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### Buying and Selling before getting Possession ♦

In present time, there are numerous kinds of transactions in which the buyer sells off the purchased item to others before getting possession over it. Islam justifiably urges people to abstain from selling off before getting actual possession thereon. In this perspective, the Ninth Seminar of the IFA discussed the issue at length arrived at the following conclusions.

- 6.1 As a principle it is not permissible to sell off anything before actually possessing it. Eventually, if the selling deal were struck before getting possession, the sale would be termed as *Fāsīd* (corrupted) rather than *Bātil* (null and void) and shall become valid after getting possession.
- 6.2 No specific condition has been laid out in the Holy Book and the *Sunnah* regarding the ownership rights, as if Shariah has recognised the prevalent Muslim custom in this regard. Thus, the nature of the possession would be determined according to the nature of various kinds of goods and the prevalent system of a particular period.
- 6.3 It is clear from the elucidations of the jurists, that possession over sold off goods should be without any hindrance so that the buyer may use them freely. This facet has been termed as *Takhlyā* in the Islamic Jurisprudence.
- 6.4 A 'selling deal before getting possession' is prohibited because there is always a risk of rescission, which means that unless the sold off property does not come under the real possession of the first buyer it may be possible that the sold off property may not come under his ownership at all and hence he might not be able to hand over the same to the second buyer.
- 6.5 The prohibition of 'selling-before-getting-possession' is related to movable properties only. On the other hand, selling-before-getting-possession is permitted in case of immovable properties, provided that there is no compelling hindrance to their utilisation by the buyer.
- 6.6 In case a person buys some goods (say, from a factory) and sells it off to another person, although the sold off goods have not, even, been dispatched from the factory, such a sale falls under, the category of 'selling-before-getting-possession' and stands invalid, whatsoever.

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♦ 9<sup>th</sup> Fiqhi Seminar (Jaipur Rajasthan) 11-14 Oct 1996.

6.7 A person purchases some goods from a factory, etc. and places his order for transporting the goods by some special means (a ship, transporting vehicle, permits, etc.) and the items in question are dispatched from the factory as well. The buyer stands responsible in the eventuality of any loss and damage and also ready to bear the transportation expenses. In such a situation, the buyer shall be deemed to have the ownership right, in proxy, over the mode of transport, etc. whatsoever it may be. Thus, under such circumstances it is valid to sell the goods to the next buyer before it reaches there because such a transaction does not fall under the category of selling-before-getting-possession, albeit it is certainly not permitted for the second buyer to sell off the goods to another person before it reaches to him. The latter shall be assumed as a deal falling under the category of 'selling-before-getting-possession'.