق وزاده في الأجل-

During the days of Ignorance the practice of usury in matters of credit and borrowing was that a person owed a debt to another person. As the time of payment approached, the creditor would go to the debtor and said to him: Will you pay or extend the time of payment? Then, if the debtor paid, he would take otherwise would add (the amount of

interest to the main credit), extending the period of payment:⁴⁷

Apart from the legality or otherwise of the pecuniary fine and from that with whom rests the right of penalizing a defaulter: the party, a law officer or the head of the State, this involves not only the kind of interest which the Muslims must abstain from, but also from what is similar to interest and usury. In order to abstain from the matters involving interest and usury the *Fuqaha* expressly hold unlawful all such dealings which may indirectly lead to the involvement in usury.

In short, charging more amount than the defined price in the case of the delayed payment is devoid of legality.

Ans. to question no. 8

a. benefiting from the object kept in pawn

As a matter of principle, the mortgagee cannot benefit from the object kept as mortgage with him. For the mortgaging involves only the right of withholding the object not of benefiting from it⁴⁸

However, the general standpoint of the *Fuqaha* is that the mortgagee can benefit from the item lying in mortgage if the mortgagor has so permitted. Ibne Nujaim writes:

ليس للمرتهن أن ينتفع بالمرهون إلا بإذن الراهن-

⁴⁷ al-Mudawwanatul Kubra : 5/18

⁴⁸ Badaius Sanai: 2/146

The mortgagee has no right to benefit from the item kept in mortgage except with the permission from the mortgager.⁴⁹

Imam Nawawi (Shafie) writes:

فليس للمرتهن أن يفعل ذلك بغير إذن الراهن-

The mortgagee is without right to use the mortgaged goods for his benefit. He can do so only if the mortgager has so allowed him.⁵⁰

The Malikites and Hambalites hold a view broader still. Precisely speaking, Imam Malik holds that if the items kept in pawn are house or land, the mortgagee has the right to stipulate that he will benefit from the house and land kept in pawn. However if the mortgaged item are animals or clothing, the mortgagee has no such right. To quote a reference here:

إذا باعه وارتهن رهناً واشترط منفعة الراهن إلى أجل، قال مالك "لا أرى به بأساً في الدور والأرضين" قال مالك "وأكره في الحيوانات والثياب-

About the case that a person sold an item and then kept it as mortgage, stipulating to benefit from it for a time period, Imam Malik said: I see nothing wrong in benefiting from the mortgage if it is a house or a price of land, but disapprove of it if it is an animal or clothing.⁵¹

⁴⁹ al-Bahrur Raiq: 8/271

⁵⁰ Sharh al-Muhazzab: 13/235

⁵¹ al-Mudawwanatul Kubra: 4/163

As regards the Hamblites, apart from the details and the abundance of the edicts and sayings we encounter in the Hambali Fiqhi literature regarding the problem in hand, the gist may be put forward in the following three points:

(1). The stipulation of benefiting from the object/goods kept as mortgage is entirely incorrect, devoid of validity.

(2). If the good kept in mortgage need care involving expenses, for example, the animal(s) of burden or those producing milk, and the mortgagee is required to look after them and the bear expenses involved, the mortgagee has the right to benefit from them even without the permission of the mortgager.

(3). In case the mortgage is not an animal(s) but from the category of house etc, the mortgagee has no right to benefit from it even after the permission of the mortgager. The mortgagee can stay in the mortgaged house on condition that he pays the due rental to the mortgager.⁵²

Regarding the benefiting from the mortgage the view nearer to the nature of the Islamic Law is indeed the one which Imam Ahmad has expressed about the house-like things. As a matter of principle, the mortgagee should have no right to benefit from the goods/property kept in mortgage with him even with the permission of the mortgager. For it falls under *seeking extra benefit from the credit lent to somebody*; and this extra benefit from the credit

⁵² al-Mughni: 4/251

undoubtedly constitutes a sort of *riba* (interest), which cannot be lawful even after the permission of the debtor.

In short, to my assessment the position of the *Shariat* on benefiting from the mortgage will be as under:

- (1). the seller /creditor must not stipulate to benefit from the mortgaged property while striking such a deal.
- (2) the seller is not already known to use the *goods in pawn* for his benefit.
- (3) benefiting from the mortgaged property is not in vogue in the region.

In the absence of these three things the mortgagee can benefit from the item(s) kept on mortgage. In the presence of either one thing out of the three seeking benefit from a mortgage shall turn unlawful. This assessment is based on the juristic principle that in business dealings one-sided addition of a condition to the core dealing, with no payment against it constitutes *riba* (interest); and the established practice too shares the ruling of the conditional, as is evident from the following citation:

والغالب من أحوال الناس أنهم إنما يريدون عندالدفع الإنتفاع، ولولاه لما أعطاه الدراهم، وهو بمنزلة الشرط، لأن المعروف كلمشروط، وهو مما يُعِينُ المنع-

The general condition of the people is that they want to secure benefit from the (mortgage) while lending money to a person;

in the absence of such possibilities they, for the most part, will not be ready to lend money to somebody else. This has established itself as a precondition. Custom and usage is like the conditional, and this is the very thing which determines the prohibition.⁵³

b. Realizing the price of the sold product from the mortgage property

If the merchandise costs more than the mortgage, the rest portion shall have to be paid by the purchaser. If the value of the merchandize is as much as of the mortgage, the purchaser will have to pay nothing further to the seller. In case the mortgage costs more than the merchandize sold to the purchaser and the mortgage is lost, the seller will have to pay nothing to the purchaser (mortgager) as the mortgagee is of course the trusty in a way.⁵⁴

To the three grand Imams the mortgage is very much similar to a trust; if it is lost without any doing of the creditor/vendors, he will not be held liable to return it to its owner.⁵⁵

To the Malikites the mortgagee's liability is about the objects the losing of which is a matter of secrecy, like gold, silver etc. As for the things destruction of which is noticeably obvious, like animals, piece of land or

⁵³ Fathul Qadir: 9/79

⁵⁴ Hidayah with Fathul Qadir: 10/145
hindiaya:5/477

⁵⁵ Sharh al-Muhazzab:1/138, al-Mughni: 4/257

the house etc, the creditor will not be held liable to return them to the debtor.⁵⁶

The Hanafi view is more preferable as it takes into account the legitimate interests of both the parties of the deal.

c. What if the vendee failed to repay the amount of price in time?

In case the purchaser failed to repay the price in due time, the vendor will demand him, and in the event of his non-availability his attorney shall be asked to sell off the mortgage and repay the price. In case he is not prepared to so doing, the law officer will sell off the mortgage so as to pay the due price to the seller. This being the opinion of Imam Abu Yusuf and Muhammad and on the same opinion the edict is issued.⁵⁷

The same view is shared by the Malikites, the Shafites and the Hambalites.⁵⁸

The Hanafi view, however, is slightly different from the above ones.

To the Hanafites, the law officer himself is not vested with the authority to sell off the mortgage; instead, he will commit the defaulter debtor to prison, where he

⁵⁶ al-Mudawwana: 4/252

⁵⁷ Raddul Muhtar: 5/359

⁵⁸ al-Mudawwanatul Kubra: 4/116 _ Sharh al-Mhazzab, al-Mughni : 4/262

shall have to stay unless he is ready to sell off his goods lying in pawn with the mortgagee.⁵⁹

With the view to ward off all such future problem, the seller/creditor is better advised to get a trustworthy person appointed as an attorney, at the very time of finalizing the deal, with the authority to sell off the mortgage in the event of disappearance of the purchaser or his dodging the payment of the due price.

Ans. to question no. 9

Withholding the sold commodity to ensure the realization of payment

Withholding the sold commodity may have two modes: first that the purchaser takes it into his possession and then give it back to the seller as mortgage. This is of course lawful the only provision is that it must take place with the parties' mutual consent. To quote Haskafi, a jurist of note:

هوالمبيع الذى اشتراه بعينه لو بعد قبضه هو رهن-

It is the very commodity which he has purchased, even if it was given to the seller after the purchaser took it into his possession, and will be considered as mortgage.⁶⁰

قال للبايع: أمسك هذا الثوب حتى أعطيك الثمن فهو عندنا رهن-

⁵⁹ Badaius Sanai: 2/148

⁶⁰ al-Durrul Muhtar on side notes of the Raddul Muhtar: 5/354

The purchaser said to the seller: keep this garment with you till I pay you the price.” To our opinion, this of course constitutes a case of mortgage.⁶¹

The second mode is that the purchaser has not yet taken possession of the commodity sold to him. If the seller withhold it, this shall not be termed as ‘mortgage’; it is a case of withholding the sold commodity to ensure the realization of the price money instead.

ولو قبله لا يكون رهناً له، لأنه محبوس بالثمن-

But if it look place before the purchaser took it to his possession it will not be regarded as mortgage; it is withheld due to non-payment of the price.⁶²

To the Hanafi standpoint, the seller has the right to withhold the sold commodity provided that the deal is struck on hand-to hand basis and the sold item is a product and the price in the form of money. In the event of the credit business deal in which the payment is to be made later after a fixed duration, the seller has no right to withhold the sold commodity. The same reflects from the following reference:

وثبت حق الحبس لإستيفاء الثمن، وهذا عندنا، أما شرط ثبوته فشئان: أحدهما أن يكون أحد البديلين عيناً، والآخر ديناً، والثاني أن يكون الثمن حالاً، فإن كان مؤجلاً لا يثبت حق الحبس-

⁶¹ Bazzazia on the side notes of the al-Hindiah: 6/55

⁶² al-Durrul Mukhtar on the side notes of Raddul Muhtar: 5/354

To us the vendor has the right to withhold the sold object to realize the payment of the price. As regards the condition of being the seller entitled to so doing, there are two things: first, either one exchange (the item sold or its price) must be present there or the other exchange is credit. Second, the deal is struck on hand-to-hand basic. In the event of the credit deal the seller shall enjoy no such a right.⁶³

The Shafites and the Hambalites however hold that the seller may not release the sold item if he is apprehensive of not receiving the due price, as establishes the following citation:

للبيع حبس مبيعه حتى يقبض ثمنه إن خاف فوته بلاخلاف.

The seller has the right to withhold the sold commodity till he realizes the whole payment if he fears the losing of it. And this is an agreed proposition.⁶⁴

The better option for the seller, however, is that he should seek the commodity from the purchaser as mortgage after the latter has taken it into his possession. Withholding the sold commodity without giving it in the possession of the purchaser will render both the commodity and its price to be a case of nonsensical sort of business dealings, hence unlawful.

⁶³ Badaius Sanai: 5/249

⁶⁴ Tuhfatul Muhtaj: 4/423
al-Mughni: 4/141

Ans. to question no. 10

Forfeiture of the paid installments in the event of delay in delivering further installments

It of course constitutes a grave sort of wrong and injustice towards the purchaser if his paid installments are forfeited merely because he failed to deliver the next installment(s) in due time. In *hadith* such a dealing has been termed as the *Arbun* or *Irban* sale. Such business deals are prohibited. Abdullah bin. Umar (may Allah be pleased with them) reported the Holy Prophet ﷺ to have outlawed the *irban* sale dealing.⁶⁵

To define the *Irban* or *Arban* sale deal the purchaser purchases an item, pays a portion of the price and says: If I paid the rest of the price, I will take the commodity and whatever has earlier been paid shall be deducted from the rest amount of the price. But in the event of my failure to deposit the rest, the portion of price paid earlier will stand forfeited in the right of the seller.⁶⁶ According to the view of Shah Waliullah, such a deal involve an element of gambling. To the same view subscribe the Shafites and the Malikites.⁶⁷

⁶⁵ Ibne Majah: 2/14

⁶⁶ Hujjatul Lahil Baligha: 2/108

⁶⁷ Tuhfatul Muhtaj: 2/322, al-Sharhul Kabir on the side notes of al-*Dasuqi* 3/63

However, according to the standpoint of Imam Ahmad b. Hambal such a sort of dealing is not objectionable; and its permissibility has been reported from Haz. Umar, Abdullah b. Umar (may Allah be pleased with them), Muhammad b. Sirin and Saed b. al-Musayyab (May Allah deal them with mercy).⁶⁸It is worth noticing that the only difference between the *Arbun* sale deal and the sale on installments is that in the former the purchaser falls back from purchasing the product while in the latter he fails to abide by the timeframe of the delivering of installments and was able to deposit them with delay. This difference apart, both the modes of sale-purchase deals are fully similar in as much as the vendor forfeits the paid amount with no exchange against. In short, this sort of dealing is quite unlawful according to the majority view.

Ans. to question no 11

Seller's keeping the sold commodity with him as mortgage

If the purchaser has taken the commodity sold to him into his possession, he may mortgage it with the seller. Nobody has the right to proceed with mortgaging the commodity before the purchaser takes it into his possession.

ولوتعاقدا على أن يكون الرهن في يد صاحبه لا يجوز الرهن...ولكن إذا قبضه المرتهن أو العد ل ثم تراضيا على أن يكون في يد الراهن جاز -

⁶⁸ Ibne Qudama al-Mughni: 4/160

If they agreed to that the mortgage would remain in possession of its owner, i.e., the buyer the procedure of mortgaging is not right.....However, if the mortgagee or a middleman took possession of the object and then the parties agreed to that the object be as mortgage in the hand of the mortgager, the deal will be lawful.⁶⁹

The same opinion is shared by the Shafites and the Hambalites.⁷⁰

The Maliki stand point is very much different from those put above. To their view, if the mortgage is given by the mortgagee to the purchaser, even if the seller/creditor himself gave it into the possession of the debtor/purchaser, the mortgage will go invalid. To quote the Maliki authorities:

إن من شرط صحة الرهن استدامة القبض وأنه متى عاد إلى يد الراهن بإذن المرتهن بعاريه أو ودیعة أو غیر ذلك فقد خرج من اللزوم-

For the validity of the mortgage the continuation of possession of the mortgagee over it is must: if it turned to the possession of the mortgager, with the permission of the mortgagee by way of lending or trusting etc, the object will stand out of the mortgage status.⁷¹

⁶⁹ Badaius Sanai: 6/137

⁷⁰ Tuhfatul Muhjaj: 6/67, al-Mughni: 4/216

⁷¹ Bidayatul Mujtahid: 2/274, also al-Mudawwanatul Kubra: 4/151

Ans. to question no.12

Charging for guarantee/surety

The Islamic teachings regard the act of guaranteeing as a voluntary deal; asking wages for such a voluntary act is inconsistent with the noble human feelings. That is why the *Fuqaha* hold that only the guarantee of the competent persons shall carry the legal weight.

ولاتصح الكفالة إلا ممن يملك التبرع، لأنه عقد تبرع ابتداءً-

The guarantee will be legal only of those people who possess the essentials of it; because, on the surface, it is a voluntary deal.⁷²

Based on this concept, we hold that it will be quite improper to charge any monetary value for providing such a service to a needy. Only under compelling circumstances one can ask charges for issuing the credit letters or security papers to a needy person, as expressed by the following Fiqhi principle:

الضرورات تُبيح المحظورات

Necessities render the prohibitions permissible," and receive the charges for such services. To quote Dr Wahaba al-Zuhaili here:

الكفالة عقد تبرع وطاعة يثاب عليها الكفيل، ولو قام المكفول له بتقديم شيء من المال للكفيل هبةً أو هديةً جاز.... لكن إن شرط الكفيل تقديم مقابل أو أجر على كفالة، ولعذر على المكفول عنه تحقيق مصلحة من طريق المحسنين المتبرعين جاز له دفع الأجر للضرورة-

⁷² Majmaul Anhur: 2/124

Kafalah (guaranteeing) is a voluntary deal and an act of virtue which fetches reward from Allah for the guarantor. If the guaranteed person offered something as gift or present to the guarantor, the latter may accept it. But if he stipulated to charge something for his act of guaranteeing as his wages and there are little possibilities for the guarantee-seeking person to meet the situation or finding somebody who might offer the guarantee voluntarily, he may pay the wages to face the necessitating conditions.⁷³

Ans. to question no.13

Sale and purchase of the credit documents

Sale and purchase of the credit documents dose not mean the sale and purchase of mere papers; it is in fact the sale and purchase of the amount the documents contain. As far as the rules of sale and purchase are concerned, if the amount (*naqd*) is being sold for *naqd* both the sold and purchased amount must be equal in quantum with and immediate payment and possession. This is a well established principle of the *sarf* sale deal, agreed upon almost amongst all the men of Islamic jurisprudence.⁷⁴ Given the facts as above, the sale and purchase of the credit documents is unlawful.

⁷³ al-Fiqhul Islami wa Adillatuhu: 5/161

⁷⁴ Badai us Sanai: 5/215, Durre Mukhtar with Raddul Muhtar:2/502, Tuhfaul Muhtaj: 4/273, Sharhal-Muhazzab: 5/403

Ans. to question no.14

Shortening the period and reducing the amount of payment

This question has two aspects. First, the seller reduces the price value of his merchandise sold to the purchaser. No doubt he has the right to do so any time. Second, the purchaser pays the due amount of price before the stipulated time period; he too, undeniably, has such right. But their inter depending on each other and making one act conditional on the other apparently gives a new turn to the whole transaction. That is the reduction in the amount of price is in exchange of the duration lessened. In other words, the reduced part of the value is against the part of the reduction in duration. And since the duration in it self cannot be an object of sale, if sold the price will be considered usury and interest, and hence unlawful. The unlawfulness of this is a generally agreed upon proposition among the *Fuqaha*. To quote Ibne Abidin Shami:

ولا يصح الصلح عن ألف مؤجل على نصفه حالاً، لأنه اعتياض عن المؤجل وهو حرام:

The compromise on the immediate half of the deferred one thousand will not be right as it is an exchange of the duration and time. Hence unlawful.⁷⁵

⁷⁵ Raddul Muhtar: 4/534

The Shafites too are of the same view. To quote an authority:

صالح عن عشرة مؤجلة على خمسة حالة يعنى الصلح، لأنه إنما ترك الخمسة في مقابلة حلول الباقي وهو لا يحل:

If somebody compromised on immediate five against the ten deferred, the compromise will be void because he has abandoned the five against reduction in the duration: and this is not lawful.⁷⁶

In his celebrated book *al-Muatta*, Imam Malik has furnished sufficient detail on the matter, and applied the technical word *Zaa wa taajjal*. He is of the view that the parties may do so by way of non-obligation; if they do so on making one conditional for the other, the deal will not be acceptable to the Shariat. To quote his own words:

من وجب عليه دين إلى أجل فسأل أن يضع عنه و يعجل له ما بقي لم ينبغي له ذلك، لأنه يعجل قليلاً بكثير ديناً:

If a person owes a credit and asked the creditor to reduce a part of the credit and the rest he would immediately pay to him will not be right. For the debtor wants to pay immediately an amount lesser than the actual one⁷⁷

As regards the Hambalis, the following quotation represents their view:

⁷⁶ Hawashi Tuhfatul Muhtaj: 5/152

⁷⁷ Muatta Imam Malik,

إذا صالحه على المؤجل بيعه حالاً لم يجز،

“If either one party compromised on a part table paid with immediate effect against the full amount of the debt which was to be paid later, the deal will not be lawful⁷⁸

According to Zaid b. Thabit, Abdullah b. Umar, Saed b. al-Musayyab, Qasim, Salim Shaabi, Imam Abu Hanifa, Malik, Shafie and many other Ulama well-grounded in Fiqh and Hadith regard such a deal as unlawful. Nevertheless, many great men of Islamic learning hold that the *Zaa wa taajjal* deal is lawful. These include Abdullah bin Abbas, Ibrahim Nakhaie, Muhammad bin Sereen and Hasan al-Basri. In short, the conditional mode of the *Zaa wa taajjal* is not lawful; without condition it will be legally valid.

Ans. to question no. 15

Dealing on credit without fixing the period of payment

If the deal is struck on credit but the time period of the payment is left unfixed, such a deal is not valid. If the parties again sold and purchased reducing the previous price on cash payment, the deal shall be valid and the last business activity shall be regarded completely different from the former invalid one.

⁷⁸ Ibne Qudama, al-Mugni: 4/316

Ans. to question no. 16

Delay in delivering the due installment(s)

In case the purchaser failed to deliver the amount of installments according to the timeframe the seller has the right to withdraw the facility of paying the price in installments. He may ask him to pay the full payment in one attempt without delay. To quote an authority here:

عليه ألف ثمن جعله ربّه نجوماً، إن أخلّ بنجم حل الباقي:

A person owes one thousand to another who gave him debtor the facility to pay the amount in installments. In the event of the debtor's failure to deliver an installment, the creditor may withdraw his facility."⁷⁹

The same thing has been expressed by Ali Hyder the commentator on the authoritative *Mujallatul Ahkami Adliah*, prepared under the Turkish Caliphate:

إذا كان لإنسان على آخر ألف ثمن جعله أقساطاً، إن أخل بقسط حل الباقي:⁸⁰

Ans. to question no. 17

Death of either one party of the deal

If the seller suffered death before receiving all the installments from the buyer, the deal will continue unchanged, for the party benefiting from the respite

⁷⁹ Sahmi: 4/26

⁸⁰ Durarul Ahkam: 1/230

period is still alive. In the event of the buyer's death the deal however will be considered ended and whole the rest due amount shall have to be paid from the estate of the deceased. The same thing has been stated in the following words:

و يبطل الأجل بموت المدين، لأنّ فائدة التاجيل أن يتجر فيؤدى الثمن من تمام المال، فإذا مات من له الأجل تعين المتروك لقضاء الدين، فلا يفيد التاجيل، وصرّح قبله: لو مات البائع لا يبطل الأجل،

With the death of the debtor the grace period will end, for the benefit of the deferment was to let the debtor do business and then pay the price from his earned money. In the event of the death of the debtor, the rest part of the price will become a debt to be instantly paid, for the deferment is of no avail now. The same authority has put that the death of the seller will make no difference time period already agreed upon.⁸¹

The same opinion is shared by the Shafiee *Fuqaha*:

انتقل بموت البائع لوارثه، وحلّ بموت المشتري ولا يضرّ السقوط بموته،

With the death of the seller the payment will be made to his inheritors. But in the event of the death of the buyer the full (rest) debt shall have to be instantly paid and the seller's death will not affect the deal⁸²

⁸¹ Shami: 4/26

⁸² Tuhfatul Muhtaj: 4/267

Ans. to question no. 18

Introducing prizes schemes for the customers

Since the item sold and its price both is specified and every buyer is ensured to get the item, the distribution of the prizes apparently seems lawful. For the prizes are given out to the customers from the amount of the profits the company earns. However, if the case were that every one out of the entire buying person is not sure to get the commodity, (some get and the others are denied), and the procedure of prize distribution will doubtlessly constitute a sort of gambling. The late Mufti Md. Shafi too subscribed to the same opinion.⁸³

The ruling put above is applicable only to the surface state of the question. The fact, however, remains undeniable that such business tricks in most cases, is nothing but the offshoots of the gambling mentality, and hence deserves discouragement. Even in the present age it may have an element of undesirability.

Ans. to question no. 19

Exempting the buyer from the payment of further installments if lots fell upon his name

On the surface, the matter seems invalid as the price is not specified. However, if the lots fell upon the name of a person, and as a result he got the product just for the amount of the first or more subsequent installments, the matter will assume the form of the

⁸³ Jawharul Fiqh: 2/245

business deal; and since the parties are agreed and the commodity and its price are defined, the deal shall be held valid:

إذا قال بعثك شاةً من هذا القطيع فالببيع فاسدٌ، فإن عيّن البائع شاةً، وسلّمه إليه ورضى به جاز ويكون ذلك ابتداءً ببيع بالمرضاة-

If the seller said: I sold you one goat from this herd, the sale shall not be valid. However, if the seller specified the goat, delivered it to the buyer and is pleased with it, the deal shall be held valid, and on the surface, it shall be termed as a business deal with mutual agreement.⁸⁴

In short, every time, after falling the lots on somebody's name, the sale deal shall be considered complete and valid only after the interchange of the commodity and its price (one or more installments) between the parties. But initially the deal shall remain invalid as neither the price nor the period of payment is specified.

It is notable that the ruling is being issued only on the surface study of the case. The spirit of the Islamic *Shariat* is not very much pleased with such activities which more or less, involve an element of gambling.

⁸⁴ Badius Sanai :> 5/156, Raddul Muhtar: 4/13

Selling and buying by Installments and the Shariah rulings

MI. Akhtar Imam Adil⁸⁵

Difference between the cash and credit value of a product

There are two modes of selling and purchasing: (1) hand to hand payment of the price and taking possession of the item purchased, and.

(2) Of credit. Both modes carry full legal weight. Then the cash and credit deals differ in respect of value. The product may obviously fetch more value in comparison to the cash value if it is being sold on credit. The credit mode of business is as much permitted as the cash mode. All that is pre-requisitely required is the clear specification of either one mode out of the two ones in the very sitting of deal. In the absence of such a specification the deal will be invalid.

رجل باع على أنه بالنقد كذا، وإلى شهر بكذا وإلى شهرين بكذا لم يجز -

If a person sold an item on that it costs so and so if purchased in cash, and so and so if purchased on credit; for the credit of one month its price is so and so and for the credit

⁸⁵ Manawra Sharif, Bihar (India)

of two months the price will be so and so, such a bargaining is not lawful. (that is, the parties must agree to either one option and mode of transaction before the deal is struck).⁸⁶

The short question answer furnished above declares unlawful the only deal the parties of which separate from each other and leave the sitting of deal before they clearly agree on either one option out of the two ones: cash payment or the credit one, even if both the options and the modes of sale and purchase were mentioned in the sitting. Now since the deal does not mention the price and the duration of payment, the deal shall stand invalid. The following reference puts it even more elaborately:

وإذا عقد العقد على أنه إلى أجل كذا بكذا وبالنقد كذا بكذا أو قال: إلى شهر بكذا أو إلى شهرين بكذا فهو فاسد، لأنه يقاطعه على ثمن معلوم، ولنهيه عليه السلام عن شرطين في بيع، وهذا إذا افترقا على هذا، فإن كانا يتراضيان بينهما ولم يتفرقا حتى قاطعه على ثمن معلوم و أما العقد عليه فهو جائز لأنها ما افترقا إلا بعد تمام شرط صحة العقد-

If the deal is finalized on that the credit sale is for so and so price and the cash sale is for so and so price; or that on credit of one month the price of the item is so and so but on the credit of two month the commodity is on sale for so and so price, the dealing is entirely invalid, because the seller did not finalize the deal specifying either one mode of sale with definite price. The invalidity of such a sale deal is based on the express prohibition of the Holy Prophet (SAWS). He (SAWS) has

⁸⁶ Fatwa Alamgiri: 3/136

declared it unlawful for the seller to introduce two conditions regarding a single sale. The law of prohibition shall be applicable to the credit sale if the parties separated with such an ambiguity. But if they discussed both the credit and cash sale and purchase options and separated after finalizing the deal on a definite mode with known amount of price, the deal will be valid because they separated only after fulfilling the condition for the validity of the deal.⁸⁷

With the Hambalites we do find a detailed treatment of the problem in hand. To quote an authority:

وقد رُوى عن طاؤس والحكم وحماد إنهم قالوا: لا بأس أن يقول: أبيعك بالنقد بكذا وبا لنسيئة بكذا، فيذهب على أحدهما، وهذا محمول على أنه جرى بينهما بعد ما جرى فى العقد فكأن المشتري قال: آخذه با لنسيئة بكذا، فقال: "خُذه" أو قد رضيتُ" ونحو ذلك فيكون عقداً كافياً.

Tawus, Hakam and Hammad have been reported to have said: There is nothing wrong if the seller says: I sell it in cash for so and so price and on credit for so and so," and then the buyer proceeded with either one option and finalized the sale deal. After their negotiations, the said words of the seller will mean that the purchaser has agreed to the last option in the meaning: "I take it for so and so on credit," and the seller expressed his approval in the words: 'Right, I take it, or "I agree, or similar

⁸⁷ Sarkhasi-al-Mabsut: 13/8

other expressions of approval. If so, the deal will be considered valid.”⁸⁸

To summarize the discussion, the credit price of an item on sale may be enhanced in comparison to cash price of the same item, provided that the parties choose either one mode before they separate. No doubt the time plays a very significant role in determining the value of a commodity.

إنه يزداد في الثمن لأجل الأجل-

Price is enhanced for the factor of time duration.”⁸⁹

A commentator of *al-Hidayah* has explained the same point in the following words:

(لأنَّ الأجل لا يقابله شيء من الثمن) أى حقيقةً، أما شبهة المقابلة فتنا بته، ولهذا يزداد في الثمن لأجل الأجل مالا في المرابحة-

As a matter of reality nothing could be put in comparison of the time duration. However, the similarity is of course established. For this reason the price is enhanced for the factor of time duration in sale for profit.⁹⁰

Our great learned Ulama of Deoband and Firangi Mahal also hold the same view. In their books of *Fatawa* they have clearly mentioned that the credit price of an item might be enhanced as against the cash price, provided that the specification of either

⁸⁸ Ibne Qudama:al-Mughni:4/290

⁸⁹ Marghinani: Hidayah,Chap. Murabaha

⁹⁰ Kifayah on Fathul Qadir:6/133

one mode is chosen before the finalization of the deal.⁹¹

(2). Sale and purchase on installments

If the deal is struck on credit, it is not essentially required to pay the whole amount of price in one attempt; it may be paid in installments as well. To illustrate, suppose a commodity prices ten thousand rupees, and the mode of payment is agreed that whole the price amount shall have to be paid in ten installments, one thousand rupees each month. But the parties are required to decide this mode of payment in the very sitting of deal.

البيع مع تاجيل الثمن والتقسيط صحيح-

The sale and purchase on credit payment and on installments is right.⁹²

In the ancient Fiqhi literature too we come across the instances of the sale and purchase by installments. To cite here one of them:

"رجل قال لآخر: بعثُ منك هذا الثوب بعشرة على أن تعطيني كل يوم درهماً وكل يوم درهمين يعطيه عشرة في ستة أيام، في اليوم الأول درهماً وثلاثة في اليوم الثاني ودرهماً في اليوم الثالث وثلاثة في اليوم الرابع ودرهماً في اليوم الخامس ودرهماً في اليوم السادس-

○A person said to another: I sold you this garment for ten *dirhams* with the mode of payment that you pay one *dirham* to me each

⁹¹ Fatawa Rashidia, 943, Imdadul Fatawa: 3/312 collection of the Fatawa Abdul Hai p.306, Kifayatul Mufti:8/40

⁹² Sharh al-Mujallah : P.25 with reference to Islami Fiqh: 2/313

day and two *dirhams* each day, thus paying ten *dirhams* in the course of six days. This way the purchaser will pay one *dirham* first day, three *dirham* the second day, one *dirhams* the third day: three *dirham* the fourth day, one *dirham* the fifth day; and one *dirham* the six day.⁹³

The following citation will be even more helpful in gathering the point under discussion:

قال محمد بن حسن في رجلين تبايعا شيئاً واختلفا في الثمن، فقال المشتري "اشتريته بخمسين درهماً إلى عشرين شهراً على أن أؤدي إليك كل شهر درهمين ونصفاً، قال البائع: بعثك بمائة درهم إلى عشرة أشهر على أن تؤدي إلى كل شهر عشرة دراهم، و أقاما البيعة ، قال محمد "يقبل شهادتهما ويأخذ البائع من المشتري ستة أشهر كل شهر عشرة، وفي الشهر السابع سبعة ونصفاً، ثم يأخذ بعد ذلك كل شهر درهمين ونصفاً إلى أن يتم له مائة، وهذه مسألة عجيبة،

Imam Muhammad b. Hasan is reported to have said about two men who sold and purchased an item and developed a dispute about the price of it. The purchaser said: I bought it for fifty *dirhams* on the credit of twenty month on that I would pay you two and a half *dirhams* each month." The seller said: I sold you the commodity for one hundred *dirhams* on the credit of ten months on that you would pay me ten *dirham* a month for ten months," both the seller and purchaser took

⁹³ al-Bahrur Raiq: 5/280 with reference to Tatar Khania and Tajnees

An oath to establish their claims. Muhammad said: their oaths shall be entertained, and the seller will receive ten *dirham* each month over a period of six month. In the seventh month he will receive seven and a half and then two and a half *dirhams* each month for five months, thus receiving his complete one hundred *dirhams*. This is a rare case indeed."⁹⁴

The two citations furnished above establish it beyond doubt that the sale and purchase by installments is perfectly valid. The only condition is that the amount of each installment and the duration of delivery should be specified in clear terms. Otherwise, the deal shall stand invalid. To furnish a citation again:

رجل باع عبداً بألف أن ينقده على كل أسبوع بعض الثمن حتى ينقده خمسين
مأة عند مضى الشهر كان فاسداً.

If a person sold a slave for one thousand on that the purchaser will pay him a portion of the price every week till the paid amount turn five hundred with the passing of the month, the sale deal shall be invalid. (It is because of the fact that the amount of the installments is not known).⁹⁵

(3). So far as the third question is concerned, it needs not to be discussed separately. Whatever has been furnished while dealing with the first two questions is sufficient as the answer to this question as well?

⁹⁴ Minhatul Khaliq on the side notes of al-Bahrur Raiq: 5/281,
Tatar Khaniya on the side note of the Fatawa Alamgiri : 2/269

⁹⁵ Alamgiri chep. Conditions 3/143

The terms and conditions of the credit and cash modes of the deal may be discussed, but either one mode shall have to be decided to finalize the deal before the parties separate.

Ans. to question no. 4

Enhancing the credit sale price as against the cash sale one does not form a sort of *riba* (interest, usury), because the seller has put both the options of purchase and repayment of price before the purchaser with full explanation of the term and conditions involved, leaving it up to the purchaser to choose either one mode out of the cash and credit ones. Much as the amounts of cash and credit price differ from each other, still both are against the commodity sold. Being the actual owner of the commodity, the seller has the right to sell his commodity for any price. In the case of cash sale he feels content with a small amount of profit; but on credit sale he finds himself compelled on selling his merchandise for a comparatively higher price so as to maintain the average of his profit. The deal might involve the aspect of interest only if the deal rounds between both the cash and credit option without choosing a particular one. To be more precise, if the seller said to the purchaser that the commodity would be offered for one thousand if he paid the price amount in cash; but the same merchandise would price fifteen hundred if it was sold on credit of, for example, one month, and before finalizing the deal, having chosen either one mode, the parties left the sitting of deal, the deal will be invalid. In other words, the value of the merchandise is actually one

thousand, and the rest five hundred, which the purchaser has to pay, will be regarded against the time duration, hence the extra amount will doubtlessly form a sort of interest. However, if the seller informed the purchaser of the difference between the cash and credit prices separately and he chose either one mode, there remains no ground for entertaining the doubt of interest-securing. Now the amount under either mode is of course against the merchandise sold and for nothing else. Negotiations between the parties need not be considered; what is to be considered is the finalization of the deal. It is the finalization of the deal which is the only determinant and not the amount of price. If the different prices coming under discussion of the parties are considered, the problem will get worse still. Many forms of business deals and more than one modes of sale and purchase mode will fall under the category of interest securing. Even the cash sale and purchase will not be spared. For if the escalated price of the credit sale is considered in exchange of the time period, the comparatively less price of the cash sale too is exposed to the same doubt as the less cash price is of course due to its being cash and hand-to-hand and the time is doubtlessly a factor here to determine the escalation or reduction of the price. And such (groundless and undue) considerations are bound to render almost all sorts of business dealings to look interest involving including the cash deals. Therefore, what deserves consideration is not the negotiations and discussion of different modes of transaction between the parties; it is the only finalized mode instead.

To cut the long story short, the angle of interest-securing will be found in a business deal only if the extra amount is taken after the finalization of the deal and fixation of the price according to either one mode of the deal.

(5). The question no. 5 needs not separate answer. After specifying either one mode, the price may be paid in one time or by installments, going by the specification agreed upon.

Asking extra amount if the payment is delayed

Charging any extra amount from the buyer in the event of delay in making the due payment to the seller is of courses unlawful. To exemplify, a sale and purchase deal was struck on condition that the specified price shall have to be paid in the course of

one month; and if the purchaser failed to do so, he will have to pay two rupees in addition to the due price, and the same average shall have to be maintained with the passing of more months. On similar lines, it is also invalid to ask extra amount in case the purchaser failed to pay the due credit price in the course of the specified time period; or could not deliver the installments according to the time-frame. Nothing extra could be charged, neither in lump sum nor on the percentage basis, for both the sort of imposing extra amount fall under the category of *riba*. To put it more succinctly, the extra amount which has been extracted from the purchaser for nothing but the time delay. And it is an established rule of the Shariat that the amount extracted in exchange of the time period is doubtlessly the interest

and usury. On the same ground it has been stated that if the deal was originally struck on the basis of cash payment but later the seller turned it into the credit sale and escalated the product price, having fixed the cash price of the product earlier, the deal will not be lawful; and the extra amount shall be regarded as interest and usury.

مقابلة الأجل بالدرهم ربا، ألا ترى أن في الحال لو زاده في المال ليؤجل لم
يجز -

Putting the *dirhams* (read currency notes of the day) against the time period is undoubtedly *riba*. Do you not see if something is added to the

Current credit to make it deferred credit sale will not be lawful?"⁹⁶

Discussing a similar problem the late Mufti Kifayatullah too has stated its unlawfulness. To quote him:

All such probable sorts of dealing as, for example, 'If my debt is paid within one month, I will charge two rupees extra and after one month within forty five days the credit charge shall be three *dirhams* extra' will not be lawful. The buying and selling parties are required to clearly specify the amount of price and the duration of payment at the time of finalizing the deal."⁹⁷

⁹⁶ al-Sarakhsi, al-mab sut: 13/126

⁹⁷ Kifayatul Mufti: 8/40

Penalizing the delaying purchaser in terms of finance

Such an additional amount may be termed as financial penalty on the delayer.

وفيه جواز العقوبة بالمال بحسب الظاهر، واستدل به قوم من القائلين بذلك من المالكية وعُزى ذلك أيضاً إلى مالك، وأجاب الجمهور بأنه كان ذلك في أول الإسلام ثم نسخ-

This apparently speaks of the legality of financial penalty. The adherents to the view from the Malikites contend with this. The same view has also been related to Imam Malik. But the majority of the *Fuqaha* holds that it was lawful

During the earlier days of Islam and then was abrogated.”⁹⁸

Another authority says:

وفى شرح الآثار : التعزير بالمال كان فى ابتداء الإسلام ثم نسخ، والحاصل المذهب عدم التعزير بأخذ المال-

Financial penalty was in the earlier days of Islam then was abrogated. In short, nobody could be fined in terms of money and finance.⁹⁹

Given the fact as above, terming the amount taken extra from the purchaser as monetary fine rather than

⁹⁸ Umdatul Qari: 5/164

⁹⁹ Raddul Muhtar: 3/246

the usury will also remain unlawful according to the majority view of the *Fuqaha*.

Asking a mortgage as the surety of the payment

(8) To insure the realization of the amount of price from the purchaser, the buyer is vested with the right to keep something of the purchaser with him as mortgage and security. The mortgaged property must, however, be known and specified. This is a proposition unanimously agreed upon by all the four grand Imams of the Islamic *Fiqh*.¹⁰⁰

Benefiting from the mortgaged property

The question in fact has three layers. First of all, is the vendor rightful to benefit from the mortgaged property? In the following lines the position of all the four schools of Islamic Law visa-vis the question shall be furnished.

Hanafi School

The adherents to the Hanafi school stand divided into two groups, each one holding the view different from its counterpart.

(1) A comparatively smaller group holds that under no circumstance the mortgagee has the right to benefit from the mortgaged property, irrespective of the fact that the mortgage is kept for the money lent or for the credit sale. The main argument of the group is that since the mortgagee will receive the total of his

¹⁰⁰ Alamgiri: 5/334, al-Mabsut of Sarakhsi: 13/19, al-Majmu, Sharhul Muhazzab: 9/375 al-Mughni: 4/424

loaned or credit amount, why, then, this profit from the mortgaged property? Such a profit is a sort of *riba* without doubt.

(2) Another (moderate) standpoint, held by the majority of the Hanafis, is that making such stipulation while finalizing the mortgage deal will be wrong as it is a type of exploitation of the debtor/mortgager. Without such a stipulation the

Mortgagee may benefit from the mortgaged property if the mortgager has so allowed him.¹⁰¹

However, to the view of Abu Hanifa himself in no circumstance the mortgagee has the right to benefit from the mortgaged property.¹⁰²

In his explanatory notes on *Sharh al-Waqayah* the Late Maulana Abdul Hai (of Firangi Mahal lucknow) has vehemently advocated the unlawfulness of it. The author of *al-Waqaya* has permitted it and to the same view subscribes the author of the *al-Hidayah*. That is, the mortgagee can benefit from the mortgaged property on condition that the mortgager has so allowed.

Maliki School

As far as the Maliki viewpoint *vis-à-vis* the mortgaged property is concerned, as a matter of principle, to all types of benefit and advantages extractable from the mortgaged property only the mortgager is entitled, to

¹⁰¹ *al-Fiqh ala Mazahibil Arba'a* 2/335

¹⁰² *Sharh Waqayah*: 4/74

the exclusion of all others. To the Nalikites benefiting of the seller or mortgagee from the mortgaged property is subject to three conditions

(1). The same was decided at the time when the deal, based on the mortgaging procedure, was finalized.

(2). The period of benefiting is specified. If not so, no benefit can be sought from a mortgage.

(3). The reason of the credit is the sale deal and not the money borrowed, and the mortgaged property is intended to ensure the realization of price of the goods sold to the mortgager on credit.¹⁰³ Besides all the three conditions put above there is a yet another condition. That is, the mortgaged property to be benefited must be from the category of things whose use makes no difference to them like house, land, etc. In case the mortgaged property is, for example, an animal, garment, etc. the use of which exposes them to damage and destruction, the benefiting from them is not desirable.¹⁰⁴

Shafiee standpoint

To the Shafie view the mortgagee can not stipulate that he will benefit from the property in pawn with him. Such a stipulation is bound to invalidate the mortgage deal. According to a view held by a small number of the Shafies, though the deal will not be invalid, yet the stipulation will be devoid of legal weight whatsoever, and the mortgagee will be

¹⁰³ Al-Fiqhala al-Mazahibil Arba'a :2/333

¹⁰⁴ Ibne Qudama:al-Mughni :4/432

without right to benefit from the mortgaged property. He, however, may benefit without such a stipulation. On similar lines, if he is benefiting from an item before the mortgage deal come into being, he may use it for his benefit even after the deal of mortgage, apart from that the mortgage is in connection with the credit sale deal or cash loan deal.¹⁰⁵

The Hambali standpoint

According to the Hambali standpoint, if the mortgage is in connection with the cash lent to somebody, no type of benefit could be sought from the mortgaged property. However, if the mortgage is about a credit sale or a lease deal, the mortgagee may benefit from the mortgaged property with the permission of the mortgager. As regards stipulating the same while finalizing the deal, two different opinions have been reported from Imam Ahmad b. Hambal. First, the mortgagee has no right to make such a stipulation. The other view is that such a stipulation may be introduced only in the case of credit business deal, provided the mortgaged property is accurately assessed and the time period for benefiting is clearly specified.¹⁰⁶

What if the mortgaged property is lost in possession of the seller/mortgagee

The second question is: "What if the mortgaged property is lost or got damaged while in possession

¹⁰⁵ Al-Fiqh ala-al Mazahibil Arbaah: 2/334

¹⁰⁶ Al-Mughni: 4/432

of the seller? Regarding this there are four standpoints in all:

(1). The Shafie and the Hambali standpoint is that, as a matter of principle, the mortgaged property is a trust in possession of the mortgagee. If it is lost due to carelessness of the seller/mortgagee, he will have to accept the liability for it and the value of it shall have to be deducted from the value of the commodity he sold to the mortgager. However, if it is lost or damaged with no fault of the mortgagee/seller, he will owe no liability at all; the purchaser will have to suffer whole the damage. This has been reported from Haz. Ali and the same view is shared by Imam Atta, Zuhri, Awzai, Shami, Abu Thour and Ibnul Munzar.

(2). The surety will cover whole the amount of the debt; neither the seller nor the purchaser will have to pay anything to his opposite side, irrespective of that the mortgaged property valued more or less than that of the goods sold. This opinion is based on the Holy Prophet's saying: الرهن بما فيه

This *hadith* is clear in its meaning implications. This is the opinion of Qazi Shuraih, Imam Nakhaie and Hasan al-Basari (May Allah deal them all with mercy).

(3) Imam Malik holds that if the mortgaged property is lost or damaged due to any noticeable reason, death or fire, etc, for example, the loss shall be related to the purchaser (read mortgager in the present context), and no claim against it shall be entertained; and the mortgagee will not be held liable. However,

if the loss or damage occurred owing to unnoticeable reason, the damage will be related to the mortgagee and he will have to accept the liability.¹⁰⁷

(4). The Hanafi viewpoint is that if the mortgaged property is lost or got damaged being in possession of the mortgagee or a third person, it will be the value of the mortgaged property at the time of putting it to mortgage which shall have to be made and then the assessed value will have to be put to the proportion of the credit amount. If both are equal, the credit will be regarded over and no party will have to pay anything to other. If the mortgaged property valued more than that of the debt, the mortgagee will have to pay nothing to the mortgager. For the rest part of the lost mortgaged property was a trust with the mortgagee and as a matter of principle, no *ziman* of the lost TRUST. But if it valued less than the amount of debt, the seller

Will be rightful to recover the rest portion of the debt from the debtor.¹⁰⁸

In other words, to the Hanafi viewpoint, the nature of the possession of the mortgagee on the mortgaged property is not of trust; its nature is of surety but only in proportion to the amount of debt. The extra portion, however, shall be regarded as TRUST.¹⁰⁹

If the lost mortgaged property was in use of the mortgagee with the permission of the mortgager, and

¹⁰⁷ Ibn Quadama, al-Mughni: 4/410

¹⁰⁸ Fatawa Alamgiri: 5/442

¹⁰⁹ Hidayah : 4/520

was lost or got damaged while in use, the mortgagee will still have to bear no responsibility and the mortgager will have to pay the debt without concession.¹¹⁰

If the purchaser is dodging the payment

The third important question is how will the seller extract his debt from a debtor who is trying to dodge the payment of the debt he owes to the seller? Regarding the solution of this grave problem Imam Abu Hanifa holds that the mortgagee has no right to sell off the mortgaged property without the permission of the mortgager, nor can use it to realize his debt on his own. He will have to make recourse to the law officer (*Qazi*) who will force the dodging debtor to pay the debt either by selling his mortgaged property or by any other way. The *Qazi* too has no power to sell the mortgage on his own to pay the debt. He, however, could send him to jail so as to yield him sell the mortgage and pay the debt. To Imam Abu Yusuf and Imam Muhammad, however, the *Qazi* is vested with such a power; he may sell off the mortgaged property and pay the dues the debtor owed to others. This conceptual difference of opinion is actually rooted in that to the opinion of Imam Abu Hanifa no adult man of sane can be subjected to *hajr* under any circumstances, but according to the standpoint of Imam Abu Yusuf and Imam Muhammad the adult man of sane can be subjected to the *Hajr*.¹¹¹

¹¹⁰ Fatawa Khairia on the Alamgiri :3/601-2

¹¹¹ Badaius Sanai : 6/148
Alamgiri : 5/467

Regarding the problem in hand the practice of the *Fuqah* has been to issue the edict according to the view of the *Sahibain* (Abu Yusuf and Muhammad). Moreover, the verdict of the *Qazi* may be a decisive factor to prefer particular a side in matters of juristic difference. If the *Qazi* decides to sell off the mortgaged property, it shall be sold and the dues will be paid from the price received. The same is mentioned in the following lines:

سئل فى الرهن هل يبيعه الحاكم، إذا امتنع المديون من بيعه، وفاءً للدين أم لا؟
(أجاب) مذهب الإمام تائيد حبسه إلى أن يبيع الراهن بنفسه، لأنه لا يرى
الحجر على المديون وعندهما للحاكم بيعه جبراً، لأنهما يريان الحجر، وهذه
المسئلة فرع ذلك، وصرح قاضى خان وصاحب الإختيار وكثير بأن الفتوى
على قولهما، فإذا حكم به حاكم برأيه نقد وارتفع الخلاف، والله أعلم،¹¹²

In the absence of the Islamic State the mortgagee should have the permission to sell off the mortgaged property under the care of *Sharai Panchayat* system of the region in presence of at least to just men. Doing so is a social requirement so as to save the legitimate interests of people and ensure the realization of the dues and rights.

(9). Seller's right to withhold the sold commodity

In case the sale deal is struck on cash, the seller will be right to withhold the sold goods until he recovers payment.

ولو نقد الثمن كله إلا درهماً كان له حق حبس المبيع جميعه لاستيفاء الباقي،
لأن المبيع فى إستحقاق الحبس بالثمن لا يتجزأ، فكان كل المبيع محبوساً بكل
أجزاء الثمن-

¹¹² Fatawa khairia on the side notes of Tanqihul Hamidiyah:
2/295

If the purchaser has paid whole the price of the commodity except one *dirham*, the seller still has the right to withhold the sold goods in its entirety. For the sold commodity can't be put to pieces in respect of being withheld to ensure the realization of full price even a part of it.¹¹³

However, if the sale deal is struck on credit, the seller has, then, no right to withhold the goods sold. The *Fuqaha* have clearly put it that the seller's right to withholding the sold goods is meant to recover the price, but in the event of the credit sale the seller himself has deferred the recovery. In such a situation the right of the purchaser to possess the purchased goods cannot be deferred, and the seller will be without right to withhold the commodity.

فإن كان مؤجلاً لا يثبت حق الحبس، لأن ولاية الحبس تثبت حقاً للبائع لطلبه المساوات عادة لما بيننا، ولما باع بثمن مؤجل فقد أسقط حق نفسه فبطلت الولاية، ولو كان الثمن مؤجلاً العقد فلم يقبض المشتري المبيع حتى حل الأجل فله أن يقبضه قبل نقد الثمن، وليس للبائع حق الحبس، لأنه أسقط حق نفسه بالتأجيل والساقط متلاشى فلا يحتمل العود-

In case the sale deal is struck on credit the, seller loses the right to withhold the sold goods. For such a right is granted to him to maintain parity with the purchaser. But in the event of the credit sale he (seller) himself has renounced such a right of his. Rather, in credit sale, if the purchaser failed to take possession of the purchased goods and the time of payment entered, the purchaser will still be

¹¹³ Badaius Sanai : 5/370

right to take possession of it before paying the price and the seller is without a right to withhold the sold goods. It is because of that he himself has dropped his right of the kind by credit sale. And the dropped right stands extinguished with no possibility of return.¹¹⁴

Selling by installments too constitutes a sort of credit sale and in this type of business deal too the seller shall be without a right to withhold the sold goods. He, however, may withhold it to recover the immediate installment. On similar lines, if there existed such a stipulation among the terms and conditions introduced at the very time of concluding the deal that he (the seller) might withhold the sold goods in the event of the purchaser's failure to deliver the installment(s) according to the timeframe, he may do so. Perhaps the same is the meaning of the following statement:

وإن بقي من الثمن قليل له حبس كل المبيع، وإن بعضه مؤجل له حبس الكل
لإستيفاء الحال،

If a portion of the price is left unpaid, the seller is entitled to withhold the goods sold. If a part of the price is deferred, the seller may detain the sold item till he recovers the whole payment.¹¹⁵

As regards the point that the detainment of the sold goods is either as mortgage or to ensure the recovery of the full price, the questions furnished above

¹¹⁴ Badaius Sanai: 5/369

¹¹⁵ Bazzazia on the side notes of the Fatawa Alamgiri: 4/505

suggests that it is not to be considered as mortgage; it is just to ensure the recovery of the price.

وكذاالمشترى إذانقد الثمن كله أو أبرأه البائع بطل حق الحبس، لأن حق الحبس لإستيفاء الثمن، واستيفاء الثمن بلائمن محال-

Similarly, if the purchaser paid the entire price or the seller deferred it, the seller's right to detainment will stand lost, for the right to detainment is to ensure his due: and in the absence of the..... no price could be recovered.¹¹⁶

(10) Forfeiture of the received installments:

It is totally unlawful for the vendor to withhold the sold goods permanently in the event of the vendee's failure to deliver the installment(s) according to the time scheme. On similar lines, he has no right to forfeite the amount of installments the purchaser has already delivered to him in the event that either one party is no longer interested in delivering the commodity or price to the other party. Such stipulation on the part of the vendor while finalizing the deal will carry no legal weight. Doing so will constitute a grave wrong and exploitation towards the purchaser; and the Islamic Shariat can never permit such a wrong.

(11) Benefiting from the mortgaged property

The question is not fully clear. If it means that the purchaser mortgaged the purchased goods with the vendor in exchange of the price and the seller gave it

¹¹⁶ Badaius Sanai: 5/370

to the purchaser again permitting him to use it, retaining proprietary and other basic rights for him, the *Shariat*, apparently is not opposed to such a deal. Quite obviously, as soon as the credit sale deal is concluded, the purchased item turns the property of the purchaser: and now he is fully authorized to use it according to his wish and discretion. He may mortgage it with anybody else including the vendor. Another possible aspect of the question might be that the seller, who is the mortgagee as well, instead of keeping the sold item with him in pawn, gives it to the purchaser so as he may use it, but reserves for him only the basic rights thereof: this type of deal is also lawful , as the Fuqaha have clearly expressed. Such a situation will do no harm to the mortgage transaction; and the mortgagee reserves full right to take it back from the user (now the purchaser). In the event of the loss, destruction or damage of the item in the use of the purchaser, only the latter will be liable as long as the goods and in his use. The following juristic citation establishes it clearly:

فإن أذن المرتهن للرهن أن يزرع الأرض المرهونة فزرع، أو سكن الدار المرهون بإذن المرتهن لا يبطل الرهن، وله أن يسترد الرهن فيعورهنأ، وما دام في يد الراهن لا يكون في ضمان المرتهن-

If the mortgagee permitted the mortgager to cultivate the mortgaged land and he cultivated, or stayed in the mortgaged house with the permission of the mortgagee, this will not invalidate the mortgage deal. The mortgagee has the right to take it back, and it will, again, turn mortgage. In the event of destruction/damage, the mortgagee will bear

no liability of the mortgaged property as it was in the use of the mortgager.¹¹⁷

(12) Charging for guaranteeing

This is a very important question indeed. Guaranteeing has now become a systematic and well-established industry to which many institutions and individuals are associated. They provide guarantee of the release of merchandise from the vendor and of the payment of price on behalf of the purchase since. The guaranteeing has now developed into a well grounded commercial institution, the guarantee and guarantors are available everywhere in exchange of their charges. In the fundamental principles of the deal of lease there exists nothing to oppose any principle of the law of Islam. From among the conditions required for the validity of the deal of *ijarah* (lease) a very important one is that it must involve a sort of benefit in vogue, sought after by the people in exchange of due labour charges and in the common practice of the people has turned such benefit a requirement rather necessity. To quote a reference here.

ومنها أن تكون المنفعة مقصودة يعتاد استيفاءها بعقد الإجارة، ويجرى بها التعامل بين الناس، لأنه عقد شرع بخلاف القياس لحاجة الناس ولا حاجة فيما لا تعامل فيه للناس، فلا يجوز استئجار الأشجار لتجفيف الثياب عليها والإستغلال بها، لأن هذه منفعة غير مقصودة من الشجر-¹¹⁸

¹¹⁷ Fatawa Qazi Khan on the side notes of the Fatawa Alamgiri: 3/652

¹¹⁸ Badaius Sanai 3/192 (the Book of Ijarah)

From among the reasons of *ijara* one is that the benefit should be meaningful, for which the deal of *ijarah* is commonly concluded. It is indeed a legal deal which is concluded in consideration to the need of the people. This is opposed to the (principles of) analogy. And if an act is not in general practice of people, the *ijarah* deal is not needed for it. Based on this principle, the trees cannot be taken out on lease to dry up the wet garments to seek such a benefit from the trees because for this type of benefit the trees are not meant.¹¹⁹

The citation furnished above is intended to exemplify the general rule of law regarding the deal of leasing. Since it is not a common usage to charge for letting other people use the trees for drying up the garments and asking any charge for letting the people seek such benefit from trees. If the owner of the trees leases out them for the purpose, the lease deal will carry no legal validity.

But suppose there is a region where exists no place for drying up the garments except the trees and the owner of the trees grow and look after them to leasing out them and thus earn money, it will be improper not allowing the tree owners to lease them out and charge money for this facility. Charging for guarantee is very much similar to the above furnished example. In the past, taking guarantee of someone was not a profession as it stands today; people would do this as their moral obligation

¹¹⁹ Badaius Sanai: 3/192

towards the needy. As a well grounded commercial activity, the guaranteeing has now become an industry. People of established standing as well as the insurance institutions provide insurance and guarantee to the needy is approaching them. Such institutions meant only for the purpose and the deals of hiring the services of others for the purpose have gained currency. Under such situation, it will be unwise to desist from legalizing this professional activity which, in most cases, serves a real purpose of people. The act of providing guarantee involves the risk factor as there are possibilities that the guaranteed may disappear or his turning defaulter. If so happened, it is the guarantor, whether a company or individual who will have to accept the liability and repay the amount of debt. Discussing the *Kafalah* the Fuqaha have laid down a point of principle.

ولأنَّ الكفالة والرهن شرعا للتوثق والتوثق ملائم للأجر -

The law of guaranteeing and mortgaging has been introduced to create trust: which fits to be charged for.¹²⁰

This principle suggests that it should be permissible to charge for providing such services, especially when the activity has established itself as a profession.

(13) Selling and purchasing the documents of the credit sale-purchase deal

¹²⁰ Badaius Sanai: 3/602

It is a common practice to prepare full documents of the sale-purchase deal; then these documents are a subject to sale-purchase. The sale-purchase of the documents is meant to ensure the realization of the credit money or to realize it before the time period specified. Generally, these documents are sold and purchased for a price they enshrine. The business of these documents is entirely opposed to the principles of the Shariat. To illustrate, the sale of the documents actually is the sale of the seller's right of receiving his credit price from the purchasing party which these documents represent. In other words, the sale of these documents in fact is the sale of the value agreed as the price of the sold commodity. This way the matter becomes of the sale and purchase of the equal worth objects (like coins, gold, silver etc.) technically termed as *bai sarf* and the *bai sarf* is valid only when a complete equality between the sold and purchased objects is maintained. This type of sale and purchase may carry legal validity if it is carried out through the procedure of ATTORNEY WITH THE POWER OF LEASING, provided it is ensured that the documents shall have to be returned to the concerned party if they failed to realize the dues from the purchaser.

Ans. to question no. 14

Reduction in the price of the sold commodity for an earlier recovery

In matters of credit sale and purchase it has been a point of disagreement even among the blessed Companions whether the seller has the right to remit a part of the price of the item sold if the rest amount

is repaid on the seller's demand earlier than the time period agreed upon in the core of the deal. Abdullah bin Umar رضي الله عنه regarded it as unlawful as, to him the price is being reduced against time. That is, the portion of the price is being remitted with the lessening of time period already agreed upon between the parties. To his opinion this is a sort of *riba* quite similar to the excess to be demanded in the event of extending the time limit. To Zaid bin Thabit, a Companion of extraordinary erudition and knowledge, by contrast, such a reduction is quite lawful. For what is being done now is definitely after the finalization of the deal. It would have been *riba* if the same had been included in the core of the deal. However, the Hanafis have adopted the opinion of Abdullah bin Umar as it is more cautious and prudent against falling into the dreadful sin of *riba*. As regards the point that the reduction occurs after the transaction is finalized, this is unworthy of consideration as, to the Hanafi standpoint, any lessening or enhancement is treated as included in the core of

The deal even if it took place after the finalization of the transaction. Excluding Imam Zufar, all the Hanafi Fuqha hold a unanimous view on it.¹²¹ Imam Sarkhasi, for example, has discussed this point in his great book, *al-Mabsoot*. To quote him here:

قال: وإذا كان الرجل على رجل دَين إلى أجل وهو من ثمن بيع فحطَّ عنه شيئاً على أن يعجَّل له ما بقي فلا خير فيه، ولكن يرد ما أخذ، والمال كله إلى أجله، وهو مذهب عبدالله ابن عمر، وكان زيد بن ثابت يجوز ذلك، ولسنا نأخذ بقوله، لأنَّ هذا مقابلة الأجل بالدرهم، ومقابلة الأجل بالدرهم ربا، ألا ترى

¹²¹ Al-Bahrur Raaiq 6/119

ان في دَين الحال لو زاده في المال ليؤجله لم يجز، فكذلك في المؤجل إذا
حطَّ عنه البعض ليعجل له ما بقي،

(If a person has a credit on somebody else to be received later on a specified term, and the credit is the price of the merchandise he has sold to the latter and the former remitted a portion of the amount of price in order to receive the rest earlier than the time limit specified in the agreement, the reduction of the type holds no good for the seller. The whole price shall be have to be received according to the time frame. The same being the opinion of Abdullah bin Umar رضى الله عنه . Zaid bin Thabit, contrariwise, held such a reduction to be lawful. But we do not stick to the latter's view. For this reduction is against the term which, to our view, is a sort of *riba*. Don't you see in the matter of the present credit if the amount of price is enhanced and the period of repayment is extended will not be lawful. So the same being the case of remitting of a portion of the price on condition of the early payment.¹²²

Ans. to question no. 15

Reducing unspecified duration of payment to seek a reduction in price

From among the conditions of the credit deal one is the specification of the time period of the payment, and leaving this point unspecified will invalidate the

¹²² Sarkhasi, al-Mabsoot 12/126

whole deal. In case either party of the deal, after its finalization, wants to change the deal into a spot sale on condition that the price be reduced, the rule is to see if the unspecified time period of payment may be assessed easily, for instance a particular future event has been named as the ripening of a crop, the parties will be required to contract the deal anew and specify the time period, if the credit deal is being contracted. (To Imam Zufar an invalid deal can not be changed into a valid one). But if the time period of payment is grossly unknown (for example, the purchaser left the matter of payment merely to be paid later with no specification of time), the deal will be invalid except that the period of payment is specified before the sitting is over, there will be no way to rectify the technical damage of the deal, and no specification of the time period will set the faulty transaction right. This is a principle unanimously agreed upon by the Hanafi jurists.¹²³

Ans. to question no. 16

Withdrawing the grace period on the purchaser's failure to pay the installment (s) according to the time-frame

In case the purchaser failed to deliver the installment (s) according to the specified time-frame the vendor has no right to withdraw the grace period and demand the total payment of the rest price immediately in one attempt. For the vendor has already given up any such a right. He may do so only if such a provision was included in the core of the

¹²³ Minhatul Khaliq on al-Bahrur-Raiq 6/89

deal at the time of its finalization, provided such a conditional provision causes no increase or decrease to the amount of the price. This opinion is based on the following citation:

ولو كان الثمن مؤجلاً في العقد فلم يقبض المشتري البيع حتى حل الأجل فله أن يقبضها قبل نقد الثمن، وليس للبائع حق الحبس، لأنه أسقط حق نفسه بالتأجيل. والساقط متلاشى، لا يحتمل العود.

“If the payment of the price was agreed to be made later, and the purchaser did not take the purchased commodity into his possession and the time of the payment entered, he has the right to take it into his possession. And the vendor has no right to withhold the sold commodity as by deferring the realization of the price he has already given up his right of so doing, and a dropped right is dropped for ever”

Ans. to question no. 17

What if either one party suffered death before entering of the time period.

In case of the death of the seller who sold his merchandise on credit according to the installments mode of business the matter of deal will remain uncharged; the only difference which will take place will be that the matter, with all its details, shall then be referred to the heirs of the deceased. But in the event of the death of the purchaser the matter shall undergo a substantial change. That is, the heirs of the deceased purchaser shall be obliged to pay the whole rest price from his estate as there remained no longer

a reason to defer the payment. The respite was meant to facilitate the purchaser earn the money and pay the dues easily. His death has terminated all such possibilities. Hence no respite is needed, and the debt would have now to be paid from his estate. To quote an authority here:

وبموت البائع لا يحل الثمن المؤجل، وبموت المشتري يحل، ولو أجله الوارث
لا يصح، لأن الثمن في ذمته، وكان فائدة التاجيل أن

يتجرو ويؤدى الثمن من نماء المال، وبالموت تعين الأداء من التركة، فلا فائدة
في التاجيل-

With the death of the seller the deferred payment is not required by law to be immediately made. But in the event of the buyer's death the hitherto deferred debt shall have to be immediately paid. Its further deferment by his heirs will be improper. It is because of that the payment of the price was the responsibility of the deceased, and the deferment was meant to enable him earn the money by way of business (or by other ways) and then pay the price to the vendor with the growth of earning thus procured. But his death has excluded all such possibilities and the payment has now to be paid definitely from the estate. Considering this, the deferment carries no good at all.¹²⁴

سئل فى رجل باع من زيد بضائع معلومة بثمن معلوم، أجل بعضه المعلوم
على المشتري إلى أجل معلوم و قسّط باقية أقساطا معلومة ثم مات البائع فى

¹²⁴ Fatawa Azzaziya on the foot notes of the Alamgiri 4/512

أثناء مدة التاجيل والتقسيم ، فهل يبقى كذلك ولايحل الثمن بموته، فالحالة هذه-(الجواب) بموت البائع لايحل الثمن المؤجل،وبموت المشتري يحل

(It was questioned) a person purchased from Zaid, for instance, several known commodities for known price. But he deferred the payment of a portion of price to a definite future time and decided to pay the rest amount by installments. In the meanwhile, the seller suffered death during the period of deferment and the installments. Will the matter of payment remain unchanged with the death of the vendor in such a situation? The answer is that with the death of the seller the matter will stand unchanged, but in the event of death of the purchaser, nevertheless, the respite period will end.¹²⁵

Ans. to question no. 18

Prize distribution among the purchasers by way of drawing lots

With a view to promote their business many traders selling their commodities on installments have introduced a way of prize distribution among their customers. For this purpose they announce in advance and through the procedure of drawing lots the successful customer(s) get prizes. Much as this scheme of prize distribution falls not under outright gambling as every customer surely gets the commodity for the price he is paying on installments and the state of unsurely is just about the prize for

¹²⁵ Fatawa Tanqihul Hamidiya 1/256

which he has to pay nothing, the whole of this scheme now remains contingent on the intention of the customer. If he purchases the article and enters into this scheme chiefly for the sake of the prize, he is committing the sin of gambling in a way. But if a customer won the prize without such an intention, he committed no wrong. The late Mufti Md Shafi (of Pakistan) once faced a similar query and answered as follows:

This does not obviously constitute a form of outright gambling. The purchasers of the ticket enter the exhibition in exchange of what he has paid as the price of the ticket. Now the only determinant will be the purchaser intent; if he purchased the ticket only to win the uncertain prize, he doubtlessly committed the sin of gambling in a way. But if the purchaser of the ticket won the prize without making such an intention, he committed no wrong.¹²⁶

Ans. to question no. 19

Remitting the installments by way of drawing lot

A similar practice is also being introduced by the seller on installments. That is to sell them an item for a definite price according to the installment mode of payment, the customers all are asked to deliver their installment (s) on a definite time and then the lots are drawn on the names of all the participating purchasers. The successful purchaser will get the commodity forthwith and he will need to deliver no

¹²⁶ Jawaharul Fiqh 2/345

installment any longer. In other words, he will stand detached from the deal. The same practice of drawing lots is repeated at the time of receiving each installment from the purchasers and each time the successful customer gets the item and stands detached from the deal. According to the question this scheme seems right provided that the installments of a person who suffered death before getting the item the vendor is made liable to return it back. More precisely, a vendor wants to sell his merchandise to different purchasers at different prices. He, in principle, is authorized to do so. But to differentiate between his customers for the purpose he seeks the help of the procedure of drawing lots among them, and to the succeeding customers he offers the merchandise only for the installment (s) he has thus far delivered. Obviously, his so doing involves no element of gambling, hence the deal is lawful. The late Mufti Nizamuddin once faced a similar question. To quote the question and his answer:

To promote his business a business person adopts a way. He, for example, sells the watches, one watch for one hundred rupees. In the open market too this type of watch is available for the same price. To sell the watches in a greater possible number, and to attract the attention of more and more people to his merchandise he, in the first attempt, makes fifty members with a ten rupees membership fee from each person. The scheme runs for a period of ten months; every member of the scheme will be required to deposit a

sum of ten rupees each month. At the end of each month the lots shall be drawn on the names of the participants. The successful member will get the watch each month only for the sum of membership irrespective of that it is only ten rupees or more, and then he has to pay nothing in future. In fact he stands detached from the deal and his membership is terminated. These way nine watches will be given to nine members over a period of nine months one watch to each person. In the tenth month of the scheme duration forty one watches will be distributed among the rest forty one members and with this the scheme will be closed. Under this scheme one member got the watch only for ten rupees, the second one for twenty, the third one for thirty and so on. In other words, all the fifty members of the scheme will have the watches but at different prices but no one will be required to spend more than one hundred, the actual price of the watch.

Answering this query he wrote

If the seller sold his watches and took no more than its actual price, say, one hundred rupees, and gave it to other members even for less than the market price, it is of course a way of promoting his business; and for this purpose he willingly bore the loss of his five hundred rupees. But the chief criterion to distinguish this mode of business from gambling is the seller's behavior towards the installment (s) of

a person who suffered death before getting the watch. If there is an arrangement to return back the installments of the person suffering death, or renouncing the scheme for any reason, this scheme will be regarded as a promotive device and the dealing will be lawful. But if there exists no such an arrangement, and the received installment (s) is not paid back to those who could not get the watch, the scheme will turn into gambling, and hence unlawful.¹²⁷

¹²⁷ Nizamul Fatawa

Buying and Selling on Installments

MI. Mohd Abrar Khan Nadvi¹²⁸

Ans. to question no.1

Enhancing the price of a commodity being sold on credit in comparison to that of the cash sale

It is absolutely lawful to sell an item on credit for more price than that of the cash sale of the same item. But the credit sale of the type is subject to the condition that the parties shall be required to specify, in the very sitting of deal, whether the deal is being struck on credit or in cash. In case the deal is being struck on credit, the parties must stipulate the timeframe for the defrayal of the due amount. In other words, the parties have a fuller liberty to negotiate both the cash and credit modes of a business deal, but they finally, will have to choose either one option out of the two ones available. This specification is invariably required to avoid any possible dispute in future. If the specification of the mode of deal and the price is missed, the sale deal is bound to lose its validity.¹²⁹

¹²⁸ Jamitul Hidayah, Jaipur, Rajasthan (India)
1 Hidayah with Fathul Qadir 6/261, Majmaul Anhur 2/8, al-Durrul Muntaqa 2/8, Sharhul Inayah 6/262, Raddul Muhtar, 4/279 al-Halal wal Haram fil Ialam, 4/347 al-Fiqhul Islami wa Adillatu hu 4/709

Ans. to question no. 2

Paying on installments

In case the sale deal is struck on credit, the price may be paid in installments (if the other party is agreed to receive the price amount according to the mode).¹³⁰

Ans. to question no. 3

Mentioning both cash and credit prices at the time of concluding the deal

In case the deal is being struck on credit, there is no wrong if the cash price too is mentioned along with the credit price, at which the commodity is being sold. What forms the condition for the validity of the deal is the final agreement of the selling and buying parties to either one mode of deal and the price of the commodity. Failing this condition, the deal will be devoid of any legal bearing.¹³¹

Ans. to question no. 4

Enhancing the credit sale price has no element of *riba*. It is because of the fact that in the case of the credit sale the enhancement of the price is actually against the time period; and the Fuqaha hold such an enhancement as permissible.¹³²

¹³⁰ Fiqhus Sunnah 3/153, Assaf, al-Halal wal Haram P. 379, Qarzawi 4/347,

¹³¹ Al-Durrul Muntaqa 2/8, al-Inayah on al-Hadayah will Fathul Qadir 6/262, Imdadul Fatawa 3/20,

¹³² Raddul Muhtar 4/279, Fatawa Maulana Abdul Hai 2/124, also Fiqhus Sunnah 3/125, Fatawa Rashidiya P. 494, Imdadul Fatawa 3/20, Kifayatul Mufti 8/30,

Ans. to question no.5

Selling on the two time limits

Such a credit business deal is doubtlessly permissible.¹³³

Ans. to questions. no.5, 6, 7

Demanding excess money from the buyer if he fails to pay the product value or installment(s) in stipulated time-frame.

Such dealing, as far as I think should be lawful. For the excess money is being charged against the delay in defraying the price of commodity sold on credit for a defined timeframe. Since in such a case both the price and defrayal timeframe are defined in a way, the tariff stands for the statement of the value of the commodity. If the buyer continues to pay the price in due timeframe, so will continue the enhancing of the value of the commodity. Based on this rule, the modes of business under question should be regarded right and lawful. In the world of business today, weather it is local or international, the delay in payment has become a commoner phenomenon. In the absence of such a provision the business and trade activities are bound to come to a halt, and the traders will be exposed to greater problems and crises.

¹³³ Fiqhus Sunnah 3/125,

In view of the legitimate interests of the tradesmen, their ways of dealings and the needs and the dictates of the age, the adoption of such provisions should be regarded as lawful.

Ans. to question no. 8

Keeping some thing (valuable) as mortgage to ensure the realization of payment

As a matter of rule, it is definitely permissible for the seller to keep some thing of the buyer with him as mortgage. The seller, however, is not permitted to use the mortgaged property for his benefit without a clear permission of the buyer, the original owner of the mortgaged property. With the permission of the buyer, however, the seller may benefit from it and make use of it for his personal advantage.¹³⁴

Stipulation of using the mortgaged item on the part of the seller

In case the seller stipulates regarding the mortgaged property that he would use it for his benefit, such a use will definitely be impermissible. According to another viewpoint, based on some less common narrations, use of the mortgaged item will remain unlawful even after the permission of the mortgager. For it involves an element of interest, and interest, being a *haram* act, will remain impermissible even after the permission of the other party.¹³⁵

¹³⁴ Al-Fiqhul Islami wa Adillatu hu, 5/256,

¹³⁵ Al-Durrul Mukhtar with Raddul muhtar, 5/310

Hambalite viewpoint

Imam Ahmad bin Hambal, Imam Ishaq and many men of insight into Islamic learning hold that if the mortgagee looks after the mortgaged item / property, he is doubtlessly entitled to use it and benefit from it. This opinion is based on a sound narration from the Prophet (S.A.W.S). The Prophet صلى الله عليه وسلم expressly permitted to drink the milk and ride on the animal kept as mortgage. The narration establishes it beyond doubt that the property kept as mortgage could be used by the mortgagee. To quote more a reference here:

قال رسول الله صلى الله عليه وسلم "الظهر يركب إذا كان مرهونا، ولين الدريشرب إذا كان مرهونا"، وعلى الذى يركب ويشرب نفقته، هذا حديث حسن صحيح... وفيه حجة لمن قال يجوز للمرتهن الإنتفاع بالرهن إذا قام بمصلحته ولم يأذن المالك، وهو قول أحمد و إسحاق وطائفة... وذهب الجمهور إلى أنّ المرتهن لا ينتفع من المرهون بشئ، وتأولو الحديث.

The Holy Prophet صلى الله عليه وسلم said: The animal kept as mortgage shall be used for riding; the milch animal's milk shall be drunk if such an animal is a mortgage. The mortgagee will have to look after the animal and care for it food and drink. This *hadith* is *hasn* and *sahih* (acceptable). This *hadith* offers a clear demonstration for those who hold that the mortgaged property could be utilized if the mortgagee looks after it and spends on it. Imam Ahmad ibn Hambal, Imam Ishaq and a

sizeable group of Ulama stick to the same view. They explain the *hadith* differently.¹³⁶

If the utilization is made conditional

According to the Islamic law a mortgage is only meant to be a surety and its being a mortgage does not alter its ownership. As such, the utilization of it for the benefit of the mortgagee will not be permissible. Some earlier Islamic jurists hold that the mortgage could be utilized if the mortgager, (the actual owner) so permits. But if the mortgagee makes it conditional that he will utilize it for his own advantage, the mortgage deal shall turn unlawful as it involves an element of interest.¹³⁷ Since in this age the utilization of the mortgage property has become a commoner practice, even though not made conditional orally at the time of striking the deal, the utilization will be impermissible. As required by the juridical principle: كالمشروط شرعاً المعروف, commoner practice established by usage shall be treated at a par with a thing made conditional by *shariah*.¹³⁸

What if a mortgage is lost under the possession of mortgagee?

It has already been established in the preceding lines that the property kept in mortgage continues to be in the ownership of its actual owner (read 'purchaser' in the business transaction). Under the possession of the mortgagee the property in mortgage is just a surety. If

¹³⁶ Tuhfatul Ahwazi, 4/461

¹³⁷ Al-Durrul Mukhtar with Raddul Muhtar, 5/310

¹³⁸ Op. cit. 5/311

it in possession of the mortgagee (read 'seller' in context of business transactions,) suffered destruction/damage, it is the mortgagee who shall have to bear the loss and reduce the amount equal to damage money from the value of the product sold.¹³⁹

Realizing the price value from the mortgaged property

In case the buyer fails to pay the requisite amount to the seller within the time stipulated, delays the payment by using evasive tactics or disappears, the seller shall go to the law and the law will force the purchaser into repaying the price value of the product. The *qazi* (judge) may send him to prison for the purpose. If the purchaser treads the same path of making false excuses to put off the payment, the *qazi* shall put to sale the mortgaged property in order to facilitate the realization of the price value of the product.¹⁴⁰

(9) seller's withholding the sold item

The selling party is permitted to withhold the sold item till the purchaser pays full price of the product or at least some installments of it. The act of withholding the sold item gives rise to an important question: whether it is meant to ensure the realization of the cost of the product (*habsul mabi liistifail thaman*) or it will be considered as mortgage? On this count the Shariah ruling is clear beyond any shadow of doubt that the

¹³⁹ Tatar khania, with Alamgir, 3/206

¹⁴⁰ Al-Fiqhul Islami wa Adillatuhu, 5/275, al-Durrul Mukhtar Qafi Sharhil Multaqa, 2/601, Majmaul Anhur on Multaqa Abhur, 2/601

act of withholding is meant just to ensure the realization of the product value and never as mortgage. As far as the withholding of the sold item is concerned, the *Fuqaha* have expressly permitted it.¹⁴¹ To put it more precisely, the seller has the right to withhold his sold item till he realizes the full or a part of it as per the sale-purchase agreement between the parties. But he will have no right of withholding the product if the sale-purchase deal is struck completely on credit.

(10) Not returning back the received installments in the event of the buyer's failure to pay the rest amount of value

On the face of it, the case seems analogous with the *bay'al-arbin* (business deal by earnest money), which we come across in the Fiqhi literature. In this case a pice of the total amount is paid to the seller at the time of the documentation of the sale deal; and if the purchaser fails to repay the whole price of the purchased item within stipulated time-frame, the seller shall be obliged to return back the earnest money he has received from the buyer. In case he did not, or withhold it he will be committing a *haram* act. In the case in question the seller shall have to give back whatever he has thus far received, one time or installment basis, to the purchaser; otherwise the money received shall be regarded *riba* (interest). The Holy prophet صلى الله عليه وسلم is reported to have declared the *bay'arbun* as prohibited.

¹⁴¹ Fatawa Hindiyah, 3/15, also Raddul Muhtar, 4/42

عن عمر بن شعيب عن أبيه عن جده أنّ رسول الله صلى الله عليه وسلم نهى عن بيع العربون،

Through the medium of his father and grandfather Amar bin Shuaib reported the Holy Prophet صلى الله عليه وسلم that he declared the *bay'Arbun* to be unlawful.¹⁴²

Further Explanation of the *Bay'al-Arbun*

The *Arbun* mode of the business transaction is that a person strikes a business deal with another person, or hires an animal (or indeed modern means of conveyance and transportation), paying to him a fragment of the total price or charge in advance saying that it will be counted as part of the price or the charges if he bought the item or rode the means of conveyance; if otherwise, the other party (the seller or the owner) shall not be required to pay back the received earnest money to the purchaser or the hirer. Such a business deal is unanimously held to be unlawful, excepting Imam Ahmad bin Hambal. Following citation is representative of the unanimous opinion of the jurists:

وإن تركتُ ابتياع تلك السلعة أو كراء الدابة فما أعطيتك لك باطل، أى لارجوع لى به عليك، وهو باطل عند الفقهاء لما فيه من الشرط والغرر وأكل أموال الناس بالباطل، فإن وقع فسخ..... وأجازته أحمد، وروى عن ابن عمرو جماعة من التابعين إجازته، ويرد العربان على كل حال، قال ابن عبد البر: ولا يصح ما روى عنه صلى الله عليه وسلم من إجازته، فإن صحّ احتمل انه يحسب على البائع من الثمن إن تم البيع، وهذا جائز عند الجميع،

¹⁴² Muatta (malik) 2/609, Abu Dawud (the Book of Trade)

“If I chose not to purchase that goods or hiring the animal, I shall have no right to take back whatever I had already paid to you; it will be yours. Such a deal is definitely unlawful to the consensual opinion of the *Fuqaha*. For it involves the dements of risk and uncertainty and of eating people’s properties without a legal and proper right. If struck, such a deal shall void stand on its own. Contrary to this consensual opinion, Imam Ahmad bin Hambal permits such a type of business deal, as also do Abdullah bin Umar رضي الله عنه and a group of the Followers. But the earnest money shall have to be returned back in all circumstances. Ibn Abdul Barr says that the narration of its permission from the Prophet صلى الله عليه وسلم is not technically sound. If it is right, it will mean that the earnest money (*arbun*) shall have to be counted towards the value of the item sold. This is definitely lawful to all.”¹⁴³

Shah Wali Allah, a man of great juristic insights, has explained the narration in the following words:

نهى عن بيع العربان، أن يقدم إليه شئ من الثمن، فإن اشترى حسب من الثمن،
والأفهلوه مجاناً، وفيه معنى الميسر.

“The Prophet صلى الله عليه وسلم has outlawed the *arbun* sale deal because it involves an element of gambling.”¹⁴⁴

¹⁴³ Sharh Zarqani ala Mu’atta Malik, 3/251

¹⁴⁴ Hujjatulahal Baligha, 2/108, Fiqhus Sunnah, 3/140

To the same opinion subscribes the late ML. Ashraf Ali Thanawi: Answering a query, he writes:

The deal mentioned in the query is unlawful; the reason being that the item sold will be taken back from the purchaser if he failed to pay the total price in time, and the earnest money he paid to him will stand forfeited. In case this deal is regarded a lease contract, the stipulation to sell the item in exchange of the money procured as rental will be invalid. In fact the *Shariah* recognizes no sort of business deal which is business in a way but a lease deal in another way.”

(11)Mortgaging the sold product with the purchaser

The *Shariah* recognizes no mode of business deal which permits the buyer to simultaneously use the item he has purchased and keep it with him as mortgage, vesting the proprietary rights with the seller. The law of mortgage, which the Islamic *Shariah* recognizes, holds the rationale of a higher business value that is, to force the purchaser into paying the price of the product he purchased on credit or installments if he refused to pay it or dodges, using evasive tactics. In even clearer words, the law of mortgage is intended to facilitate the receiving of his payment by selling off the mortgage in the event of mortgager’s turning defaulter. Since the way of mortgaging mentioned in question misses this wisdom, that kind of mortgaging is not acceptable to the *Shariat*.¹⁴⁵

¹⁴⁵ Al-Fiqhul Islami wa Adillatuhu, 5/216

(12) What about the credit letter?

The Shariat permits a third person to guarantee the payment of the price of the purchased item to the seller. For it is obviously a sort of surety ship. According to the Fuqaha if the guarantee or surety ship is being offered at the behest of the principal debtor, the guarantor is permitted to take back his money or the product from him.¹⁴⁶ But if the surety has been given by a third person without the permission and request of the principal debtor, the guarantor now shall have no claim against him; it will be considered an act of supererogation on his part.¹⁴⁷ As far as the credit letter is concerned, it has now become a very common practice. There exist many individuals and institutions which offer the services of guarantee and surety in exchange of their fees and charges. On the face of it, the principles operating in the base of the Islamic Shariah seem not opposed to the legalization of it. The fees and charges of the guarantor, individual or the institutions, does not fall under the category of *riba*. To the view of Maulana Ashraf Ali Thanawi too a person may be engaged as an agent on the basis of the commission on surety ship and guarantee.

(13) Sale and purchase of the documents of the credit deals

¹⁴⁶ Durrul Mukhtar, 4/284, Imdadul Fatawa, 3/128

¹⁴⁷ Raddul Nuuhhtar, 4/284

Since such documents are purchased for a price less than the actual one, that is, the one which these documents actually contain, the sale and purchase of such documents shall be unlawful as it turns it an interest involving deal.

(14) Asking the payment before the stipulated time-frame with the offer of reducing a fraction thereof

Demanding the payment of price of the sold product before the time frame agreed upon between the vendor and vendee with an offer of remitting a portion of it is not lawful. For it is much the same as the credit. To quote an authority:

ذهب جمهور الفقهاء إلى تحريم وضع قدر من الدين نظير التعجيل بالقضاء قبل الأجل المتفق عليه،

“The majority of the *Fuqaha* is of the view that reducing a fragment of the time stipulated is not lawful,”¹⁴⁸.

Contrary to this view, however, Ibn Abbas and Imam Zafar hold that the creditor has the right to reduce the amount of his credit lent to the debtor and ask him the rest amount before the stipulated time period. I personally subscribe to the same view. Emergencies could not be excluded that might compel him to arrange funds when the creditor is left with no option other than asking his debtor return his credit before the time stipulated reducing a fragment thereof. To my opinion it deems appropriate to permit the creditor to avail of this option. The seller’s

¹⁴⁸ Fiqhus Sunnah, 3/167

/ creditor's remitting a part of the price or credit to the purchaser/ debtor will be regarded an act of donation. In business credit deal the enhancement of the value as opposed to the cash deal is definitely against the duration provided for the payment. If the seller is wishing to reduce the amount of the value of his merchandise and the purchaser too has no objection, such a deal will undoubtedly be lawful from the Shariah viewpoint.

ويرى ابن عباس وزفر جواز ذلك لما رواه ابن عباس أنّ النبي صلى الله عليه وسلم لما أمرنا بإخراج بني النضير جاءه ناس منهم، فقالوا: يا نبي الله! إنك أمرت بإخراجنا، ولنا على الناس ديون لم تحل" فقال رسول الله عليه وسلم: "ضعوا وتعجلوا-

"Abdullah bin Abbas narrated that when the Messenger of Allah commander us to expel the Bani Nazir from Madinah, some Nazirite Jews approached him and said: "O the Prophet of Allah! You have issued the order of our expulsion from Madinah and many people are under our credit and the stipulated time period has not yet approached. The Prophet صلى الله عليه وسلم said to them." Reduce the amount and make haste to realize the rest ".¹⁴⁹

(15)Credit business deal without the stipulated timeframe for the repayment of the price

Striking a credit business deal without clearly stipulating a timeframe over which the payment is to be made is doubtlessly unlawful. The credit business deal must contain a clause which clearly sets out the

¹⁴⁹ Fiqhus Sunnah 3/167

time period for the payment of the due amount. In fixing a time period the underlying rationale is to avert the dispute which is very likely to occur between the parties of the deal about the payment. The seller will begin to demand the payment of the price in the nearer future, while; on the other hand, the buyer may turn a deaf ear to his demand for the sake of further time. To nip the evil of dispute in the bud, and make all credit deals fully transparent, the Shariat has outlawed all such credit business dealings which involve any element of uncertainty. Lack of transparency and uncertainty is bound to engender mutual hate and malice. More so, if the time period for the repayment is fixed at the time of striking the credit business deal, there is little possibility of making or asking reduction in the deal amount, or demanding an earlier repayment thereof as the whole deal carries no legal affect from the *Shariah* standpoint.

والبيع با لثمن الحال والمؤجل...لكن لا بدّ أن يكون الأجل معلوماً، لئلاّ يفضى إلى ما يمنع الواجب بالعدّ وهو التسليم، فربما يطالب البائع في مدة قريبة والمشتري يؤخّر إلى بعيدها.

Sale deal may be struck both in cash and credit. But the time period must be clearly specified. This is to avoid what may cause hindrance to the finality of the deal ,that is, the mutual consent. If the period is not duly fixed, the seller may demand the earlier realization of the payment, and the buyer, contrariwise, will defer it to a period even farther.”¹⁵⁰

¹⁵⁰ Al Inayah alal - Hidayah with Fathul Qadir 6/262

(16) Demanding immediate repayment of total price in case of an inordinate delay in delivering the installments as per the schedule agreed upon

In case the buyer did not deliver the installments, or made inordinate delay in this regard, the seller may exercise his option to demand the total repaying of his due amount before the stipulated time frame, withdrawing the facility of the repayment over a fixed period of time.

(17) What if either one party of the credit business deal suffered death?

In case the business deal is struck on credit and the seller suffered death the sale agreement shall remain unchanged. The only difference will be that it with all the details and provisions shall return to the heirs of the seller. Contrariwise, if the purchaser died, before the repayment of the full value of he product, the grace-term shall terminate immediately, and the selling party shall recover his full payment from the estate of the deceased as the debts are to be paid first from the legacy.¹⁵¹

(18) Prize schemes under the installments mode of business deal

Since such prize schemes are meant merely to promote the business and to widen its scope, they shall remain lawful as long as they are free from the invalid provisions and the elements of *riba*. However, it will not be lawful to demand the prize or include

¹⁵¹ Majmaul Anhur 2/8

such a provision in the core of the agreement by exercising undue pressure on the selling party. For the business parties may demand each other only what falls under their mutual agreement. The tradesman, nevertheless, is permitted to adopt such measures to promote his business. The *Fuqaha* unanimously hold that the vendor may increase the merchandise and the vendee too may pay him more than the amount agreed upon.¹⁵²

(19) Securing the product by drawing lots and the setting the successful apart from the deal

This is obviously unlawful. For it is a sort of usury and gambling. In other words, it is more like the system of *azlam* (raffling with arrows) in vogue during the days of Ignorance. To explain the system presently, in vogue, the lots are cast for the distribution of the prizes among the people whose names come out in the lots- drawing system. Under this system some may get the product only for a lower price. But those who succeed in this scheme later are made to pay more to have the same product. Worse still, if the number of the purchasers increases at later draws, the purchasers may be made to pay even more than the price actually set out for the same product. To sum up the whole discussion, the Islamic Shariat has declared outlawed all such business deals in which the price and other conditions are not clearly set out, or a party of which is made to suffer the loss.

¹⁵² Mukhtasarul Quduri, chap. Murhaba, and Taulia,

Deals of Sale and Purchase on Installments

MI. Mohd. Umar bin Yusuf Falahi

(The questions have been left out; for the actual wording of the question the readers may please go through the questionnaire.)

Ans. to query no.1

The Fiqhi literature produced by all the major schools of Islamic jurisprudence establishes it beyond doubt that the price of an item sold on credit to a buyer may be enhanced as compared to that of the cash one. For the credit, in context of the business transaction is a legitimate reason for the enhancement of the price of a product.¹⁵³

Ans. to query no. 2

Many statements of the Hanfi and Shafai jurisprudents clearly set it out that a purchaser has the liberty to pay the price of the item by installments. Apart from the resourcelessness of the purchaser, which is regarded a commoner cause of purchasing on installments; the purchasers may face

¹⁵³ Tuhfatul Muhtaj on the Hawashi al-aSharwani,4/297, Badaius Sanai, 5/224, Muqaddamat Ibn Rushd on al-Mudawwana, 3/328, Al-Mugni, 4/21

legal obstructions in making heavy payments in cash. For the purchaser, therefore, it is permissible to make the payment of the due amount by installments provided this mode of business is agreed upon between the selling and purchasing parties.¹⁵⁴

Ans. to query no. 3

A careful study of the concerned juristic statements of the jurisprudents belonging to all the four Fiqhi schools establishes it well that the principal cause of unlawfulness of the mode of business under question is of unfixing the price of the product sold and purchased. If the ignorance and uncertainty about the value of the product is removed at the very time of striking the deal and the parties arrived at either one mode, the deal will turn lawful.¹⁵⁵

Ans. to query no. 4

Having gone through the wording of the query, it becomes clear that the seller makes not mention of the difference between the cash sale and the credit sale before the buyer. Now if the deal is struck on credit, he charges more money than he would have charged if the deal would have been struck in cash. The seller's so doing is fully right, involving no element of interest charging. For the extra money charged is definitely against the deferral of the payment. Deferral of payment is obviously a factor

¹⁵⁴ Fathul Aziz on al-Majmu, 9/240, Bahrur Raiq, 5/280, Shami, 4/26

¹⁵⁵ Badaius-Sanai, 5/158, Footnotes on al-Shirwani and Ibnul Qasim, 4/294, Bidayatul Mujtahid, 2/154, al-Mugni, 4/164,

which plays a role in so far as the enhancement of the value of the product, as established earlier.

Ans. to query no.5

According to the query, the seller puts both the cash and credit options for deal before him explaining to him the relevant difference of prices between both the modes of sale. Now if the parties struck the business deal without clearly agreeing upon either one mode and parted each other, their whole exercise is rendered void. The deal will be valid only when the parties arrived at either one mode of business, thereby removing the ignorance and uncertainty about the price of the product. Such a clearly stipulated business deal carries full legal effect to almost all the *Fuqaha* and the men of Islamic learning.

Ans. to query no.6

The demand of any extra money in the event of non-payment of the price of the product or installments within the stipulation timeframe is definitely a form of usury, apart from that such a stipulation was spelt out at the time of striking the deal or was included later to the terms of reference. The sort of price escalation indeed is from among the usurious practices in vogue during the pre-Islamic days of Ignorance. Riding the humankind of all such oppressive, usurious practices constituted a very significant objective of the advent of the Messenger of Allah, the Final Messenger of Allah (peace be on him) preached the Religion of Truth to mankind, and outlawed all such evil practice. Unfortunately, such devilish practices raised their ugly head again and

gripped all human societies. The Muslims are required to warn the people against involving in such devilish practices by explaining to them their evil. On the invalidity of such stipulations, and the deals based on them all the *Fuqaha* are agreed.¹⁵⁶

Ans. to query no.7

According to the words of the query the deal was struck on one mode out of the two. Once the deal is struck, the seller can include no extra condition to the agreement binding the purchaser to pay more in case he fails to pay the amount or the installments according to the stipulated time period. Any such condition shall be regarded a form of usury, hence completely unlawful.

Ans. to query no.8

The query involves three aspects *vis-a-vis* the pledge,(1) pledger's benefiting from the article lying with him as pledge,(2) destruction of the pledged property or its getting damaged,(3) and how to recover the price of the product through the pledged property if the purchaser is not paying the due amount according to the time period agreed upon.

As far as the first aspect of the query is concerned, a careful study of juristic literature suggests that the mortgagee can benefit from the mortgaged property only if the mortgager has so permitted him. In even

¹⁵⁶ Fiqhus Sunnah 3/135, Fathul Aziz 8/162, Tuhfa on al-Hawashi 4/272, Raddul Muhtar 4/197, Muqaddamate Ibn Rushd on al-Mudawwana 3/18, Illamul Muqieen 2/135

clearer words, the profitability of the mortgaged property hinges completely on the permission of the pledger.¹⁵⁷

Nevertheless, the permission of benefiting from a mortgaged property seems a little strange to the nature of the Islamic Fiqh. For the mortgagee is entitled to recover his full amount according to the time-frame, and his benefiting from the pledged property can not be termed but as a sort of usury, the permission of which is very likely bound to open the door of usurious practices, especially in our age, when such practices have become quite commoner. So, as a precaution, and to shut the door of such evil, exploitive practices down, it will be more prudent not to permit the benefiting from the mortgaged properties, notwithstanding the permission of some *Fuqaha*. So has opined the author of *Fiqhu Sunnah*, and Ibn Abideen Shami too shares the same opinion.¹⁵⁸

As regards the second aspect, according to the Shafiees, Malikites and the Hambalites the mortgaged property is just a trust in the custody of the mortgagee. If it suffered destruction or got damaged with no role of the mortgagee, the mortgagee shall not be held responsible for its destruction or damage, and the mortgager shall have

¹⁵⁷ Al-Majmu, Sharhul Muhazzab 13/235, Raddul Muhtar 5/343, Al-Mudawwanatul Kubra 4/163, Al-Mugni 4/250, and al-Fiqhul Islami wa Adillatuhu 5/259

¹⁵⁸ For more detail, please see al-Durrul Mukhtar, 5/343

to make the full payment of the dues to the mortgagee.¹⁵⁹

The Hanafi viewpoint, contrariwise, is that the property lying with the mortgagee as mortgage holds the status of surety; in the event of its destruction or getting damaged, the mortgagee shall have to bear full responsibility, and, as a result, from his due amount the value of the mortgage lost shall be deducted.¹⁶⁰

As for the third aspect of the query, ie, inordinate delay in paying the due he owes to seller / mortgagee, the Shafiee jurists hold that the matter shall be taken to the court of law and the law officer will force the mortgager into paying the dues he owes to the mortgagee by making him sell off the mortgaged property. If the purchaser turned a deaf ear even to the court notice, the law officer himself, in his official capacity, will put the mortgaged property to sell and pay the due amount of the mortgagee.¹⁶¹ The general Hanafi standpoint is that the *Qazi* has the authority to sell off the mortgaged property to facilitate the recovery of the dues of the mortgagee. However, Imam Abu Hanifa himself is of the view that the *Qazi* has no legal authority to sell off the mortgage without the permission of the mortgager, the real owner of the mortgaged property. To Imam Abu Yusuf and Imam Muhammad the *Qazi* may sell off the mortgaged property even against the will of

¹⁵⁹ Fathul Aziz Alal-Majmu, 10/138, al-Mudawwanatul Kubra, 4/152, al-Mugni, 4/257.

¹⁶⁰ Fatawa Hindiya, 5/448

¹⁶¹ Fathul Aziz on al-Majmu, 10/127 and the subsequent pages

the mortgager. The author of the Shami and many others subscribe to the latter view, and the *Fatwa* too is issued according to this view. The Malikites as well as the Hambalites too share the same view.¹⁶²

Ans. to query no. 9

The Hanafi and the Shafiee literature tells that, in spite of the agreement between the selling and buying parties, if the seller entertains a fear that the buyer may dodge the payment after getting possession of the sold article, the seller should be given the permission to keep the sold item in his possession until he recovers the full or a significant part of the price from the buyer. In our age when the moral value and the professional ethics have deeply sunk, there exists every likelihood of such bitter experiences from the buyers. So in the larger interest of the selling party, there seems no evil if the seller is vested with such a right.¹⁶³

Ans. to query no. 10

According to the opinion of the Shafiee jurists the seller must return back to the buyer whatever he has thus far received from him as part of the price of the item sold to him, because the item sold continues to be still in possession of the seller. Now if the sale agreement between the parties is being terminated because of non-delivering of the due installments, or due to any other reason, the seller has no right

¹⁶² Al-Mudawwanatul kubra, 4/156, al-Mugni, 4/262

¹⁶³ Tuhfatul Muhtaj on the Hawashi al-Shirwani, 4/425, Badaiusanai, 5/249, Raddul Muhtar, 4/47

whatsoever to withhold the received installments. This act will indeed be regarded a gross injustice towards the buyer rather a sort of usury as this withholding now is against nothing. Such a mode of business deal bears full similarity to the *bay, al-arbun*, declared unlawful in the *ahadith*.¹⁶⁴ The Maliki standpoint describes this mode of business as a sort of usurpation and eating up the other people's properties without a legitimate right of so doing.¹⁶⁵ The Hamblites, contrariwise, see no wrong in this mode of business deals.¹⁶⁶ So far as the Hanafi standpoint *vis-à-vis* this withholding is concerned, I could find no clear statement in the literature concerned. But there general principles and other statements, though not directly related the issue in question suggest that the unlawfulness must be the Hanafi view *vis-à-vis* the withholding of the installments received from the purchaser against nothing. The unlawfulness deems fitter to be applied to this sort of business as it will open the door of usurping the property of the poor turning unable to deliver the installments any longer due to any reason.

Ans. to query no.11

The law of mortgage essentially requires that the mortgagee must have the possession of the mortgage. The Hanafis and the Shafees hold that without taking the mortgaged property in to his possession the mortgagee can not give to the custody of the mortgager or a third party under any situation. If the

¹⁶⁴ Tufatul Muhtaj, on the Hawashi, 4/322

¹⁶⁵ Sharh al-Kabir on Hashiya al-Dusuqi, 3/63

¹⁶⁶ Al-Mugni, 4/160

mortgagee decides to mortgage an already mortgaged property with the mortgager, the mortgagee shall be required to take the property into his possession and then to mortgage it with the mortgager.¹⁶⁷

Ans. to query no. 12

If the query is about the charges for the guaranteeing and the surety ship in vogue now-days, the practice may involve two aspects: charging somebody for providing such service. So far as the paying of the charges for such services is concerned, circumstances may compel the purchasing party to have the cover of surety ship of such persons who lend their such services to needy parties for charges. A person facing such circumstances will be permitted to pay for the cover of surety ship. The case is very much like to giving bribe to secure one's legitimate right if one fears losing it otherwise. But charging the needy person for the provision of such service like surety-ship apparently deems unlawful. For the surety-ship, to the Islamic Sharihat, is a donative transaction, an act of charity meant to support the needy in times of need. Such a donative act fetches no reward whatsoever. The Fiqhi literature, mostly under the chapters on *kafalah* (surety-ship) explains that if the guarantor paid the debt of a debtor to his creditor without the request and permission of the debtor, the guarantor has no legal right to ask him whatever he has paid on his behalf. It is because of the fact that the guarantor's this act is held a gesture of charity and

¹⁶⁷ Tuhfatul Muhtaj on the Hawashi, 5/67, Badaius Sanai, 6/137

goodness. Given the fact as above, the guarantor and surety are better advised not to charge the guaranteed for providing the guarantee and surety ship to the needy.

Ans. to query no.13

The sale and purchase of the documents of credit business deals seems unlawful as it is very much similar to the sale and purchase of the asset of one kind for that of another kind except that both the kinds exactly correspond to each other with respect of their value. It is a well-founded principle of the Shariat that the credit and below par sale and purchase of the GROWING ASSETS is perfectly unlawful. The sale and purchase of such documents essentially involves the element of credit and quantitative disparity *vis-à-vis* the business of two corresponding assets. The element of disparity stands clear because such documents are sold and purchased for a value below the par with that of these documents contain. As regards the element of credit, it is also obvious as the purchaser of these documents recovers his money later at the time fixed. In short, the sale and purchase of such documents seems unlawful to the juristic principles of the Hanafis and the Shafiee Schools.¹⁶⁸

Ans. to query no.14

Since the deferral (*tajil*) is not a fit reason for any enhancement of the amount lent, the reduction in amount in order to recover the rest immediately is

¹⁶⁸ Raddul-Muhtar 4/261, al-Majmu Sharh al-Muhazzab 9/304

not permissible because reduction in amount is essentially against the immediateness of the repayment. Some body might entertain a doubt here about the absoluteness of the principle of deferral or immediateness of the repayment. So, it seems desirable here to clear the doubt. If the credit transaction involves only money and cash, ie, a person has lent money to somebody else for a time, neither the debtor nor the creditor is permitted to reduce the amount for an earlier/immediate payment. But the deferral of repayment may be a legitimate cause for the enhancement of the price, amount of money is against the merchandise.¹⁶⁹

Ans. to query no. 15

According to the query the credit transaction has been struck without the specification of time. In such a situation two cases are possible. Either specification of time period in the same sitting to remove the unspecification, or leave the sitting without so doing. In the first case the transaction will take place and carry full legal effect. In the latter case if the selling and buying parties separated without specification and the specification took place later in their future meeting, the business deal will be fully lawful. It is because of the fact that their earlier transaction was fully invalid due to uncertainty of the time frame of the payment; it is only the next according to which the things will stand, irrespective of that they agree to the price fixed earlier or negotiate the deal a- new.

¹⁶⁹ For further detail of the Hanafi and the Shafiee viewpoints see Tuhfatul Muhtaj on the Hawashi, 5/192, al-Taliqul Mummajj ad on al-Muatta of Imam Muhammad

The case of reduction in value for the immediate recovery of the rest is quite different and the two must not be intermingled. The two cases might have been analogous had the first deal carried legal effect, but in the situation given it is fully irrelevant. Therefore, the transaction in question is lawful.

Ans. to query no. 16

According to the Hanafi and the Shafiee view making such a demand from the buyer is the right of the seller. For the system of installments to recover the product value does not make the deal a credit one, and he therefore has full right to demand the buyer his full payment any time.¹⁷⁰

Ans. to query no.17

According to the Hanafi and Shafiee view- points, the death of the creditor/ seller will make no difference to the deal, and the case with all its concerned details will turn to his heirs. But the death of the debtor shall terminate the whole deal and the creditor will recover his credit / price from the estate of the deceased.

Ans. to query no. 18

According to the query, in this mode of business both the item on sale and its value stand specified. The prize scheme is definitely a third aspect of the deal which the trader adopts in order to promote his business and attract a larger number of the buyers.

¹⁷⁰ Al-Umm(of Imam Shafiee),3/33,Raddul Muhtar,4/26

For this purpose if the seller makes an announcement to distribute the prizes among his would-be purchasers of a certain product, it is in fact a sort of adding more to the merchandise which is fully lawful. This mode of business fetches comparatively less profit but attracts more purchasers. It involves no element of gambling or usury. For gambling stands for a deal the fate of which is completely unknown; the present scheme of prize distribution, on the contrary, has a completely known fate, that is, the article to be given in prize. The object of sale and its price both stand already known.

To encapsulate the whole discussion, this way of business promotion is fully lawful as it is completely free from all such elements which are bound to turn a business deal into an unlawful one. Since it is a newer form of business which did not exist in the past, the Fiqhi literature has no clear ruling regarding this. Only the method of reasoning, in the light of the rulings of the *Shariat vis-à-vis* similar cases, is the only way to determine the *Shariat* stand point towards similar quarries.

Ans. to query no. 19

This mode of business deal apparently seems unlawful. It is because of the fact that the price of the object on sale is not known at the time of striking the deal; nor the time of its availability is specified. As a matter of rule, both the price and the expected time of its availability must be clearly specified in the sitting so that no dispute between the parties could arise

later. Un-specification is the main reason which renders the deal invalid.¹⁷¹

Nevertheless, the only apparent form of this case is not just a sufficient reason to give a categorical verdict on it. The ignorance, which renders a business deal invalid, has to be assessed and then to be determined whether it is to be termed as gross or light in nature and implication. Only the gross ignorance renders the deal invalid as it, in most cases, breeds disputes between the parties. Moreover, judged from the angle of the parties, mutual consent, which plays a greater role in contracting a business deal, seems acceptable to the norms of the *Shariat* if the ignorance involved is not gross, hence not feared to lead to a dispute and discord. Such modes of business now have become a part of the established usage, and the parties involved are fully agreed. I see no wrong in the legality of such modes of contracting business deals as it seemingly involves no element of unlawfulness.

¹⁷¹ Raddul Muhar on Durrul Mukhtar, 4/23

Sale and Purchase by Installments

MI. Mohd. Anwar bin Tahir Qasmi¹⁷²

Ans. to question no.1

Zainul Abidin Ali bin al-Husain, al-Nasir, al-Mansur bil-Allah and Hadiviah (all known jurists of Islam) are of the view that it is not permissible for a businessman to sell his products on credit at a price exceeding to that of the spot sale. To their opinion the excess money is in exchange of the credit term; it is a sort of usury, hence unlawful. Contrary to this view, the Hanafites, the Shafites, Zaid bin Ali, Muayyad bil- Allah and the majority of the Fuqaha hold that the credit sale may fetch an enhanced price as compared to that of the cash sale transaction and the seller has full legal right to sell his product at a higher price if the price is to be received in future. To the later view this enhancement constitutes no sort of usury.¹⁷³ The latter standpoint is just right and more reasonable. For, quite obviously, the seller enjoys a fuller liberty to sell off his merchandize at a cost he regards appropriate, but not touching the limit of the grave deception; as it will be an unkind gesture towards his fellow human being. The sale transaction, nonetheless, will be lawful.

¹⁷² Patna (Bihar)

¹⁷³ Nailul Awatar 5/182

Ans. to question no. 2

Sale and purchase on installments is indeed a mode of the credit sale. According to a juristic authority, the mode of installments and the deferral of payment share a shade of relationship. For the mode of installments essentially involves the deferment of the payment. All types of deferment, on the other hand, do not essentially involve the installments.¹⁷⁴

So far as the legal status of the credit sale is concerned, the Qur'an and the *Sunnah*, the primary sources of the Islamic Shariat, clearly hold it lawful. To quote the Quran,

وأحل الله البيع وحرم الربوا

And Allah has permitted the trade, and forbidden the usury¹⁷⁵

The notable term in the *ayah* being the *bay'* (sale), which has been employed here used without no restriction at all. So it includes both spot sale and the credit sale. The quoted Qur'anic verse establishes the legality of the sale transactions apart from that they are spot sales or the credit sales. As regards the position of the *Sunnah*, the Holy Prophet himself has purchased armor from a Jew on credit.¹⁷⁶ Sale and purchase on installment is nothing but a variant of the credit sale, as we have just established. The only

¹⁷⁴ Durrul Hakkan, 2/110

¹⁷⁵ Al-Qura'an S.2 A.275

¹⁷⁶ Durarul-Aukkam 2/194

difference being that in the latter mode of business the payment of the item sold is realized in more parts than one. The deferred sale does not essentially stipulate the one-time payment of the whole price. The same mode of business is termed as the sale and purchase on installments. But both the credit sale and the sale on installments stipulate that the selling and the purchasing parties must definitely specify the time period in the same sitting over which the delivery of all the installments is to be made.¹⁷⁷

Ans. to question no.3 (a)

If the seller mentions both the credit and the spot price of his merchandise before the buyer and the buyer selected either one option in the same meeting, the transaction will take place with full legal effect. But if their meeting terminated without such a definite selection on the part of the buyer, the transaction will not take place as the price and the mode of the sale deal were still undecided. The anonymity of the price and uncertainty about the mode of transaction are essentially bound to undo such a business transaction.¹⁷⁸ The Malikite viewpoint, however, is relatively resilient *vis-à-vis* such a transactional problem. To them, if the purchaser agreed to either one price, and the same is made clear in the very session, the transaction will be valid. The majority view, which is also shared by the Hanafis and the Shafies, nevertheless, is sounder.

¹⁷⁷ Mujallah al- Fiqhul Islami 5th issue part 1. P. 179, Durarul Ahkam 2/195

¹⁷⁸ Al-Mugni, 4/258, 259, Durrul Hakkam, 2/192, Bidayatul Mujtahid,

(b) Mentioning difference prices before the purchaser

Whether a business transaction is contracted on the basis of cash payment or on credit if the seller is reselling his merchandize with a stated profit the *Fuqaha* hold it necessary for the seller to mention separately to the buyer the capital and his profit prices, making it clear to him whether he had purchased it in cash or on credit, for the spot sale price and the credit sale price often differs from each other.¹⁷⁹

Ans. to question no. 4

Same as put under the first question.

Ans. to question no. 5

Same as the answer to question no. 3¹⁸⁰

Ans. to question no. 6,7

Going by the words of the question, any type of profit-making in exchange of the deferral of the payment shall definitely be unlawful. Such an earning is indeed a sort of usury.¹⁸¹

¹⁷⁹ Al-Mugni, 4/199, Bidayatul-Mujahid, 2/161, Fathul Aziz of Iman Rafiee, Badai, 5/224

¹⁸⁰ Surkhasi, al-Mabsoot, 8/13, Badai, 5/158

¹⁸¹ For detail, see Jassas, Abu Bakar, Ahkamul Qur'an,1/465

Ans. to question no. 8

Mortgagee's benefiting from the mortgaged property

The view of the *Fuqaha* is different as regards the benefiting of the mortgagee from a mortgaged property under his custody. These views are set out below.

(a) The Malikites permit the mortgagee to benefit from a mortgage if three conditions are met:

(1) While contracting the mortgage deal the same point was made clear.

(2) The duration of benefiting is specified and.

(3) The mortgaged property is not for a loan in cash. If any one condition out of the three ones is not met, the benefiting from a mortgaged property will be unlawful. The Hambalities make difference between different types of mortgaged properties. So, if the mortgaged property, for instance, is an animal of ride and burden or produces milk, the mortgagee may benefit from it as far as his expenses and labour charges involve even if the mortgager has not so allowed him. In case the mortgaged property is of otherwise type, the mortgagee is permitted to benefit from it on condition that the benefiting is not in exchange of a cash loan or credit lent to the mortgager. Moreover, this benefiting must be against a workable charge. In case any one of these two conditions is missed, the mortgagee shall not be allowed to

benefit from a mortgage. As regards the Shafiee standpoint, the al-Mausuatul Fiqhiya, (a very valuable mutli- volume work in the Arabic language, prepared and published by the government of Kuwait), puts it in the following words:

وقالت الشافعية: ليس للمرتهن في المرهون إلا حق الإستيثاق، فيمنع
The من كل تصرف أو انتفاع بالعين المرهونة"¹⁸²
Shafiees hold that the mortgagee has no right in the mortgaged property except keeping it in his custody. He has no right whatsoever to benefit from it or exercise any type of liberty to utilize the mortgaged property."¹⁸²

As for the Hanafi standpoint, four views are found in the Hanafi literature on *Fiqh*. They are as follows:

- (1) The mortgagee is not permitted by the Shariat to benefit from a mortgaged property.¹⁸³
- (2) The mortgagee may benefit from the mortgaged property on condition that the mortgager has so allowed him.¹⁸⁴
- (3) It is unadvisable for the mortgagee to benefit from the mortgaged property.
- (4) The mortgagee cannot benefit from a mortgaged property if he has included such a stipulation in the terms and condition of the

¹⁸² Al-Mausu'atul Fiqhiya 23/185

¹⁸³ Raddul Muhtar 5/310

¹⁸⁴ Hidayah 4/506

deal. If the terms and conditions of the mortgage deal do not have such a stipulation nor the environment of the society and its custom and usage have such an implication, but the mortgager has so allowed him without external compulsion, the mortgagee may benefit from the mortgaged property. But if the mortgager is not willing to allow the mortgagee to the benefit from the mortgaged property or the social custom and the known practice is of benefiting from the mortgage, the mortgagee shall not be allowed to so doing. For the known social practices are treated as the stipulations.¹⁸⁵

What if the mortgaged property perished/ got damaged under the custody of the mortgagee?

The Shafiees and the Hambalites are of the opinion that if the mortgaged property perished/ got damaged without a fault of the mortgagee; the mortgagee shall not be held responsible for it. In otherwise case, however, he shall be held responsible for the destruction of the mortgaged property. Actually, to the Shafiee and the Hambali viewpoint the possession of the mortgagee on the mortgage is regarded as the possession of trust: so they tread the mortgage as the trust which is the same as put above.¹⁸⁶

¹⁸⁵ Raddul Muhtar, 5/310-11 Allama Shami tends to prefer the last option as it seems sound.

¹⁸⁶ Al-Mugni, 2/438, Sharh al-Muhazzab 13/249

But the Malikites differentiate between the concealable and the non-concealable things. To illustrate the point if the mortgaged property is from among the things which could possibly be concealed and the mortgagee is not able to prove that the mortgaged property has perished with no fault on his part, he can not escape the responsibility.

But in case the perished property belonged to the category of things which couldn't be concealed from the public eyes, the mortgagee shall not be held liable, except that it is established that the destruction/damage was caused with the fault and negligence of the mortgagee.¹⁸⁷ *Visa-vis* the perished mortgaged property the Hanafi viewpoint is that the mortgager shall be held liable to the thing of the comparatively lesser value out of the mortgaged property and the amount of the credit to be recovered from the mortgager. If the two stand equal in terms of their value, the debtor / purchaser will be required to pay nothing to the mortgagee/creditor. If the credit exceeds the mortgaged property in terms of value, the mortgagee will have the right to ask the mortgager/debtor what the exceeds to the value of the mortgaged property. If, likewise, the mortgaged property valued more than that the mortgager owed to the mortgagee, the latter shall have to return the excess to the mortgager/debtor. To summaries the point, in case the mortgaged property perished under the custody of the mortgagee, the LAW OF TRUST shall be invoked only on the amount of value which exceeded the value of the credit if it has suffered

¹⁸⁷ Bidayaul- Mujtahid 2/208

destruction due to negligence on the part of the mortgagee. In case the mortgagee is not found guilty of negligence, he shall not be held liable for its destruction.¹⁸⁸

Recovery of credit by the mortgaged property

In case the mortgager failed to repay the due amount of debt/price within the time period, the mortgagee will demand him his due and serve him the reminder. If he repaid, so far so good, but if he turned a deaf ear to the mortgagee's repeated reminders or repaid only a portion of the debt of the due price and withheld the rest, the agent of the mortgager will be required to sell off the mortgaged property and repay the due debt from the price of it. To this extent all the schools of Islamic law hold a unanimous standpoint. But if the mortgager neither is allowing the sale of the mortgaged property nor is prepared to repay the debt the Hambalites and the Shafites leave the matter up to the discretion of the Qazi (judge of the Islamic court of justice). He may force the mortgager into repaying the dues of the mortgagee either by selling off his property lying in pledge with the mortgagee or by any other way. The Qazi himself is authorized by law to sell off the mortgaged property in his official capacity or may get it sold by a law officer under him. The Qazi may imprison the mortgager if the circumstances so require.¹⁸⁹ The Malikites do not authorize the Qazi to imprison the mortgager; but to sell off the mortgaged property by himself to settle

¹⁸⁸ Fatawa Hindiyah 5/447

¹⁸⁹ Al-Mugni 2/447, Nihayatul Muhtaj, 4/273

the debt.¹⁹⁰ From among the Hanafites Imam Abu Yusuf and Imam Muhammad are inclined to the same view. Imam Abu Hanifa too does not authorize the Qazi to sell off the property lying in mortgage; he should force him into selling it off to repay the debt. The Qazi may put the mortgager to prison if he does not yield to the demand of the law.¹⁹¹ The *fatwa* goes according to the view of the *Sahibain* (Abu Yusuf and Muhammad)¹⁹² to avoid any inconvenience in future the mortgagee is better advised to appoint a proxy on behalf of the mortgager so as to meet an undesirable situation of non-payment through the agency of the agent/proxy.

¹⁹⁰ Bidayatul Mujthid, 2/207

¹⁹¹ Badai, 6/148

¹⁹² Raddaul Muhtar 5/359

Group Discussion

Position of the Islamic Shariat On Sale and purchase by Installments

(Following is the group discussion which was arranged after the papers contributed by the Ulama were read out by their authors in the Tenth Seminar of the Islamic Fiqh Academy of India.)

Qazi Mujahidul Islam puts question before Dr Ihsanul Haq, an expert in the national banking law and the modern business affairs, in relation to the sale and purchase on installments.

I call on Mr. Ehsanul Haq to explain briefly the relationship between the mode of business called 'sale and purchase on installments' and the modern system of banking, and how it operates on the level of international business. Since this mode of business has become common in our age, we would like to know about it first only as a matter of practice on the national and international levels, apart from the Shariah position regarding it.

Mr Ehsanul Haq responds

As far as the sale and purchase on installments is concerned, it simply facilitates the purchase of a product for a purchaser who wishes to have it in spite of the fact that he is unable to pay the total price of the commodity in cash and in a single attempt. In the practical terminology of the banking system the excess money charged with the receiving of each installment is termed as interest. On the rest amount the interest is levied. The *modus operandi* is that the amount received from the debtor is deducted from the total and the amount of interest the bank received from him in the form of installment is included to the overall income of the bank. In future the bank will levy the interest only on the rest amount the debtor still owes to the bank. This being the practice of the bank *visa-vis* the sale and purchase on installment mode of business.

Qazi Sb speaks again to seek further explanation of the point

My second question was about its operationality. For this I have to talk to Dr Khatkhate. It is a well-known fact of the modern economy and trade system that it rests on the concept of interest rather usury, to use even more correct expression, so much so that one can't even think of it or any other of its business schemes divested of the usurious practices. The problem we are facing is how to make the present financial institutions apply the Islamic principles of trade and commerce to their business schemes. Such financial institutions collect money and invest it in

their different beneficial schemes. Although the fact that these financial institutions are heading, though slowly, to adopt the Islamic principles of business and investment like mutual benefit, partnership, company, etc, can not be denied. And we are hopeful that in the future years this, *insha Allah*, will pave the ground for further advancement in this regard. Also, we are sure that the Allah--fearing Muslim economists will succeed in developing an interest-free system of economy and trade mechanism. The problem in hand and the topic of discussion is the sale and purchase on installments which has now become an individual problem in which most of people are involved by this way or that. Simply speaking, the sale and purchase on installments is only a way of purchase. For example, I approach your shop and purchase a commodity and said to you that at the time I am out of money; after a period of time I will pay the price in one attempt or by installments. This mode of sale and purchase is indeed from among the day-today affairs, commodities are purchased on credit with a promise to pay the price amount either in one attempt or by installments. It is of course a mode of business and an activity recognized by law and Shariat as such. However, the situation assumes new dimensions and delicacy when such modes of business are adopted by investment companies and public associations. The *modus operandi* of such investment bodies is that they generally sell their commodities on credit at comparatively higher price than that of the cash deal. Such credit deals are generally struck in two ways. One is that an agreement is signed between the selling and buying parties wherein it is clearly stated

that if the payment is to be made after six months the price of the commodity will be so and so; and the same commodity will be sold at an amount so and so if the deal is to be struck on the credit of one year, for example. In this mode, to be more precise, the difference between the prices of the same commodity in respect to two different time periods is clearly laid out is that the purchaser himself asks the seller to sell a commodity to him on a credit of six months, for instance, for an amount so and so (while he knows that the price of the same commodity is lesser in the event of the spot sale). Thus the parties stand clearly aware of the difference of price the cash deal and the credit deal involve. This mode of credit business is gaining currency not just in our country, India, but on the international level as well. The way of selling and purchasing on installments is also thriving. In this perspective I would like to know how these modes of business operate in the existing banking system as well as in the financial / investment institutions which are endeavoring to walk along the lines of the Islamic system of economy in India and elsewhere. I think Mr M.H. KhatKhate sb, who has been the director of the Baitul Nasr, a known financial institution, may guide us better in this respect. To our good fortune, we have among us here many more expert economists. We will benefit from their knowledge and experience later. *(Here somebody spoke and expressed his views but could not be heard clearly, as a result, his words turned unintelligible.)*

Another person speaks

It is of course right that no extra amount could be levied on the amount of the debt as it will admittedly be a usurious practice. But what could be done to punish the debtor if he is dodging the payment despite his capacity? Could a fine in terms of finance be imposed on such a debtor who is found guilty of an intentional delay? If so, what shall be the use of the amount collected as fine? These are few very important questions. If the present Seminar arrives at conclusive decisions *visa-vis* these questions, it will be of immense help for the Islamic financial institution and will serve them as guide line.

Qazi sb speaks

As far as the credit sale and purchase is concerned, its legality is well established and the Holy Prophet صلى الله عليه وسلم himself has practiced it. We know that the Holy Prophet صلى الله عليه وسلم bought an armour on credit from a Jew and he was not able to pay the price of armour to the seller Jew even until his sad demise. So, the legality of the credit sale-purchase transaction stands established beyond doubt. As regards the juristic doctrine:

الأمر بمقاصدها، ولا عبرة للألفاظ والمباني، إنما العبرة للمعاني:

(The practices shall be judged by their aims and objectives; it is the meaning which actually matters. rather than the words and expressions), which has been put forward by our friend, about it I would like to put that this principle is not a generic

one. Aims and objectives may differ in terms of their practicality and levels of usefulness. Here I would like to call the attention of the participants and discussants toward an important point to which Shaikh Wahba Zuhaili has pointed in his article. The point made by the Shaikh is the legality of the *bay'Salam* (sale with advance payment for future delivery of the goods). Suppose here is a farmer who for the time being stands Empty-handed, but after a period of months he expects a rich crop from his fields. To manage his home affairs and also to spend on the farming, he stands in need to receive the price of his crop in advance for a lower price in comparison of that the ripe crop is expected to fetch in the open market. This difference of prices too falls under the definition and scope of the exploitation according to the definition of Shams Pirzada sb. undeniably, the *bay'Salam* deos involve an element of exploitation and perhaps for the same reason it is termed as *bay al-Mafalis*. Given the facts as above, I entertain no reluctance in admitting the presence of an element of exploitation in the *bay' salam* and in the credit sale or the sale and purchase by installments with the enhancement of price. But, despite this element, the *bay' salam* enjoys full legality based on the Hadith and the collective opinion of the Ummah and the *Fuqaha*. In the *bay'salam* the payment is made in advance and the goods are taken after a period of time. In the *bay' bil Taqseet* (sale and purchase on installments), however, the goods are procured first and then the price is paid later in installments according to the time-frame agreed upon between the parties. I 'm sorry, I think it inappropriate to express my personal opinion regarding the problem in hand.

Still, I think that the *bay'bil Taqseet* and the *bay' Salam* both are analogous with each other and share very much in common. This point is very important and provides a sufficient ground for further deliberation. In this connection a very careful study of the *hadith* cited by Imam Shafiee, who is doubtlessly a true diver into the deeper meanings of the *hadith*, is required. The article of Shaikh Wahba Zuhaili contains a detailed treatment of the said *hadith* and sheds ample light on its various aspects. I ask brother Haroon to have Xerox copies of it so that our Ulama may duly benefit from it as its publication in the printed form might take a longer time. Here we are to ponder over similar issues, rather than to impose personal views on others. Only Allah *Subhanahu wa ta'ala* is asked to lead us to whatever is right, good and beneficial for us and the Ummah at large. After these words I conclude my brief talk. If anybody wants to put his opinion here, he is welcomed.

Somebody speaks

In the *bay'Salam* the price is paid first and the goods are taken later. In the credit sale and purchase, by contrast, the things stand quite opposite to the *bay'Salam*; the goods are delivered first and the price is received after a period of time. So, both the modes of business are not analogous to each other. What feature exists in the credit sale and purchase which might be taken as the *ratio legis* between both the modes of business transactions i.e, the *bay'Salam* and the *bay' bil Taqseet*?

(Somebody spoke again but the words are not clear)

The Qazi sb. speaks

The *bay'Salam* of course is a very blessed sort of business transaction as compared to what is generally practiced in the rural areas where ONE AND A QUARTER, ONE AND HALF, EVEN THE DOUBLE is in common practice. A rich farmer gives something to a poor and needy farmer today and receives back from the produce of the later one and quarter, or one and the half, or even the double of what he had given him earlier in advance. In the past it constituted the general practice; in some areas it is still in vogue. Such cursed practices by no means could be termed as business transactions; it is in fact the exchange of one kind of object for another kind of object. We are trying to dissuade the people from such exploitive practices and the situation has become comparatively better now. But a very important point of thinking here being that the said exchange is not between two types of the GROWING ASSETS. Still, your point is worth consideration that we should direct the Muslim financial institutions to tread the path of justness and appropriateness in selling their goods on credit/installments, although it is presumably true that the goods sold on credit would be costlier as compared to the spot sale. We would like to know the opinions of other discussants as well.

(A discussant spoke but the voice was not intelligibly clear.)

The Qazi sb. speaks again

Exploitation is unacceptable to the Shariat and as such deserves every type of discouragement. But it is too difficult to give it a water-tight definition. To contain the exploitation and the exploitive mentality the law of the Shariat has arrangement; the hoarding is declared prohibited. In order to keep the rates, at least of the commoner commodities, in control the Islamic State has the authority to introduce the checks. All such provisions are meant only to minimize the problem and hardship the general public may face otherwise. Admittedly, the people have to purchase the things on credit only when they have no option other than so doing. But it would be improper to exploit the need of the needy and sell the merchandise at an unreasonably higher price, and take undue advantage of the customer's compulsions. We are in a position to advise, at least our Islamic financial bodies that they sell their merchandise at a reasonable price. Their credit sale must not represent the usurious and exploitive mentality which, unfortunately, is holding sway over most business establishments. If such checks are introduced on the part of the board of the Ulama, it is expected to bear good results.

Dr Mohd. Manzoor Alam speaks

To have an assessment of the exploitive mentality of the 'Islamic financial bodies I would like to furnish an example here. Loan facilities are available both with Islamic financial institutions and with banks and other interest-based institutions. Both take their

money back by installments, but, to our disappointment, there exists a yawning difference between the rates of interest/charges the customer has to pay to them. To illustrate the point, suppose a person wants to purchase a car through an interest-free Muslim financial institution, he will have to pay a far greater amount of money to the Islamic financial institution for the car in comparison to the amount he would have to pay had he purchased the same car through an interest-based financial institution. Those who want to keep themselves away from the interest-based institutions for the fulfillment of their need have been made to pay even more for the purchase of the same item if it is bought through an interest-free Muslim institution. To my opinion, the trade activities of the Islamic interest-free financial institutions do involve an element of exploitation. Deplorably, this phenomenon, which is shared by almost all the interest-free Islamic financial institutions, is casting a very negative impact on the minds of the general Muslims and the majority of them is reluctant in benefiting from the services of such Islamic financial institutions. Seizing upon the present opportunity, which has gathered many personalities here, I feel compelled to call their attention to this bitter reality. If you are unable to make your business dealings cheaper than the interest-based institutions, you may charge for your financial services only as much as the interest-based financial institutions do, so that the people take not the excess to be a tax of Islam on them.

A discussant speaks

We have just discussed different aspects of the exploitation, and in between many related topics were also discussed at length. For the moment we are discussing the question of the sale and purchase on installments. I 'm also attached to an interest-free Muslim financial institution and in a better position to give the opinion on the much-talked about exploitation. I feel myself constrained to say that at present the things stand contrary to what is generally being claimed. The interest-free Muslim financial institutions are bearing the burden of exploitation on the part of the general public. The list of the ways of exploitation is too long to be assessed. Undeniably, the aspect of the institutions' exploitation of the public might be their over-charging, as Dr Manzoor Alam sb. feels. Actually there might be two reasons which operate in delaying the payment and delivering the installments according to the time-frame: one, compulsion and financial problem; and the other dodging the payment and non-delivering the installments despite his capability to so doing, merely to strengthen one's financial position. This is definitely a condemnable sort of exploitation of the financial institution on the part of the customer. The damage thus being inflicted on the institution and the kind of rot setting in the moral fiber are being communicated to us by the public itself. There are many, for example, who withhold the payment and the delivery of the installments according to the time-frame saying that the person so-and-so did not pay in time and escaped unscathed, why then, should we bother ourselves to pay in time? This is a very

unfortunate state of affairs. I feel compelled to call the attention of the Ulama to the inordinate delay *visa-vis* the payment and the delivery of the due installments which unfortunately has become a commoner phenomenon nowadays. What guidance our Ulama would like to offer to cure this grave malaise?

Qazi sb. speaks

Of course, why not, we will surely offer such guidance. The absence of such guidance will complicate the situation even further.

Somebody speaks

Respected audience! As I just said, the activity of purchasing the machines, cars, etc, and their spare parts has two apparent aspects: purchaser's approaching to the finance company. To illustrate, we, for instance, are to purchase a car, we approached a finance company. The company gives us the draft of the price of car by the name of the car company. This is a transaction between us and the finance company which lent us the required amount to purchase the car and then received it from us by installments. The second aspect of the matter is that we approach the car company, submit the draft to it and get the car. The question here is: is it right to divide this transaction into two parts, that is, the loan transaction from the finance company and the purchase transaction? The latter is undoubtedly valid, but what term should we apply to the former deal? Please explain.

Somebody speaks

From among the points raised by H. Qazi sb. the first one was to determine whether the specification is a condition in the exchange of two objects of the same kind. If so, is it absolute or exceptional? I think the point was the same. To explain the point, in the *muqarzah* transaction (a type of business transaction in which the exchange of two objects takes place rather than between the commodity and its price) mode of business there are possibilities that both the objects may price as much as the merchandise does. In the latter case the merchandise has to be specified. In the *bay' Sarf*, by contrast, since the exchange takes place between two *thamans*, each party must take into possession its lot of exchange, so that the transaction does not turn into the *credit sale for the credit sale*. This was my actual question. I can't say how it got entangled. To be precise, for the obtainment of usury is it not necessary that the sold and the purchased objects belong to the growing-value properties, or every excess shall be termed as interest and usury?

Somebody speaks

To the Hanafi view, usury will be obtained only if the exchange occurred between two objects of the same value, and such objects must belong to the category either measurable or the weighable things.

A discussant speaks

Presently, we are not discussing the *riba* (interest); we therefore have no need to bother ourselves in what kind of objects the *riba* is obtained if they are

exchanged. Our present discussion rounds about the sale transaction. (Here the voice of the speaker again got unintelligible)

Some body speaks

Interest is definitely a sort of exploitation, as in the present discussion; too, the same aspect of the interest has been discussed. But the interest- based transactions and the interest-free transactions need be studied from a yet another angle of view. That is, the interest rates are often fixed by the lender, but, by contrast, no such specification exists at all in interest free business transactions. We see that if an object is purchased through an interest-based transaction, the financier will earn only a small amount of money as he will charge only a fixed percentage on the amount he is lending. Such charges may undeniably differ from country to country. We know that the interest rates in the Arab world are considerably low. But the trader may earn far more than he has to pay as interest to the financier / lender if he carries out the business activities by himself. In the installment mode of business the point worth studying is that the lent amount of money is risk-free or not. If it involves risk, but if the rate of profit is fixed, it will turn a transaction quite similar to the interest-based transactions. (The voice of the speaker again got unintelligible.)

Qazi sb. speaks

First question of the Maulana has been repeated many times. That is, if the debtor is dodging the payment despite his capacity, how it is to be

recovered from such a person? This point is very important and needs to be debated. The second question is about the mortgage. The moot point of the question being: will a mortgaged property be treated as such and subjected to the law of mortgage if it stands out of the possession of the mortgagee? This is a question which the Maulana himself will have to explain rather than I. The Maulana wants that the latter question should be debated first.

A discussant speaks

So far as the decrease and increase in the price of the commodity on sale is concerned, I think there is no wrong if the nature of the deal is specified at the very time of finalizing it and the price of the credit sale of a commodity may be increased as compared to that of the cash sale. But, practically, many sorts of a credit sale are being introduced in the market, and these too need be debated. Some people do a business of different type. They provide, for instance, a car on demand to a person, for Rs. 25000/- and receive this amount on installments from the buyer, while they themselves purchased the same car from the money they took as loan on interest from a bank or a finance company, and then sold the car to a third party on an enhanced price. In other words, they themselves incur loan on interest from others and thus are involved in interest deals, but to others they sell that car, etc, on installments /on credit at a higher price, thereby making profit. This is a common way of business and many individuals as well as finance companies are practicing it. It will be useful to discuss at length this mode of business as well. When

they are told that such modes of business involved an obvious element of interest, they say, "This is our own matter; you have nothing to do what we are doing and where from we draw money as long as our business with our customer is free from the element of interest". Is the second aspect of the sale be regarded as *riba*? To my opinion, on the face of it, this enhancement might be termed as *riba* but factually it is not. A businessperson sold an item for Rs. 150/- today on the credit of one year for example. In the market the same item costs Rs. 125/- today. The seller will receive an enhancement of only twenty five rupees. How this enhancement might be termed as *riba* while after one year the same commodity may cost the purchaser a hundred fifty rupees?? This is a point which calls for a serious deliberation. A proper study of this point is expected to solve many related questions regarding similar modes of business. In more precise words, the rising of the price and ever-increasing rates of inflation have to be taken into account, among other things, while discussing the element of *riba* in matters of business.

A discussant speaks

The question No. 5 is about the credit sale of an item at more than one rates of enhancement differing according to various time periods agreed upon between the parties. To explain, a business person sells his merchandise on credit for two differing prices. If the price is repaid by six installments over a period of six months, the price will be twelve thousand rupees; but the purchaser will have to pay thirteen thousand rupees for the same item if the

payment is made by twelve installments over a period of twelve months. The seller puts both the modes and options before the purchaser and then the parties choose either one in the same sitting. Is this a valid mode of business? This is indeed valid as far as I think. But no enhancement shall be permissible in the event of failure to repay the price/deliver the installments according to the time-frame. The demand of any excess money will doubtlessly constitute a sort of *riba*. All the participants and the contributors are unanimously agreed on this point. About the first mode of business, ie, selling a commodity for two different prices on credit of two differing terms, most contributors regard it a valid mode of business. Their argument is chiefly based on the following text:

وكذا إذا قال " بعثك هذا العبد بألف درهم إلى سنة أو بألف و خمسين مائة إلى سنتين " لأن الثمن مجهول، وقيل هو الشرطان في البيع، وقد روى أن رسول الله صلى الله عليه وسلم نهى عن شرطين في البيع، فإذا علم ورضى به جاز البيع لأن المانع من الجواز هو الجهالة عند العقد، وقد زالت في المجلس،

As regards the question you have raised in this context, I'm not in a position to give my personal view on it. However, in the light of the question what I can say is that the deal will not be valid if

the parties separated from each other without choosing either one sort of the deal. For the decrease or increase in the price is made conditional upon which one out of the two options is chosen by the purchaser while finalizing the deal. If the purchaser chose either one term period for the payment of

price, the deal will doubtlessly carry full validity. To rephrase the question again, merchandise is available on credit sale with the facility to repay the price by installments. The vendor makes the sale offer on two different terms; shorter and longer ones. For the shorter credit term the vendor will sell his merchandise at a lower price as compared to that of the longer term of credit. The answer is that it will be valid only if the parties are agreed to either one option, and made the offer and acceptance in the same sitting.

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al-Hashiyah:Dasuqi
Muatta:SMalik

A GLOSSARY OF SELECT ARABIC FIQHI TERMS

'*abd*, male slave,
'*abik*, runaway slave,
'*ada*, custom,
'*adab*, *al-kadi*, the duties of The *kadi*, a subject of Special works,
'*adl*, (pl. '*udul*' q. v), of good Character,
'*afw*, pardon,
'*al-ahkam*' *al-khamsa*, 'the Five legal qualification'
'*ahkam*, *sultaniyya*, constitutional and administrative law, subject of special works,
'*ahl al-kitab*, unbelievers who possess a scripture,
ahliya, capacity,
ajal, term,
ajir, hired servant,
ajnabi, 'stranger', third party,
ajr, wage (used in a wider meaning in the Koran),
akar, immovable,
akd, contract,
akil, sane,
akila, (q.v for definition),
akl, 'reason', the result of systematic thought,
ama, female slave,
amal, practice, *amal of Medina*, 'judicial practice'
aman, temporary saf- conduct,
amana, trust, deposit, fiduciary relationship: in the Koran, in Islamic law,
'*amd*, deliberate intent,
'*amil al-suk.*, inspector of the market,
amni, a person in a position of trust (*amana*),
arabun, earnest money,
ariyya, loan of non-fungible things,
arsh, a penalty for certain wounds,
'*asaba*, (roughly) the agnates,
ashbah wa-naza'ir, 'similarities', the systematic structure of the law, subject of special works,
asil, the principle, principle debtor,
asl, the nature of a transaction
awl, reduction of heirs,
'*ayn*, thing, substance,
Badal, consideration,
Baligh, of age,
Bara'a (q.v. for definition).
Batil, invalid, null and void,

Batin, the 'inward' state,
bay, sale, exchange, barter,
bay al-araya, a contract of barter in dates,
bay al-dayn bil-dayn, exchange of obligation for obligation,
bay' al-uhda, bay' al-wafa', sale of real property with the right of redemption,
bay'atan fi bay'a, 'double sale', a group of devices for evading the prohibition of interest,
bayt al-mal, public treasury,
bayyina, evidence,
bughat, rebels,
daf', *noxae deditio*,
dallas, to conceal a fault or defect,
daman, liability,
damin, liable,
dar al-harb, enemy territory,
dar, al-Islam, the territory of the Islamic state,
darak, default in ownership,
darura, necessity (as a dispensing element),
dawa, claim, lawsuit,
sayn, debt, claim, obligation,
devshirme, a forced levy of non-Muslim children in the Ottoman Empire,
dhawu l-arham, (roughly) the cognates,
dhimma, engagement, undertaking
care as a duty of conscience, obligation,
dhimmis, non-Muslims who are protected by a treaty of surrender,
dhukr or *dhukr hakk* (pl. *adhkar hukuk*), written document,
diwan, army list, records of the tribunal,
diya, blood-money,
diyana, conscience, *forum internum*
dukhul, consummation (of marriage),
fadl mal bila iwad, unjustified enrichment,
fakih (pl. *fujaha'*), the specialist in *fikh*
fara'id, the portions allotted to the heirs, succession in general,
fard, duty,
fard, fixed share of an heir,
fasad al-zaman, the (ever-increasing) corruption of contemporary conditions,
fasid, defective, voidable,
fasiq, sinner (opp. *adl*),
faskh, cancellation,
fatwa, the considered legal opinion of *mufti*
fida, (q.v. for definition)

fiqh, the science of the *shari'a*, the sacred Law of Islam
fuduli, unauthorized agent, the religious lawyers of Islam,
furu, the branches', positive law, as opposed to *usul*
furuq, legal distinction, subject of special works,
ghaban fahish, 'grave deception', fraud
gha'ib, absent,
ghalla, proceeds,
ghanima, booty,
gharar, risk, hazard, uncertainty,
ghasb, usurpation,
ghasib, usurper,
ghayr ma'lum, not known,
ghayr mamluk, that in which there is no ownership,
ghurra, indemnity for causing an abortion,
habs, imprisonment,
habs, retention of a thing in order to secure a claim, lien,
hadana, care of the child by the mother,
hadd(pl. *hudud*), a fixed punishment for certain crimes,
hadith,(pl. *ahadith*), a formal tradition deriving from the Prophet,
hadr, *hadar*, not protested by criminal law,
hajr, interdiction,
hakam, arbitrator,
haqq admi, private claim (as opposed to a right or claim of Allah),
haqq Allah, right or claim of Allah (as opposed to a private claim),
halal, not forbidden,
haram, forbidden,
harbi, enemy, alien,
hawala, transfer of debts,
hiba, donation,
hirz, custody (of things),
hisba, the office of the *muhtasib* (q.v.),
hiyal (pl. of *hila*), legal device, evasions,
hukm (pl. *ahkam*), qualification'
 see also *al-ahklam al-khamsa*.
hukm al-hawz, *hukm (ahkam)al-man*, or *al-mal'a*, *hukm al-taghut*, tribal
 customary law of the Bedouins in Arabia,
hukuma, a penalty for certain woulds,
hurr, free person,
ibra, acquittance,
idda, waiting-period of a woman after termination of marriage,
idhn, permission', extension of the capacity to dispose,
ifa', fulfillment (of the obligation),
ihtiyat, (religious) precaution,
ihya' al-mawat, cultivating waste land,

ijab, offer (as a constitutive element of a contract),
ijara, hire and lease,
ijaza, approval,
ijma', consensus, *ijma' ahl al-Madina*, consensus of the scholars of Madina,
ijtihad, 'effort', the use of individual reasoning (also *ijtihad al-ra'y*), later restricted to the use of *kiyas*
ikala, reversal (of a sale),
ikhtilaf, disagreement,
ikhtilas, (q.v. for definition).
ikhthiyar, (q.v. for definition),
ikrah, duress, coercion
ikrah, acknowledgment, confession,
illa oath of abstinence from intercourse by the husband,
ilqa' bil-hajar, an aleatory transaction,
imada', ratification,
'ina, a device for evading the prohibition of interest,
ishara ma'huda, 'gesture', conclusive act,
ishtirak, joint ownership,
isqat, relinquishment (of a claim),
istibra', waiting-period of a female slave after a change of owner,
istifa', receiving (taking possession),
istighlal, acquisition of proceeds,
istihbab, 'preference', a synonym of *istihsan* (q.v.)
istihkak, vindication,
istihsan, 'approval', a discretionary opinion in breach of strict analogy,
istila', occupancy of a *res nullius*,
istirdad, vindication,
istishab, a method of legal reasoning particular to the Shafee school and to the 'Twelver' Shiites,
istislah, taking the public interest into account,
istisna, contract of manufacture,
'itq, i' taq, manumission,
'iwad, countervalue,
ja'iz, allowed, unobjectionable,
jam', (q.v. for definition).
jarya, female slave,
jinaiya, (pl. *jinayat*), tort, delict,
jizya, poll-tax,
ju'l, reward for bringing back a fugitive slave,
juzaf, undermined quantity,
kabd taking possession,
qabul, acceptance (as a constitutive element of a contract),
qada, judgment given by the *qadi*, *forum externum*,

qada', the district, circumscription, of a *qada*,
qada', payment (of a debt),
qadhf, false accusation of unchastity (unlawful intercourse),
qadi, the Islamic judge,
qadi l-jama'a, a judicial office in Islamic Spain,
Kafa'a, equality by birth,
Kafala, suretyship,
Kaffara, religious expiation,
Kafil, guarantor, surety,
Kafir, unbeliever,
Kahin, soothsayer,
qanun, 'law, used of secular acts, the administrative law of the Ottoman Empire,
qanun-namr, a text containing one or several *qanuns*,
qard, loan of fungible objects for consumption,
qasama, a kind of compurgation, *qasd*, aim, purpose,
qasim, divider of inheritance,
qat' al-tariq, highway robbery,
Katib, secretary of the *qadi*, 'clerk of the court',
qatl, homicide,
qawad, retaliation,
qawa, 'rules', the technical principles of positive law, subject of special works,
Khalwa, privacy (between husband and wife),
Kharaj, land-tax,
Kharij, 'stranger', third party,
Khasm, party to a lawsuit,
Khata', mistake,
Khiyana, embezzlement,
Khyar, aptio, right of rescission,
Khiyar al-shrt, stipulated right of cancellation,
Khul, a form of divorce,
Khusuma, litigation,
qima, value,
Kimi, non-fungible,
Kinaya, 'allusion', implicit declaration,
qisas, retaliation,
qisma, division, parity of reasoning,
Laqit, founding,
Lazim, binding,
Li'an, (p.l. for definition),
Liss, robber,
Luqata, found property,
madhhaab (p.l. *madhahib*), 'school' of religious law,

ma'dhun, a slave who has been given permission to trade,
ma'dud, *mutakkarib*, things that can be counted,
mafkuḍ, missing person,
maharim, see *mahram*.
mahdar, minutes, the written record of proceedings before the *kadi*,
mahr, nuptial gift, 'fair' or average *mahr* defined,
mahram (pl. *maharim*), a person related to another within the forbidden degrees,
majhul, unknown,
majnun, 'insane',
makil, *kayli*, things that can be measured,
makruh, reprehensible, disapproved,
maks, market dues in pre-Islamic Arabia, illegal taxes in Islamic law,
ma'kul, 'reasonable', the result of systematic thought,
mal, *res in commercio*,
mal mankul, *mal nakli*, movables,
malasa, the reverse of '*uhda*
malik, owner,
ma'lum, 'known', certain, (opp. *ghayr ma'lum*, *majhul*, qq.v.)
mamluk, male slave,
mandub, recommended,
manfa'a (pl. *manafi'*), proceeds, usufruct,
marsum, 'decree', used of modern, secular acts,
mashru', recognized by the law,
maslaha, the public interest,
mastur, (q.v. for definition).
ma'sum, inviolable, protected by criminal law, (opp. *hard*)
ma'tum, idiot,
mawkuf, in abeyance,
mawla, the patron, or the client,
mawlawi, term used in India for a Muslim scholar of religious law,
mawzun, *wazni*, things that can be weighed,
maysir, a game of hazard,
mayta, animals not ritually slaughtered,
mazalim, see *nazar fil-mazalim*.
milk, ownership (also in a wider meaning),
milk al-'amma, public property,
mithl, just mean, average, fair,
mithli, fungible,
mu'amala, 'transaction', euphemistic term for a device for evading the prohibition of interest,
mu'amalat, pecuniary transaction,
mu'awada maliyya, exchange of monetary assets,
mubah, indifferent (neither obligation / recommended nor reprehensible /

forbidden),
mubara'a, a form of divorce,
mu'bham, ambiguous (declaration),
mudabbar, a slave who has been manumitted by *tabir* (q.v.)
mudaraba, sleeping partnership,
mudda'a 'alayh, defendant,
mudda'i, claimant, plaintiff,
mufawada, unlimited mercantile partnership,
muflis, bankrupt,
mufti, a specialist in religious law who gives an authoritative opinion,
muhakala, a contract of barter in corn,
muhsan, (q.v. for definition),
muhtakir, speculator on rising prices of food,
muhtasib, the Islamic inspector of the market,
mujtahid, a qualified lawyer who uses *ijtihad* (q.v.)
mukallaf, (fully) responsible,
muqallid, a lawyer who uses *taqlid* (q.v.)
mukataba, manumission by contract,
mukatab, the slave who has concluded this contract,
mukhtara, a device for evading the prohibition of interest,
mulamasa, an aleatory transaction,
mulazama, personal supervision (of defendant by plaintiff, &c.)
mumyyiz, 'intelligent', 'discriminating' minor,
munabbadha, an aleatory transaction,
murabaha, resale with a stated profit,
murtadd, apostate,
musakat, a contract of lease of agricultural land,
musha, joint ownership,
mustahabb, recommended,
musta'min, an enemy alien who has been given an *aman* (q.v.),
mut'a, temporary marriage,
mut'a indemnity payable in certain cases of repudiation,
muta'arif, customary,
muwada'a, 'understanding', term for a document used in connexion with
hayal,
muwakkil, the principal (as opposed to the agent),
muwalat, contract of clientship,
muzara'a, a contract of lease of agricultural land,
muzabana, a contract of barter in dates,
nafaqa, maintenance,
nafidh, operative,
nafy, banishment,
nahb, robbery,
na'ib, deputy in matters of worship,

nasi'a, delay,
naskh, repeal (*nasikh*, the repealing passage; *mansukh*, the repealed one),
nazar fil-mazalim, 'investigation of complaints',
nikah, marriage,
niyaba, intent,
nizam, *nizam-name*, 'ordinance';, used of modern, secular regulations,
nukul, refusal (to take the oath),
rabb, owner,
rabb al-mal, sleeping partner,
rada', fosterage,
rahn, pledge, pawn security,
rakaba, substance, also the person (of a slave),
rakik, slaves,
ra'al-mal, capital,
rashwa, bribery,
rasul, messenger,
ra'y, 'opinion', individual reasoning,
riba, 'excess', interest,
rida, consent,
rikaz, treasure,
ruju', withdrawal, revocation, retraction,
rukba, an archaic form of donation,
rukn, (p.v. *arkan*), essential element,
sabi minor
sadaq nuptial gift,
sadaqa, charitable,
safih, irresponsible,
safaqa, (q.v. for definition),
saghir, minor,
sahib al-suk, inspector of the market,
sahih, valid, legally effective,
sahm, fixed share of an heir,
sakk, (pl. *sukuk*), written document,
salam, contract for delivery with prepayment,
sarf, exchange (of money and precious metals),
sarih, explicit (declaration),
sariqa, theft,
sa'y, *si'aya*, (q.v. for definition),
shahada, testimony, evidence of witnesses,
shahid, (pl. *shuhud*), witness,
shari'a, the sacred law of Islam, opposed to *siyasa*, administrative justice,
sharik, partner,
sharika, *shirka*, society, partnership,

sharikat mal, association in property, joint ownership,
shaykh Al-Islam, The chief *mufti* of a country, in the Uthmanid empire,
shibh, quasi,
shira', purchase,
shubha, (q.v. for definition),
shuf'a, pre-impion,
shrub al-khamar, wine-drinking,
shurta, police,
shurut,(pl. of *shart*), 'stipulations', legal formularies,
sijill, written judgment of the *kadi*,
simsar, broker,
siyasa' policy, administrative justice,
siyasa shar'iyya,*siyasa* with in the limits assigned to it by the *shari'a*,
subashi, chief of police in the Uthmani empire,
suftaja, bill of exchange,
sulh, amicable settlement,
sultan, authority, dominion, ruling power,
sunna, precedent, normative legal custom: in pre-Islamic Arabia, in early Islam, in the ancient schools of law, according to Shafee, according to Ibn al-Muqaffa', according to Ibn Tumart,
sunna of the Prophet,
sunna of Abubakr and Umar
sunna recommended,
ta'addi, fault, illicit act,
tabaqat, biographies of lawyers arranged by classes or generation,
subject of special works,
tadbir, manumission which takes effect at the death of the owner,
tafriq, a dissolution of marriage,
tafwiz, (q.v. for definition.),
tahaluf, (q.v. for definition.).
tahatur, conflict of equivalent testimonies,
tahdid, threat,
tahlil, a device to remove and impediment to marriage,
tajir, trader, merchant, euphemistic term for the money-lender,
taqabud, taking possession reciprocally,
taqiyya, simulation,
taqlid, reference to the companions of the Prophet (in the ancient schools of law),reliance on the teaching of a master,
talaq, repudiation,
talfiq, combining the doctrines of more than one schools,
taliq al-talaq, form of a conditional repudiation,
tamlk fil-hal, immediate transfer of ownership,
tamm, complete,
tanazzuh, religious scruple,

tapu, an Uthman fiscal institution of land law,
ta`rif, (q.v. definition).
tariqa, estate,
tasallum, taking delivery,
tasarruf, capacity to dispose, disposition,
tasbib, *bi-sabab*, indirect causation,
taslim, delivery,
tawba, repentance,
tawliya, resale at the stated original cost,
ta`zir, discretionary punishment awarded by the *qazi*,
thaman, price,
thiqa, a trustworthy person,
tifl, small child, babe-in-arms,
`uzr, excuse (for non-fulfillment of a contract of *ijara*),
uzul, (pl. of *`adl*, q.v.), professional witnesses, ‘notaries’,
`uhda, a guarantee against specific faults in a slave or an animal,
 particular to the *Maliki* school,
ujra, hire, rent,
`uqr, (q.v. for definition).
`uquba, a *Maliki* punishment in certain cases of homicide,
`ulama`, the religious scholars of Islam,
umm walad, female slave who has born a child to her owner,
`umra, donation for life,
`urf, custom,
ulul, (sing. *asl*), or *usul al-fiqh*, the ‘roots, or theoretical bases of Islamic
 law,
wadi`a, deposit,
wadi`a, resale with a rebate,
wakala, procreation,
wajib, (1) obligatory, (2) definite, binding, due,
waqf, pious foundation, mortmain,
wakil, deputy, agent, proxy, attorney,
wala`, the relationship of client and patron,
wali, legal guardian,
wali al-dam, the next of kin who has the right to demand retaliation,
wara`, religious scruple,
warith, heir,
wasf, the qualities and description of a transaction,
wasi, executor and/or guardian appointed by testament,
wasiyya, (pl. *wasiya*), written document,
wilaya, competence, jurisdiction,
wuquf, abeyance (of rights and legal effects),
yad, possession (also in a wider meaning),
yamin, oath (undertaking),

zahir, the Literal meaning (of Quran and traditions), the out word state,
zakat, alms-tax,
zawj, husband; *zawja*, wife,
zihar, (q.v. for definition),
zina, unchastely (unlawful intercourse),