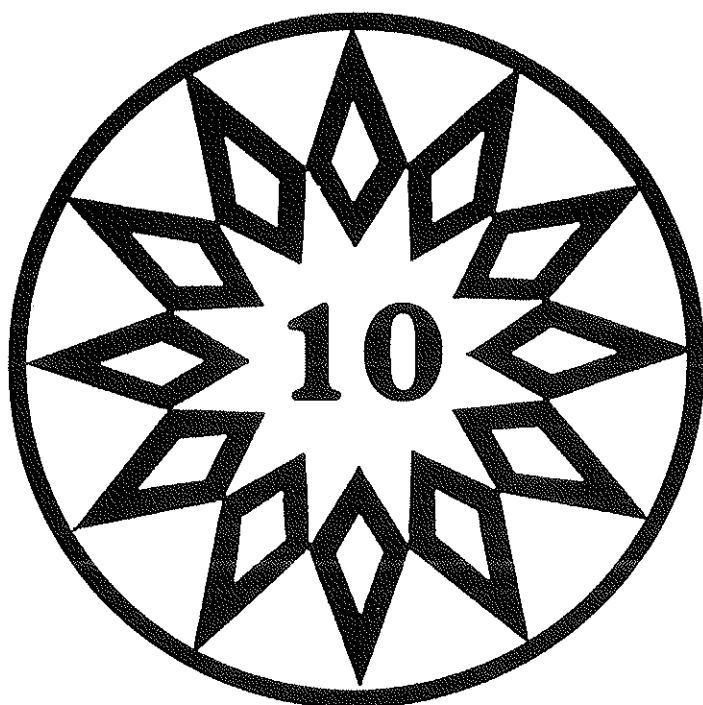


تسهيل الفقه

**Tas-heelul**

**Fiqh**

**Fiqh Made Easy**





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We are indebted to all the Deeni institutions and organizations as we have consulted all books currently available when drawing up these.

If there are any errors or suggestions please write to:

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We make dua that Allah Ta'ala reward all those who have made this possible.

**JAZAKUMULLAH**

**SHABAAN 1419**

Draft edition

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IN THE NAME OF ALLAH TA'ALA  
THE MOST KIND, MOST MERCIFUL

## INTRODUCTION

### **BUSINESS AND TRADE IN ISLAM**

#### **EARNING A HALAAL LIVELIHOOD**

##### **Hadeeth:**

Sayyidina Miqdaam bin Ma'diqarab (radhiyallahu anhu) narrates from Rasoolullah (sallallahu alayhi wa sallam) *"There is no food of any person which he eats better than that which he eats of the money earned with his own hands. Nabi Dawood (Alayhis Salaam) earned by working with his hands (from which he ate)"* (Bukhari).

It is narrated by Abu Hurairah (radhiyallahu anhu) that Rasoolullah (sallallahu alayhi wa sallam) said: *"A time will come upon the people when they will not be concerned and will not take care in taking things whether Halaal or Haraam (in their earning and eating)"* (Bukhari)

Sayyidina Abu Hurairah (radhiyallahu anhu) reports from Rasoolullah (sallallahu alayhi wa sallam) *“Verily, Allah Ta’ala is most pure, and Allah Ta’ala only accepts that which is pure. Verily, Allah Ta’ala instructs the believers that which He commanded the messengers (i.e. The Ambiyaa). Thus Allah Ta’ala said ‘O messengers eat of pure and Halaal sustenance and do virtuous and righteous deeds’. Allah Ta’ala also says ‘O you who believe, eat from that which is pure and Halaal of what We have provided you.’*

Thereafter Rasoolullah (sallallahu alayhi wa sallam) illustrated this by means of an example where a person is undertaking a long journey. His hair is dishevelled and body full of dust. He then lifts his hands towards the skies and says ‘Oh my Sustainer’ but his food is Haraam (unlawful), his drinking is of unlawful means and he is thus nourished by Haraam, then how can such a person’s dua be accepted?” (Muslim)

Sayyidina Jaabir (radhiyallahu anhu) narrates that Rasoolullah (sallallahu alayhi wa sallam) said *“That flesh will not enter Jannat which is nourished through Haraam and is more deserving of the fire of Jahannam”* (Ahmad and Daarimi)

It is narrated by Abdullah bin Mas'ood (radhiyallahu anhu) that Rasoolullah (sallallahu alayhi wa sallam) said ***“Seeking a Halaal livelihood is compulsory after the Faraa'idh”*** (Baihaiqi)

Rafee' bin Khudaij (radhiyallahu anhu) reports that it was enquired of Rasoolullah (sallallahu alayhi wa sallam) which earnings are most pure. Rasoolullah (sallallahu alayhi wa sallam) replied ***“That effort or work that a person does with his hands and every transaction which is accepted (correct according to Shariah.)”*** (Ahmad)

From the above ahaadeeth we understand that the earning of Halaal livelihood is most loved by Allah Ta'ala.

### **The harms of Haraam and unlawful livelihood:**

1. a person's earnings will be unlawful.
2. such earnings will be devoid of barakaat (blessings).
3. the business incurs the anger of Allah Ta'ala.
4. the body will be nourished with Haraam.
5. the noor of the heart will disappear.
6. the actions that will flow from the body will be incorrect.



7. a person will be living under the influence of Shaytaan constantly and thus will become rebellious to the orders of Allah Ta'ala. (This is prevalent today).
8. earnings will have no barakaat. Even if the entire family tire themselves in the earning of this wealth there will be constant deficits in their income.
9. all one's ibaadaat will not be accepted.
10. duas will be rejected.
11. charity and zakaat will go unrewarded.
12. the travelling towards Haj will go unrewarded and one will remain unaffected in such sacred and holy places.
13. it will cause a person to be thrown headlong into Jahannam.
14. the entire social system will become tainted, corruption will set in and disunity will be the order of the day.
15. the enjoyment and love for doing ibaadat will vanish and ibaadat will be reduced to a mere routine and the inner sweetness will disappear.
16. wealth earned in the displeasure of Allah Ta'ala will often be spent in the displeasure of Allah Ta'ala e.g. gambling, buying Haraam items etc.

**The cautiousness of the Sahabah (radhiyallahu anhum) in matters of their rizq:**

**Sayyidina Abu Bakr (radhiyallahu anhu) and a sooth-sayer's food:**

Sayyidina Abu Bakr (radhiyallahu anhu) had a slave who used to give him a portion of his daily income as the master's share. Once he brought him some food, and Sayyidina Abu Bakr (radhiyallahu anhu) took a morsel and consumed it. The slave then remarked: *"You always enquire about the source of what I bring to you, but today you have not done so."*

He replied: *"I was feeling so hungry that I failed to do that. Tell me now, how did you come by this food?"*

The slave said: *"Before I embraced Islam, I practised sooth-saying. During those days I came across some people for whom I practised some of my charms. They promised to pay me for that later on. I happened to pass by those people today, while they were engaged in a marriage ceremony, and they gave me this food."*

Sayyidina Abu Bakr exclaimed: ***“Ah! You would have surely killed me?”*** He then tried to vomit the morsel he had swallowed, but could not do so, as his stomach had been quite empty. Somebody suggested to him to take water to his fill and then to try and vomit. He sent for a goblet of water and kept on taking water and forcing it out, till the morsel was vomitted out. Somebody remarked: “May Allah have mercy on you! You put yourself to such trouble for one single morsel.”

To this he replied: ***“I would have thrust it out even if I had to lose my life. I have heard Rasoolullah (sallallahu alayhi wa sallam) saying, ‘The flesh nourished by Haraam food, is destined for the fire of Hell.’ I, therefore, made haste to vomit this morsel, lest any portion of my body should receive nourishment from it.”***

Many stories of this nature have been reported about Sayyidina Abu Bakr (radhiyallahu anhu). As he was very scrupulous and would not taste anything but that about which he was perfectly sure, even the slightest doubt about its being Halaal would make him vomit what he had taken.

## **Sayyidina Umar (radhiyallahu anhu) vomits out milk of Sadaqah:**

A person once brought some milk for Sayyidina Umar (radhiyallahu anhu). When he took it, he noted its queer taste, and asked the person as to how he had come in possession of the milk.

He replied: *“The camels given in Sadaqah were grazing in the desert, and the attendants gave me this milk out of what they got from them.”*

Upon this, Sayyidina Umar (radhiyallahu anhu) put his hand in his throat and vomitted all that he had taken.

These Allah-fearing people not only totally abstained from Haraam food, but were most anxious to avoid any doubtful morsel finding its way inside them. They could not dare take anything that was Haraam, which is so common these days.

## **The benefits of Halaal and lawful livelihood:**

1. Allah Ta’ala will be pleased.
2. All duas will be accepted.
3. Ibaadaat (salaat, haj etc.) and charity (zakaat, sadaqah etc.) will be accepted.

4. One will experience the sweetness of ibaadaat.
5. It will be a means of developing noor in the heart of a person.
6. A person will be saved from the anger and rescued from the calamities of Allah Ta'ala.
7. Lawful earnings nourishes the body with purity and its effects will be felt through a person's entire life.
8. A person will be saved from Jahannam.

### **TRUTHFULNESS IN BUSINESS TRANSACTIONS**

A Hadeeth states, Sayyidina Rasoolullah (sallallahu alayhi wa sallam) said: *“Abstain from swearing oaths frequently.”* Do not swear excessively thinking business can be increased by it.  
(Virtues Of Halaal earning and Trade)

Rasoolullah (sallallahu alayhi wa sallam) has said: *“A trader who is trustworthy when speaking and dealing (while trading), will be with the Ambiyaa, Siddiqueen and Shuhadaa on the day of Qiyaamah.”* (Virtues Of Halaal earning and trade)

Rasoolullah (sallallahu alayhi wa sallam) has said: *“O group of merchants, verily selling is such a thing wherein useless things are spoken and oaths taken. Verily add to it sadaqah.”* (Virtues Of Halaal earning and Trade)

It is stated in the Hadeeth, *“Businessmen will be raised on the day of Qiyaamah (judgment) as sinners, except the ones who feared and uttered the truth.”* (Virtues Of Halaal earning and Trade)

## **THE ETIQUETTES OF BUSINESS**

### **a. Intentions**

#### **Hadeeth:**

*“Every action is judged according to intention”* (Bukhari)

#### **The following intentions should be made:**

1. The purpose is to please Allah Ta’ala.
2. The earning of Halaal livelihood.
3. To support one’s family.
4. To serve the community by making products easily available.

5. To assist the needy within the community by fulfilling one's zakaat obligations so that orphans, widows and the poor are not neglected.
6. Propagating the Deen, i.e. supporting and the building of masajid and madressahs etc.
7. Fulfilling the command of Allah Ta'ala of going for Haj and Umrah.

**b. Honesty in dealings**

1. A businessman should be truthful and honest in all business transactions.
2. Likewise, it is necessary for him to honour his commitments.
3. If one is unable to fulfill ones commitments, the creditor should be informed and an extension for payment be sought.
4. The trader should not praise his merchandise excessively.

### **c. Character**

1. A trader should adopt politeness and kindness when undertaking business transactions.
2. It is also not appropriate for a trader to lose his temper or become enraged if a buyer does not wish to purchase an item.
3. Although the taking of profit is permissible, a trader should be considerate when pricing merchandise. Goods should not be marked at exorbitant prices but rather that they should be affordable.
4. If a customer is dissatisfied with the goods purchased, the trader should permit an exchange or refund, provided that the customer has not damaged the item.
5. The buyer should be informed of goods wherein there are defects, flaws and any inaccuracies, likewise if the buyer wants the original item if it is not the genuine article.
6. Trade and business should not hamper the performance of Salaat of the employer or even his Muslim employees, since Allah Ta'ala praises such people in the Qur'aan as follows:

***“Men whom neither merchandise nor sale beguileth from remembrance of Allah Ta’ala and constancy in***



*Salaat and paying to the poor their due, who fear a day when hearts and eyeballs will be overturned.”*  
(Surah Noor - Ayat 37).

Rasoolullah (sallallahu alayhi wa sallam) said:

*“All the people shall be gathered on the day of judgment, when it will be asked, ‘who are those who glorified Allah Ta’ala in ease and adversity?’ A group will arise and enter paradise without any reckoning. Again it will be asked, ‘who are those who left their beds and passed their nights in act of worshipping their Creator.’ Another group will arise and enter paradise without any reckoning. The angel will ask yet again ‘where are those whom trade did not hinder from remembering Allah.’ And yet another group will arise and enter paradise without any reckoning. After these three groups have departed, reckoning would commence for the people in general.”*

(Fazaail A’maal)

## **Dealing in Haraam merchandise**

1. It is incorrect and undesirable for a trader to deal in Haraam transactions and Haraam merchandise. It is the command of Allah Ta'ala to seek Halaal rizq, thus it is incorrect and undesirable to deal in Haraam transactions and Haraam merchandise.
2. It is imperative that a trader educates himself of the Islamic laws of trade. He should approach the learned Ulema concerning new developments in his field of business.
3. A Muslim trader is a door to Islam, and therefore should not conduct himself in a manner that breeds hatred and contempt for Muslims thus turning people away from the Deen.

# TYPES OF BAY'

BAY'  
MUTLAQ

BAY'  
TA'AATEE

## METHODS OF BAY'

MURAABAHAH  
SALE AT COST  
PLUS PROFIT

TOWLIYAH  
SALE AT COST

BAY' US SARF  
SALE OF GOLD AND SILVER

BAY' US SALAM  
PAYMENT OF SALE  
WITHOUT RECEIVING  
MERCHANDISE

## LESSON 1

### BAY'

The literal meaning of Bay' is "to exchange".

The Shar'i meaning of Bay' is to barter one commodity for another by making one the owner of the bartered goods. This definition also includes exchanging money for a commodity.

#### **a. Conditions of buying and selling**

1. Both persons (parties) should be sane.
2. Both persons (parties) should be adults.
3. If a child does any dealings, he should be able to recognise the value of money and he should also have the knowledge of the transactions undertaken.

**b. Bay'-Mutlaq (ordinary transaction)**

Two methods of business prevailed in the past:

1. A person walked into a market to buy a certain commodity. When he found the commodity, he walked to the seller, negotiated a price and paid for the commodity in gold, silver or any other monetary form. The buyer said: "I have bought" and the seller said: "I have sold".
2. A person went to the market to buy a commodity. He did not want to pay for it in cash, but instead wanted to exchange his goods for the seller's goods. Both parties agreed to this; the exchange was made and the buyer said: "I have bought", the seller said: "I have sold". This form of trade is commonly known as barter.

**c. Rules regarding the sale of an item:**

1. When making the deal, the buyer should use the phrase: “I have bought” and the seller should say “I have sold”. These words should be used in the past tense (i.e. the words bought/sold) and not in the present or future tense i.e. ‘I am buying’, ‘I am selling’ or ‘I will buy’, ‘I will sell’. Using the words in the present or future tense does not confirm the sale and may lead to a doubt in the transactions being undertaken.
2. During the transactions of the sale, the buyer says: “I have bought”, but walks away displaying an attitude of disregard towards the seller, the sale is not complete.
3. A person says: “I have taken this item for R10-00”. The other replies: “Take it.” The sale is valid. This transaction shows that both parties consent to the sale.
4. A buyer says: “Sell me all these items for R30-00”. The buyer now cannot change these items without the consent of the seller. However, if every single article is priced separately the buyer may pick and choose. E.g. if a person buys a box of socks for R30-00, he cannot

change some of the socks in the box since he has agreed to purchase the entire box with its contents.

5. In the sale of an article it is necessary for both the buyer and seller to speak in clear unambiguous terms i.e. they must both be clear about what is being said. Vague language which can lead to argument must not be used. Similarly, there must be complete clarity about the price, otherwise the sale will be null and void.
6. A person purchases something for one rand (dirham, dinar, riyal, rupee, etc) and says: "First give the article, then I will pay you". To this the seller replies: "No, first give the money, then I will give it". In such a case the money must be given first.

## WORKSHEET

1. Define Bay'

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2. List the conditions of buying and selling.

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3. Explain the method of Bay' Mutlaq

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4. How can one pay for goods if one does not have cash on hand?

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5. How does the buyer confirm his purchase?

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6. What action renders a transactions to be cancelled?

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7. In a bay' transaction what is given first to the buyer or seller i.e. money or the items bought?

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## LESSON 2

### THE PRESENT DAY TRANSACTION

1. A person goes into a shop or supermarket, picks up an item from the shelf, examines it and is satisfied with the item. He then takes it to the cashier and pays the price which was marked on the item. The deal is now concluded. This is called 'Bay'-Ta-'aatee'.
2. A person goes to a shop and picks up an item. He then negotiates a price with the seller. If both buyer and seller are satisfied, the buyer pays for the item at the agreed price and the sale is concluded. The negotiation takes place in the past tense.
3. Meat, milk, vegetables etc. are sold by weight or quantities. Measurement should be done using a container or weight of known quantity.  
(N.B. Meat and meat products should not be purchased from non-Muslims.)
4. When buying a flock of sheep or any other animals, a price should be stipulated for the entire flock e.g. R4,000-00 for 20 sheep. However, this does not mean that each sheep costs R200-00 because each sheep is different in

size and quality. This implies that some sheep may cost R250-00 and another sheep may cost R150-00.

5. When selling land all trees on the land are included in the price of the land, but the crops on the land are sold separately.
6. When selling fruit-bearing trees, the trees are sold separately, and the fruit of the trees are sold separately.
7. A seller cannot exclude certain trees from the sale of land. Neither can he stipulate a condition that “the fruit which the trees bears yearly is mine”. If he does stipulate this, the sale is invalid.
8. It is valid to sell wheat that has not been separated from the plant.
9. Keys and locks of a house are included in the price of the home. The seller cannot charge the buyer separately for these items.
10. When selling a piece of land, all buildings on the land are included in the sale.
11. When a transaction is undertaken by means of bartering the weighing of items will be done by the respective parties (e.g.  $\frac{1}{2}$  kilo of meat is exchanged for 1.5kg of rice then the owner of the wheat will weigh his goods and the owner of the rice will weigh the rice).

**WORKSHEET**  
**WORKSHEET**

What is the Shar'i term for present day buying and

1. What is the Shar'i term for present day buying and selling done in a self-service shop?

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What is the Shar'i rule in the sale of a flock of sheep?

2. What is the Shar'i rule in the sale of a flock of sheep?

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3. Which type of merchandise will be incorrect to purchase from non-Muslims?

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4. Explain the rules regarding the sale of land.

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## LESSON 3

### THE MERCHANDISE

1. One has the option of selling grain etc. by weight or measure. For example, a heap of wheat is sold for R100-00. Whatever amount of wheat derived from the heap will belong to the buyer.  
Similarly, one has the option of selling any other edible commodity by count or mass.
2. A box of mangoes is purchased for R40-00 on condition that it contains forty mangoes. On counting, it was found to contain thirty mangoes only. The purchaser has the option of accepting or rejecting it. (If the mangoes are taken, the buyer will not pay the full price, but instead will pay at the rate of R10-00 for ten).
3. If a buyer goes into a shop to buy a ready cut piece of embroidered material and requests a 3m piece. The seller takes out a certain piece of material and quotes a price e.g. R70-00. However, when the material is measured it is found to be 3.5m long. The buyer now has a choice of whether to take the material or not. If the piece of material is 2.7m long then the buyer still has a choice to

take the item or not. The seller cannot change his price since the item is not priced per metre. But rather it is priced as a single commodity i.e. a ready cut piece of material.

4. If the buyer wanted an embroidered piece of material and he is given a piece by the seller, he should examine the cloth. If he (the buyer) finds a defect in the embroidery he has a choice of taking the material or leaving it.

A woman goes to a shop to buy 2 pieces of silk cloth. On returning home, she finds that one piece of cloth is silk and the other piece of cloth is made of cotton. The buyer should return both pieces of cloth and enter into a new transaction. The reason being that the buyer would be at a loss. In this manner it prevents a conflict arising.

6. A woman goes into a farm stall to buy pecan-nuts. The seller shows her a container and says that this container holds approximately 500g. If the woman and the seller both agree, then the transaction can be made even if the container only has 450g nuts in it. The deal is still complete since both parties agreed on the container and not on the weight.

7. A seller with a container of heaters comes to a shopkeeper. The shopkeeper says he will pay R10,000-00 if there are 100 heaters. This implies he wants to pay R100-00 for each heater. After counting the heaters, the shopkeeper finds there are only 90 heaters then he will pay R9,000-00. If there are 75 heaters, the shopkeeper will pay R7,500-00. However, if there are 110 heaters, the seller will take 10 heaters back.
8. A seller with a container of heaters comes to a shopkeeper. The seller says the entire container is R10,000-00. If the shopkeeper and seller both agree, then the transaction can be made. If the shopkeeper finds 75 heaters or 120 heaters they are all his, because when making the deal he bought the entire container and did not specify the number of heaters.
9. Transactions can be made either by specifying a quantity, weighing an item, or looking at it, e.g. if an entire truckload of watermelons is for sale, a buyer may say:
- a. He will pay R800-00 for 400 watermelons.
  - b. He will pay R900-00 for 200kg of watermelons.
  - c. He will pay R700-00 for the whole truckload without specifying weight or quantity.

**OR**

A woman goes to a wholesaler to buy rice. She may ask the wholesaler:

- a. For a heap of rice for R100-00
- b. For 100kg of rice for R300-00
- c. For a whole container of rice for R5,000-00 without knowing its weight or quantity.

In both the above cases, three aspects should be agreed upon for the transaction to be valid. They are:

1. Quantity or weight
2. Price
3. Quality (the buyer has a right to inspect the goods before taking them).

10. When buying or selling, the seller should display the commodity and allow the buyer to examine the commodity. Both parties should not use vague language since this leads to arguments. The price should also be clearly stipulated and both should agree to the price. If the commodity is not known to the buyer or price is not agreed upon, then the transaction will not be valid.



## WORKSHEET

1. What is the ruling of selling grain?

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2. A buyer buys a box of apples at R40-00 on condition it contains forty apples. On counting, it was found to contain thirty apples. What is the rule?

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3. A buyer buys almonds from a farm stall. The seller shows the buyer a container and says that this container holds approximately 1kg and its costs is R10-00. If both agree to this transaction then what is the rule of this transaction?

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4. What is the rule when vague language is used in any transaction?

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5. Give an example of a transaction made by specifying:

- a. The item

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- b. A quantity of the item

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- c. The weight of item

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## LESSON 4

### METHOD OF PAYMENT

1. The buyer could pay for merchandise in (a) cash, (b) by credit.
2. The payment could also be made by the exchange of items i.e. bartering. If a transaction of bartering is undertaken, it must be of a Halaal commodity. Exchanging sheep for pigs, live sheep for dead sheep, cloth for wine, human bones and hair for fruit, dogs for wheat or rice etc. are all invalid. Bartering cattle for wood etc will be correct.
3. Both the buyer and seller should be well-informed and agree upon the price of an article.
4. When there are two currencies used in a transaction (e.g. dollars and rands) then the seller will stipulate which currency he wants to be paid in. He will also state the price in both currencies.
5. When two currencies are used in a town (e.g. in towns situated near borders of two countries), then the seller will stipulate which currency he wants to be paid in. If the currency is not stipulated then the currency more

commonly used will be used as a means for payment. If both currencies are equally used, then the transaction is invalid without the stipulation of currency.

6. When a seller agrees to take money offered to him without knowing how much money it is, then the transaction is invalid e.g. if a person pulls out some notes and gives it to the seller and he is unaware of the amount in exchange for something, then the deal is invalid.

Note: This occurs when dealing with foreigners who cannot speak one's language. The foreigner may pick up an item and place some money in one's hand. The deal is valid if one accepts the money and if one accepts that the money is the correct amount.

7. When a buyer conceals the amount of money he has, and wants to buy something, this transaction is not valid e.g. he tells the owner "I want this item and I will give you whatever is in my hand." The deal cannot take place if the seller does not know how much money is in the buyer's hand.
8. If a deal is concluded where the buyer or seller is in doubt or there is ignorance in the price, then such a deal is not valid.

### **Examples:**

- a. The seller says “take this item, what is the need to agree on a price?”
- b. The seller says “take the item, I’ll find out the price and let you know.”
- c. The seller says “I will not charge you extra, take the item.”
- d. “Someone else bought a similar item, take it and pay the same price he paid me.”
- e. “Pay whatever you wish. I will accept whatever you give me.”
- f “Find out the price elsewhere. Whatever price they charge, I will charge you.”
- g. “Go to so and so, whatever he charges you, I will charge you.”
9. Where the buyer has goods delivered to him and takes these goods on credit with the agreement that he will pay the seller the amount he (the seller) stipulates, then such a transaction is valid.

### **Rules on credit**

1. When taking goods on credit, the buyer should be specific about when he is going to pay e.g. I will pay you in 15 days; I will pay on the 14<sup>th</sup> March 1998, etc.
2. The buyer should not be vague about the date of payment:

### **Examples:**

- a. "I will pay you later"
- b. "I will pay you when my brother comes"
- c. "I will pay you when the tree bears fruit"
- d. The seller will say "Take the item and pay when you wish"

All the above transactions are invalid since the time of payment is not specified.

3. It is valid to have a cash price and a credit price. E.g. a fan taken for cash costs R150-00 and if the same fan is taken on credit it will cost R175-00.

4. For a seller to charge interest (Riba) on overdue accounts is totally Haraam.
5. Credit cards incur interest, if the amount is not paid in full within the fixed period. Thus ensure that payments are made by the due date since transactions involving interest are totally haraam.
6. Post-dated cheques are considered a credit transaction.
7. All credit sales must be documented as stated in the Qur'aanic verse:

***“Oh you who believe, when you transact a debt payable fix a specified time, put it in writing, and let a scribe write it between you with fairness.” (Surah 2-Verse 182)***

### **Methods of taking ownership after buying**

1. The buyer will first pay for the merchandise and thereafter the seller will hand over ownership of the merchandise.
2. Ownership of home or land will take place after Ijaab and Qabool.
3. Ownership of a car will take place after the keys are given to the buyer after concluding the transaction.
4. Ownership of fruit and vegetables (edibles) will take place when it is handed to the buyer.
5. Ownership of sheep, cows, goats, fowls will take place on delivery or when these are handed over to the buyer.
6. Ownership of furniture will take place when it is delivered or handed over to the buyer.

### **Rule:**

If merchandise is damaged or stolen before handing it over to the buyer, ownership has not taken place and thus the seller will be responsible for the damage or loss.



## WORKSHEET

1. What are the rules when a sale is done with credit payment?

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2. What is the rule on payment when there are two types of currencies used in a town?

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3. Explain why the following will be incorrect. A person enters a shop and says "I want this item and I will give you whatever is in my hand."

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4. List a few examples which renders the deal invalid due to ignorance in price.

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5. Why must a Muslim document a credit sale?

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6. What is the law in charging riba in a credit sale?

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7. When will ownership take place of the following sales:

- a. Merchandise
- b. Home
- c. Edibles
- d. Animals

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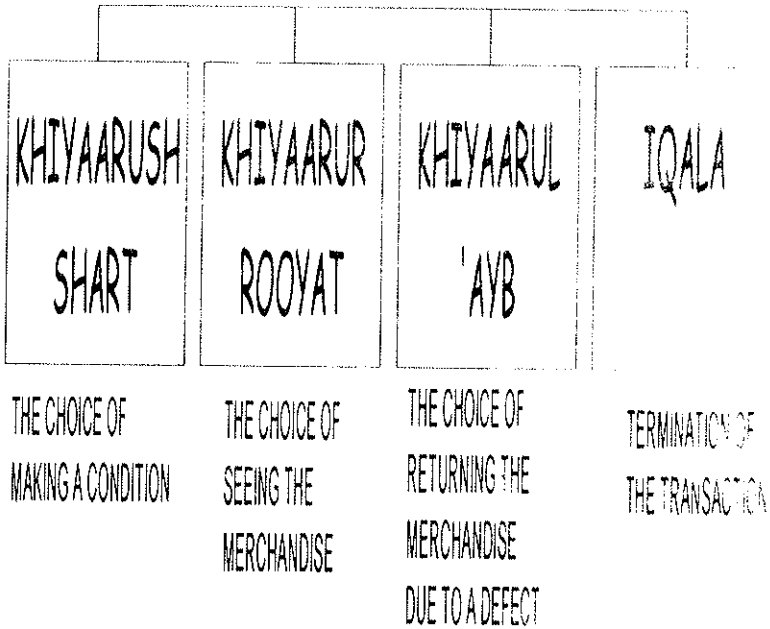
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# OPTIONS GIVEN TO A BUYER



## LESSON 5

### THE OPTIONS GIVEN TO A BUYER DURING A TRANSACTION:

1. **Khiyaarush Shart:** The choice of making a condition.
2. **Khiyaarur Rooyat:** The choice to see the merchandise.
3. **Khiyaarul 'Ayb:** The choice to return a defective merchandise.
4. **Iqala:** Cancelling the transaction.

#### 1. Khiyaarush Shart

- a. Khiyaarush Shart may be exercised by both buyer and seller. This law implies that the buyer may return an item within a 3 day period. Khiyaarush Shart can only be exercised if this condition was made at the time of the transaction. The buyer cannot return the goods after 3 days since Khiyaarush Shart must take place within 3 days.
- b. When Khiyaarush Shart is made by the seller, he may claim his goods back from the buyer within 3 days.
- c. If the buyer made a Khiyaarush Shart condition for a 3 day period and goes to the seller on the first day and

tells the seller that he is keeping the item, then he may not return the goods on the second or third day.

- d. A buyer takes an item with the option of Khiyaarush Shart with the condition that he gets approval from some specified person (his mother, wife, brother). If his mother, wife etc. agrees with the buyer then the seller should be informed by the buyer or his mother, wife etc.

Note: The buyer has transferred the Khiyaarush Shart to another person

- e. If a buyer buys an item with a Khiyaarush Shart option and takes it home, and he puts the item to full use e.g. he buys shoes and walks around with them; buys a bed sheet and uses it on his bed, then he may not return the item since he has used it.

However, if the item is taken for a specific reason e.g. fitting or to check out the article e.g. trying on a shoe to see if it fits, then the right to return the item is not lost.

## **2. Khiyaarur Rooyat**

This is the right to return an item after seeing it. This condition only applies when the goods were not seen at the time of the transaction. If a person has seen the item at the time of the transaction then the condition of Khiyaarur Rooyat is lost.

- a. The condition of Khiyaarur Rooyat is lost if:
  - i. If the face of an animal is seen
  - ii. If a heap of food e.g. wheat, rice, etc is seen
  - iii. If a roll of material is seen
  - iv. If all the houses in a locality are similar and a person sees only the verandah or outside area. However, if all the homes are different, then only by seeing the whole house will Khiyaarur Rooyat be lost.
- b. If a buyer bought an article without seeing it, and thereafter he damages the article, the buyer will have to pay for it. If the seller sent a damaged item then the seller will be responsible for the damage e.g. if a person buys cloth without seeing it and upon delivery of the cloth, the buyer finds the item soiled or torn then the seller will be responsible for it. If the buyer stained or soiled the cloth, then he will have to pay the cost of the damages.

- c. If a blind person purchases an item, then his Khiyaarur Rooyat is accomplished by feeling, touching, smelling etc. the item.
- d. A person sells an item without seeing it, he cannot take the item back after seeing it. Khiyaarur Rooyat can only be exercised by the buyer.
- e. If a person sees a heap of beans, the top of the heap has good quality beans and after purchasing the heap, he finds that the beans at the bottom of the heap are of an inferior quality then the buyer has the right of returning the beans.
- f. If a person buys a consumable item, Khiyaarur Rooyat is not lost by seeing the item but it is lost by tasting the item, e.g. if milk is tasted and it is found to be sour, it may be returned.

### 3. Khiyaarul 'Ayb

Khiyaarul 'Ayb is the choice of returning a defective item. If a buyer buys an item and finds a defect in the item, he has a choice of returning the item or keeping it.

- a. If material was purchased, and it was found that a small portion of it was torn, the buyer may return the entire piece of material, or he may return only the torn portion.
- b. If edible items are purchased and it was found that a certain portion of the food was defective, then the remaining portion can be returned. The seller will compensate the defective items with cash and the remaining portion will be changed e.g. a person buys a dozen eggs for R12.00 and finds that 4 eggs are rotten. When he returns the eggs, the seller will reimburse him for 4 eggs and the buyer will retain the 8 eggs which are good.
- c. If a woman purchases mutton but when she returns home, she finds it is beef. The woman has a right to return the meat.
- d. A person purchases a piece of material and when he returns home he finds that the material is soiled. Thereafter, due to some reason, the material was



damaged at his house. The buyer may return the material, but the seller will only recompensate him (the buyer) for the defect (soiled material) which took place at his shop and not for the damage that took place at the buyer's house.

- e. When purchasing a few items of food and a certain portion is defective, the person may keep all the items or return all the items. He may not keep a certain portion and return a certain portion. E.g. a woman buys flour and butter and she finds that both items are defective, then she should return both the flour and the butter.
- f. If an item was defective, one cannot use it and then return it. E.g. a person buys a shoe and finds it defective, he may not walk around with it and then return it.
- g. If a person goes to a shop to buy a branded article, and when he returns home he finds it is an imitation of the article, then the buyer has the right to return the article (since he has been deceived).

- h. If the seller informs the buyer that he is not responsible for defects, then the buyer should inspect the article thoroughly before taking it. In this case, the buyer loses the right of Khiyaarul 'Ayb.

#### **4. Iqala**

Iqala is the termination of the business transaction. Both the buyer or the seller is allowed to cancel a transaction.

- a. The transaction will be cancelled once iqala takes place, i.e. both buyer and seller agree to mutually cancel the sale.
- b. If the transaction is cancelled, the seller cannot claim money for usage or handling charges and will have to refund the full value. If the seller decides to refund him with less, it will not be permitted.
- c. The buyer cannot introduce a third person into his deal with the seller. If a third person is involved, the seller will have to negotiate a new deal with the third person directly and not via the first buyer. E.g. a buyer cannot tell a seller, go to "so and so" person, and he will pay you.

d. When a deal is done by barter and the item used for payment is destroyed, the deal is not terminated. If the merchandise is destroyed then the act of iqala cannot take place. E.g. a person gave his watch in exchange for a calculator. This implies that the watch is the payment and the calculator is the merchandise. If the watch gets stolen, destroyed, the iqala is valid since the payment can be compensated.

However, if the calculator is destroyed, the deal cannot be cancelled. If part of the calculator was destroyed, then the deal can be cancelled (iqala can be made).

## **WORKSHEET**

1. What are the options given to the buyer during a transaction?

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2. What is meant by Khiyaarush Shart?

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3. List three rules of Khiyaarush Shart.

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4. Explain how will Khiyaarur Rooyat take place.

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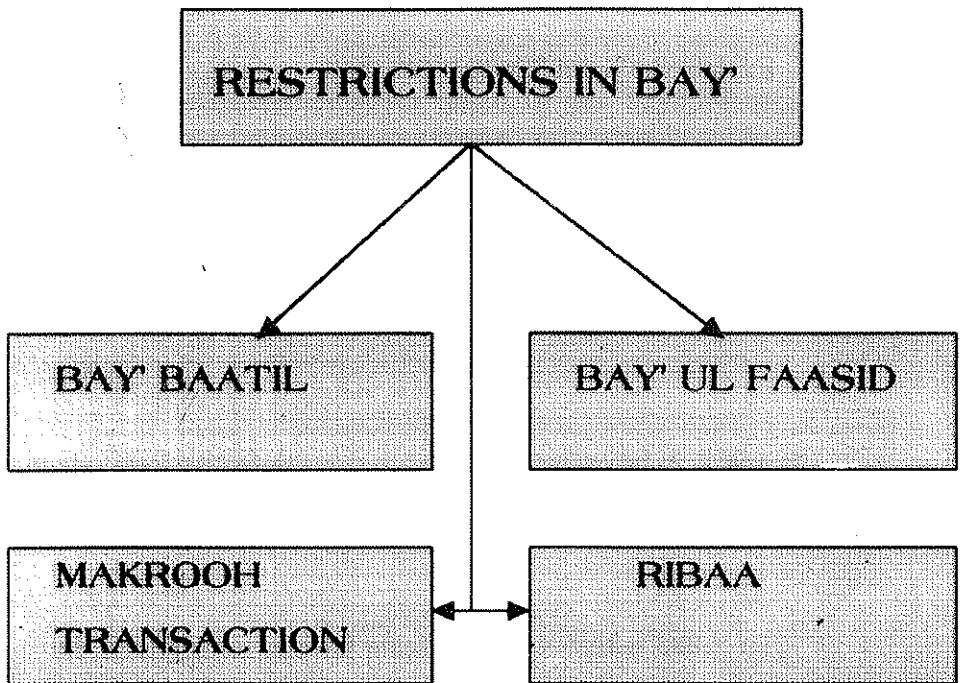
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5. How will Khiyaarur Rooyat be established when the buyer is blind?

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6. Explain the word Khiyaarul 'Ayb.
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7. List three rules of Khiyaarul 'Ayb.
- 
- 
- 
8. Will a buyer be permitted to use a defective item which was purchased before returning it?
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9. To what extent will the seller have to compensate the buyer who purchased an item which had a defect and was further damaged by the buyer?
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- 
10. What is the Shar'i definition of termination of a business transaction?
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11. When will Iqala not take place?
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**THE GOLDEN RULE:**  
ALL TRANSACTIONS MUST BE  
VOID OF THE FOLLOWING:

AMBIGUITY IN  
A) MERCHANDISE  
B) PAYMENT

ANY FACTOR THAT  
LEADS TO  
DISPUTES

## LESSON 6

### TOWLIYAH AND MURAABAHAH

**Towliyah:** To sell something without a profit i.e. cost price.

**Muraabahah:** To sell something at cost plus profit.

1. When the sale of towliyah or muraabahah is made then the condition is that the price be **mithlee** i.e. cash money or if it is bartered, then the weight should be known so that when the transaction of muraabahah or towliyah takes place then the seller knows his cost price.
2. If a person makes a sale of muraabahah, a buyer negotiates a price e.g. cost price + 20% then if the seller agrees, it will be waajib for him to sell the item at that agreed price and if he charges anything extra, it will be Haraam.
3. If a person requests a seller to sell him something without a profit, then this is called towliyah. Towliyah is valid in Shariah.

4. When a person is selling at towliyah or muraabahah he should not say what price he purchased the item for, but rather say what the item cost him. This is because the following costs may be added to the purchase price:
- a. cleaning and sorting costs
  - b. painting and spraying
  - c. transport
  - d. labour and handling
  - e. security
  - f. storage etc.
  - g. rent, electricity, lights and water
  - h. and other incidental expenses which may occur

Examples: a person selling a car purchased a car for R5,000-00

- a. He had it repaired for R1,000-00
- b. He spraypainted it for R2,500-00
- c. He had to have the car cleaned for R100-00
- d. He paid a security company R200-00 to look after the car
- e. He had to pay R100-00 transport costs to get the car delivered to him.
- f. He had to pay R100-00 as rental to the person who kept his car.



Therefore, the seller spent an additional R4000-00

The seller's cost price is R9,000-00 and when selling the car he will not say his cost price is R5000-00 but it is R9,000-00.

5. In muraabahah and towliyah it is not permissible to resell non-movable items before obtaining full ownership.
6. In the sale of movable items one can resell an item before having full ownership of an item i.e. before delivery etc.
7. If items are purchased by weight, one cannot resell the item without re-weighing the item. However, if the buyer was present when the bags were weighed, it will not be necessary to re-weigh the item.

## WORKSHEET

1. Explain the term towliyah and muraabahah.  

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2. When will a sale of muraabahah become Haraam?  

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3. List the types of costs which could be added in the sale of towliyah and muraabahah.  

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4. What is the ruling in muraabahah and towliyah regarding the following sales:
  - a. non movable items
  - b. movable items
  - c. items of weight.

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## LESSON 7

### **MURAABAHAH**

Most of the Islamic banks and financial institutions are using the term “Muraabahah” as an Islamic mode of financing, and most of their financing operations are based on “Muraabahah”. That is why this term has been believed in the economic circles today as a method of banking operations, while the fact is otherwise.

“Muraabahah” is, in fact, a term of Islamic Fiqh and it refers to a particular kind of sale having nothing to do with financing in its original sense. If a seller agrees with his purchaser to provide him a specific commodity on a certain profit added to his cost, it is called a “muraabahah” transaction. The basic ingredient of “muraabahah” is that the seller discloses the actual cost he has incurred in acquiring the commodity, and then adds some profit thereon. This profit may be in lump sum or may be based on a percentage.

The payment in the case of muraabahah may be at the spot, and may be on a subsequent date agreed upon by the parties. Therefore, muraabahah does not necessarily imply the concept of

deferred payment, as generally believed by some people who are not acquainted with the Islamic jurisprudence and who have heard about muraabahah only in relation with the banking transactions.

Muraabahah in its original Islamic connotation is simply a sale. The only feature distinguishing it from other kinds of sale is that the seller in muraabahah expressly tells the purchaser how much cost he has incurred and how much profit he is going to charge in addition to the cost.

If a person sells a commodity for a lump sum price without any reference to the cost, this is not a muraabahah, even though he is earning some profit on his cost because the sale is not based on a "cost-plus" concept. In this case the sale is called Musawamah.

This is the actual sense of the term Muraabahah which is a sale, pure and simple. However, this kind of sale is being used by the Islamic banks and financial institutions by adding some other concepts to it as a mode of financing. But the validity of such transactions depends on some conditions which should be duly observed to make them acceptable in Shariah.

In order to understand these conditions correctly, one should, at the first instance, appreciate that murabah is a sale with all its implications, and that all the basic ingredients of a valid sale should be present in muraabahah also.

Therefore, some fundamental rules of sale without which a sale cannot be held as valid in Shariah shall be discussed. Then, some special rules governing the sale of muraabahah in particular shall be given, and in the last, the correct procedure for using the muraabahah as an acceptable mode of financing will be explained.

The detailed principles have been reduced into concise notes in the shortest possible sentences, so that the basic points of the subject may be grasped at in one glance, and may be preserved for easy reference.

### **Some basic rules of sale**

'Sale' is defined in Shariah as the exchange of a thing of value by another thing of value with mutual consent. Islamic jurisprudence has laid down enormous rules governing the contract of sale, and the Muslim jurists have written a large number of books, in a number of volumes, to elaborate them in detail. What is meant here is to give a summary of those rules

only which are more relevant to the transactions of murabahah as carried out by the financial institutions:

1. The subject of sale must be existing at the time of the transaction. Thus, a thing which has not yet come into existence cannot be sold. If a non-existent thing has been sold, though by mutual consent, the sale is void according to Shariah.

**Example:** 'A' sells the unborn calf of his cow to 'B'. The sale is void.

- 2 The subject of sale must be in the ownership of the seller at the time of sale, and he must have a good title to it.

Thus, what is not owned by the seller cannot be sold. If he sells something before acquiring its ownership, the sale is void according to Shariah.

**Example:** 'A' sells to 'B' a car which is presently owned by 'C', but 'A' is hopeful that he will buy it from 'C' and shall deliver it to 'B' subsequently. The sale is void, because the car was not owned by 'A' at the time of sale.

3. The subject of sale must be in the physical or constructive possession of the seller when he sells it to another person.

"Constructive possession" means a situation where the possessor has not taken the delivery of the commodity, yet the commodity has come into his control, and all the rights and liabilities of the commodity are passed on to him, including the risk of its destruction.

**Examples:**

- i. 'A' has purchased a car from 'B'. 'B' has not yet delivered it to 'A' or to his agent. 'A' cannot sell the car to 'C'. If he sells it before taking its delivery from 'B', the sale is void.
- ii 'A' has purchased a car from 'B'. 'B' has placed the car in a garage where 'A' has free access and 'B' has allowed him to take the delivery from that place whenever he wishes. The car is in the constructive possession of 'A'. If 'A' sells the car to 'C' without acquiring physical possession, the sale is valid.

**Explanation 1:**

The gist of the rules mentioned in paragraphs 1 to 3 is that a person cannot sell a commodity unless:

- a. It has come into existence.
- b. It is owned by the seller.
- c. It is in the physical or constructive possession of the seller.

**Explanation 2:**

There is a big difference between an actual sale and a mere promise to sell. The actual sale cannot be effected unless the above three conditions are fulfilled. However one can promise to sell something which is not yet owned or possessed by him. This promise initially creates only a moral obligation on the promisor to fulfil his promise, which is normally not justifiable. Nevertheless, in certain situations, specially where such promise has burdened the promisee with some liability, it can be enforceable through the courts of law.

But the actual sale will have to be effected after the commodity comes into the possession of the seller. This will require a separate offer and acceptance, and unless the sale is effected in this manner, the legal consequences of the sale shall not follow.

**Exception:**

The rules mentioned in paragraphs 1 to 3 are relaxed with respect to two types of sale, namely:

- a. Bai' salam
- b. Istithna'



4. The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on future events is void. If the parties wish to effect a valid sale, they will have to effect it afresh when the future date comes or the contingency actually occurs.

**Example:**

1. 'A' says to 'B' on the first of January: 'I sold my car to you on the first of February'. The sale is void, because it is attributed to a future date.
2. 'A' says to 'B', "If the 'X' party wins the elections, my car stands sold to you". The sale is void, because it is contingent on a future event.
3. The subject of sale must be a property of value. Thus, a thing having no value according to the usage of trade cannot be sold or purchased.
4. The subject of sale should not be a thing which is not used except for a haraam purpose, like pork, wine etc.
5. The subject of sale must be specifically known and identified to the buyer.

**Explanation:** The subject of sale may be identified either by pointing or by detailed specification which can distinguish it from other things not sold.

**Example:**

There is a building comprising a number of apartments built in the same pattern. 'A', the owner of the building says to 'B'. "I sold one of these apartments to you" 'B' accepts. The sale is void unless the apartment intended to be sold is specifically identified or pointed out to the buyer.

6. The delivery of the sold commodity to the buyer must be certain and should not depend on a contingency or change.

**Rules:**

1. Muraabahah is a particular kind of sale where the seller expressly mentions the cost of the sold commodity he has incurred, and sells it to another person by adding some profit or mark up thereon.
2. The profit in Muraabahah can be determined by mutual consent, either in lump sum or through an agreed ratio of profit to be charged over the cost.
3. All the expenses incurred by the seller in acquiring the commodity like freight, custom duty etc. shall be included in the cost price and the mark-up can be applied on the aggregate cost.
4. Muraabahah is valid only where the exact cost of a commodity can be ascertained. If the exact cost cannot be

ascertained, the commodity cannot be sold on muraabahah basis. In this case the commodity must be sold on musawamah (bargaining) basis i.e. without any reference to the cost or to the ratio of profit / mark-up. The price of the commodity in such cases shall be determined in lump sum by mutual consent.

**Example: 1**

‘A’ purchased a pair of shoes for R100-00. He wants to sell it on muraabahah with 10% mark-up. The exact cost is known. The muraabahah sale is valid.

**Example: 2**

‘A’ purchased a ready-made suit with a pair of shoes in a single transaction by a lump sum price of R500-00. ‘A’ can sell the suit including shoes on muraabahah. But he cannot sell the shoes separately on muraabahah, because the individual cost of the shoes is unknown. If he wants to sell the shoes separately, he must sell it at a lump sum price without reference to the cost or to the mark-up.

## **Muraabahah as a mode of finance**

Originally, murabah is a particular type of sale and not a mode of financing. The ideal mode of financing according to Shariah is mudharabah or musharakah. However, in the perspective of the current economic set up there are certain practical difficulties in using mudharabah and musharakah.

### **Basic features of Muraabahah Financing**

1. Muraabahah is not a loan given on interest. Rather, it is the sale of a commodity for a deferred price which includes an agreed profit, added to the cost.
2. Being a sale, and not a loan, the muraabahah should fulfill all the conditions necessary for a valid sale.
3. The financier must have a good title to the commodity before he sells it to his client.
4. The commodity must come into the possession of the financier, whether physical or constructive, in the sense that the commodity must be in his risk, though for a short period.
5. The best way for muraabahah, according to Shariah, is that the financier himself purchases the commodity and keeps it in his own possession, or purchases the commodity through a third person appointed by him as agent, before he sells it to

the customer. However, it is also allowed that he makes the customer himself his agent to buy the commodity on his behalf. In this case the client first purchases the commodity on behalf of his financier and takes its possession as such. Thereafter, he purchases the commodity from the financier for a deferred price. His possession over the commodity in the first instance is in the capacity of an agent of his financier. In this capacity he is only a trustee, while the ownership vests in the financier and the risk of the commodity is also borne by him as a logical consequence of the ownership. But when the client purchases the commodity from his financier, the ownership, as well as the risk, is transferred to the client.

6. As mentioned earlier, the sale cannot take place unless the commodity comes into the possession of the seller, but the seller can sign an agreement to sell even when the commodity is not in his possession. The same rule is applicable to the Muraabahah.
7. In the light of the aforementioned principles, a financial institution can use the Muraabahah mode of finance by adopting the following procedure:

**Firstly:**

The client and the institution sign an overall agreement whereby the institution promises to sell and the client promises to buy the commodity on an agreed ratio of profit added to the cost.

**Secondly:**

The institution appoints the client as his agent for purchasing the commodity on its behalf, and an agreement of agency is signed by both the parties.

**Thirdly:**

The client purchases the commodity on behalf of the institution and takes in possession as an agent of the institution.

**Fourthly:**

The client informs the institution that he has purchased the commodity in his behalf, and at the same time, makes an offer to purchase it from the institution.

**Fifthly:**

The institution accepts the offer and the sale is concluded whereby the ownership as well as the risk of the commodity is transferred to the client. All these five stages are necessary to effect a valid muraabahah.

**The most essential element of the transaction is that the commodity must remain in the risk of the institution during the period between the third and the fifth stage.**

This is the only feature of muraabahah which can distinguish it from an interest-based transaction. Therefore, it must be observed with due diligence at all costs, otherwise the muraabahah transaction becomes invalid according to Shariah.

8. It is also a necessary condition for the validity of muraabahah that the commodity is purchased from a third party. The purchase of the commodity from the client himself on 'buy back' agreement is not allowed in Shariah. Thus muraabahah based on 'buy back' agreement is nothing more than an interest based transaction.
9. The above mentioned procedure of the muraabahah financing is a complex transaction where the parties involved have different capacities in different stages.
  - a. At the first stage, the institution and the client agree to sell and purchase a commodity in future. This is not an actual sale. It is just a promise to effect a sale in future on muraabahah basis. Thus in this stage the relation between the institution and the client is that of a promisor and a promisee.

- b. At the second stage, the relation between the parties is that of a principle and an agent.
- c. At the third stage, the relation between the institution and the supplier is that of a buyer and seller.
- d. At the fourth and fifth stage, the relation of buyer and seller comes into operation between the institution and the client, and since the sale is effected on deferred payment basis, the relation of a debtor and creditor also emerges between them simultaneously.

All these capacities must be kept in mind and must come into operation with all their consequential effects, each at its relevant stage, and these different capacities should never be mixed up or confused with each other.

10. The institution may ask the client to furnish a security to its satisfaction for the prompt payment of the deferred price. He may also ask him to sign a promissory note or a bill of exchange, but it must be after the actual sale takes place, i.e. at the fifth stage mentioned above. The reason is that the promissory note is signed by a debtor in favour of his creditor, but the relation of debtor and creditor between the institution and the client begins only on the fifth stage, whereupon the actual sale takes place between them.



11. In the case of default by the buyer in the payment of price at the due date, the price cannot be increased. However, if he has undertaken, in the agreement to pay an amount for a charitable purpose, as mentioned in paragraph 7 of the rules of Bai' Mu'ajjal, he shall be liable to pay the amount undertaken by him. But the amount so recovered from the buyer shall not form part of the income of the seller / the financier. He is bound to spend it for a charitable purpose on behalf of the buyer.

## LESSON 8

### **BAY'-US-SALAM**

Bay'-us-salam means to pay for goods before receiving it (paying in advance). It is valid if size, amount, quantity and date of delivery is known. If these factors are not known bay'-us-salam is not valid.

Bay'-us-salam will be valid for the following:

- a. eggs
- b. nuts
- c. bricks
- d. wheat and rice
- e. material
- f. similar articles of sale

In the above cases, sizes, quality, quantity should all be known.

Bay'-us-salam is not valid on the following due to inconsistency in size, quantity, quality etc:

- a. animals
- b. skins of animals
- c. all bodily parts of animals
- d. meat
- e. bundles of wood
- f. vegetables
- g. unripe fruit
- h. fresh fish
- i. pearls and precious stones
- j. goods which are not readily available
- k. fruit or wheat from a specific town or farm.
- l. similar articles of sale

### **The conditions of Bay'-us-salam**

1. The description of the item must be given.
2. Specification of the item must be stated (e.g. wheat, was it irrigated or was it watered by rain).
3. The quality of the item i.e. 1<sup>st</sup> grade, 2<sup>nd</sup> grade.
4. The quantity of the item e.g. 10kg, 1 tonne, 2 metres.
5. The time of delivery e.g. 1 month's time.
6. The stipulation of price in cash or bartered amount.
7. Place of delivery.
8. The buyer should pay the owner at the time of the contract.
9. The whole deal should be documented and a copy given to each party. The buyer has no right to use or sell the items he has purchased until transfer of ownership has taken place.

## WORKSHEET

1. What is the meaning of Bay'-us-salam?

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2. What makes Bay'-us-salam valid?

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3. Why is Bay'-us-salam not valid in the following:

- a. animals
- b. skins of animals
- c. body parts of an animal
- d. meat
- e. bundles of wood
- f. vegetables
- g. fresh fish
- h. unripe fruit
- i. goods which are not readily available?

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- 4 List the nine conditions of Bay'-us-salam.

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## LESSON 9

### BAY'-US-SARF

Bay'-us-sarf is the transaction where both the merchandise and payments is in gold or silver.

#### Rules:

1. The transaction of gold and silver cannot be on a credit basis. It has to be done on a cash basis.
2. When exchanging gold the quantity must be the same but the quality can be different, e.g. a 22ct gold bangle that weighs 50g must be exchanged for gold also weighing 50g. The quality of the exchanged bangle can be different i.e. 18ct, 9ct..
3. The same rule will apply to silver i.e. both weights should be the same.

4. If gold is exchanged for silver or vice versa then the weights need not be the same e.g. 100g of gold can be exchanged for 150g of silver, but both must be exchanged at the same time.
  
5. Gold and silver transactions must be done in cash, e.g. a necklace has diamonds and gold and is valued at R2,500-00. If a buyer only has R1,000-00, he may buy the gold for cash and take the diamonds on credit.

GOLD	DIAMONDS	TOTAL VALUE
↓ R1000 Pay cash	↓ R1500 Take on credit	
		<b>R 2,500</b>

If the sale is intended in this way, then it will be permissible.



## WORKSHEET

1. Explain what is Bay'-us-Sarf

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2. From the following example explain whether the sale will be correct or not.

A person enters a jewellery shop. He gives his 22ct gold bangle which weighs 100g in exchange for a new 50g gold bangle. \_\_\_\_\_

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3. A lady wants to purchase a silver necklace which is stringed with pearls. The price is R5,000-00. The lady only has R2,500-00 cash. How does the sale become valid? \_\_\_\_\_

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4. Mention a few rules on Bay'-us-Sarf.

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## LESSON 10

### **BAY'-UL-BAATIL**

Bay'-ul-baatil is a transaction which is not valid from its inception i.e. selling merchandise that is illegal and prohibited in Islam, e.g. the sale of pigs.

#### **Rules:**

1. It is Haraam for Muslims to sell the following:
  - a. animals not slaughtered Islamically, dead animals.
  - b. blood of humans or animals.
  - c. pigs or any part of the pig (hair, fat, meat, teeth, bones, skin etc).
  - d. wine, beer, drugs and other intoxicants.
  - e. to sell a free human as a slave.

If any of the above items are sold then the transaction is classified as **Bay'-ul-Baatil and is not valid.**

2. Anything made from the above items is also not permissible, e.g. wigs made out of human hair, shoes made out of pig skin etc.
3. Wealth earned from the above merchandise is **Haraam**.
4. If the Haraam item is mixed with the Halaal item then the transaction is still null and void e.g. if a case of wine and a case of vinegar is sold in one transaction.

## WORKSHEET

1. Explain what is Bay'-ul-Baatil.

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2. List a few items that would fall under the category of bay'-ul-baatil..

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## LESSON 11

### **BAY'-UL-FAASID**

Bay'-ul-faasid refers to a transaction that was valid initially but due to its incorrect method it becomes invalid e.g. to sell fish which is not yet caught. In this case, selling fish is permissible but it becomes impermissible because the fish is not yet in one's possession (it is still in the water). This transaction is termed as Bay'-ul-faasid because neither the seller nor the buyer have knowledge about the size, quality, etc of the fish.

Similarly, a transaction becomes invalid because of other external factors such as adding an inappropriate condition e.g. The seller tells the buyer. 'I sold this article to you on condition that when you resell it I have the 1<sup>st</sup> option of buying it,' or '... on condition that I receive a royalty from you when you resell it.'

## **Rules:**

The following transactions will render a sale as bay'-ul-faasid:

1. The sale of fish which is still in the water.
2. The sale of birds which are still free.
3. The selling of milk while it is still in the cow's udder.
4. The sale of a calf before it is born.
5. The sale of steel, gold, silver, copper etc that must still be mined.
6. Selling wool that is still on the skin of the sheep.
7. The stipulation of the payment of price at a period not precisely known to both parties.
8. The date of occurrence which is uncertain.

## WORKSHEET

1. Explain what is Bay'-ul-Faasid

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2. Give an explanation as to why the following are Bay'-ul-Faasid

- a. The sale of a fish which is still in the water
- b. The sale of birds which are still free and flying
- c. The sale of an unborn calf.

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3. What other cause renders a transaction as Bay'-ul-Faasid? Give an example.

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## LESSON 12

### MAKROOH TRANSACTIONS

**The following acts will render a transaction makrooh (undesirable):**

1. For a buyer to bid very high prices without having an intention to purchase the goods, i.e. he spoils the chances of other buyers by raising the price.
2. If a buyer and seller are about to agree on a transaction, and a second buyer goes to the seller and offers him a better price, then for the seller to accept this 2<sup>nd</sup> offer will render the transaction makrooh.
3. For a person to withhold items when there is a need for them (e.g. during droughts etc) so that he may charge people exorbitant prices for these items. Also, for a person to create a monopoly on certain items (i.e. he goes directly to the source of the item to become the sole supplier) at a time of need is makrooh.
4. To trade after the Jumu'ah athaan.



### **Ihtikaar (stock piling)**

Ihtikaar means to buy up all of a certain merchandise when there is a shortage and then sell it with an exorbitant price when it is not readily available at the shops and markets.

Rasoolullah (sallallahu alayhi wa sallam) has forbidden us from stock piling and hoarding items so as to increase the price during a time of shortage.

### **Incorrect merchandise**

It is incorrect for Muslims to sell the following items:

1. Idols and statues
2. Crosses used by Christians
3. Musical instruments and music cd's, cassettes etc.
4. Pornographic material
5. All such articles / commodities which promote sin.
6. All such articles/commodities that promote other religions.
7. Items used for gambling.

## WORKSHEET

1. What is meant by makrooh acts during a transaction?

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2. What is the ruling of trading after the Jumu'ah athaan?

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3. What is the meaning of Ihtikaar?

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4. List seven types of merchandise which are incorrect for Muslims to sell.

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## LESSON 13

### **RIBA**

**(interest/usury)**

The **literal** meaning of Riba is “to increase”

The **Shar’i** meaning of Riba is the extra wealth which is earned without any benefit for gain.

Allah Ta’ala has prohibited the taking of interest in numerous aayaat.

Allah Ta'ala says in the Qur'aan:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلَ الرِّبَا ۚ وَأَحَلَّ اللَّهُ بَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَاتَّهَىٰ فَلَهُ مَا سَلَفَ ۚ وَأَمْرُهُ إِلَى اللَّهِ ۚ وَ مَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ ۝ يَرْبِي الصَّادِقَاتِ ۚ وَاللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَتَيْمٍ ۝ إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ ۖ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ۝ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا خَفِيَ مِنَ الرِّبَا إِنِ كُنْتُمْ مُؤْمِنِينَ ۝ فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ ۖ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ ۖ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ۝ وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۚ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ۝ وَاتَّقُوا يَوْمًا تُرْجَعُونَ إِلَى اللَّهِ ۚ ثُمَّ تُوقَىٰ كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ ۝

### **Translation:**

Those who take riba (usury/interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: "Trading is but like riba". And Allah has permitted trading, and prohibited riba. So, whoever receives an advice from his Lord and stops, he is allowed what has passed, and his matter is upto Allah. And the ones who revert back, those are the people of Fire. There they remain forever.

Allah destroys riba and nourishes charities. And Allah does not like any sinful disbeliever. Surely those who believe and do good deeds, establish salaah and zakaah have their reward with their Lord, and there is no fear for them, nor shall they grieve.

O those who believe, fear Allah and give up what still remains of the riba if you are believers. But if you do not, then listen to the declaration of war from Allah and His Messenger. And if you repent, yours is your principal (capital). Neither you wrong and not be wronged.

And if there be one in misery, then deferment till ease. And that you leave it as alms is far better for you, if you really know. And be fearful of a day when you shall be returned to Allah, then

everybody shall be paid, in full, what he has earned. And they shall not be wronged. (Surah Baqarah, Verse 275-281)

### **Ahaadeeth forbidding Riba (interest)**

1. Rasoolullah (sallallahu alayhi wa sallam) has mentioned a lengthy hadeeth wherein he related the incidents of Mi'raj. He says "..... this night I saw two men who came to me and brought me to a sacred land. We walked until we reached a river of blood, wherein a man was standing, and another man was standing on the bank of the river with some stones in front of him. Then the man who was standing in the river came forward, and when he intended to come out of the river, the other man threw a stone at his mouth, and turned him back to the place where he was earlier - thus he began to do the same with him whenever he tried to come out of the river by throwing a stone at him and turning him back. I asked him, "What is that which I have just seen going on?" He replied, "He is the one who used to take riba (interest/usury)." (Bukhari)

2. The Messenger of Allah (sallallahu alayhi wa sallam) cursed the one who accepts riba (interest/usury), the one who pays it, the one who writes it and the persons who gives witness to it, and said, "They are all alike." (Muslim)
3. Rasoolullah (sallallahu alayhi wa sallam) said: "four kinds of people about whom Allah Ta'ala has decided not to admit them to paradise and not to let them taste its bliss: The one who is addicted to wine, the one who takes riba, the one who exploits the property of an orphan and the man who is disobedient to his parents." (Haakim)
4. Rasoolullah (sallallahu alayhi wa sallam) said: "A dirham which a man receives as riba (interest or usury) is, in the sight of Allah, more serious than thirty three acts of fornication (adultery) in Islam." (Tabraani)
5. Rasoolullah (sallallahu alayhi wa sallam) has forbidden the fruits to be sold or purchased before they are edible and said, "When zina (adultery) and riba (usury/interest) become rampant in the people of a town they themselves invite the punishment of Allah." (Haakim).

6. “The society in which riba becomes rampant is punished with famine, and the society where bribery is rampant is punished with horror and awe (of others).” (Ahmed)

### **Examples of rules regarding interest.**

1. When exchanging two commodities which are the same, their quantities should be equal even if their qualities are different. If an excess quantity is given, it will be considered as riba.

#### **Example: 1**

2.5kg of 1<sup>st</sup> grade wheat can be exchanged for 2.5kg of 2<sup>nd</sup> grade wheat **or** 10 big apples for 10 medium apples. The buyer or seller **cannot** say that they will pay less because of the inferior quality i.e. 2.5kg first grade wheat for 3kg of 2<sup>nd</sup> grade wheat **or** 10 big apples for 15 medium applies.

Note: When two of the same commodities are exchanged (e.g. gold for gold) then this **cannot** be a credit transaction.



**Example: 2**

If a woman takes a 22ct, 30g used gold bangle to a jeweller and wants to exchange it for a new 22ct gold bangle, then the seller will be permitted to give her a new gold bangle weighing 30g and also of 22ct value. If the seller feels that he is incurring a loss, he may first purchase the used bangle for an agreed price and give the buyer the cash. Thereafter, the buyer may purchase what she wants. In this transaction it will be incorrect for the seller to give back only 25g of gold and say that the remaining 5g is taken because the gold was used. If the 5g of gold is taken it is riba and it is Haraam to use.

2. When commodities are not the same, then the quantities exchanged can be different, e.g. 2kg of guavas for 5kg of potatoes. This difference will not be considered as riba.

**The following commodities are considered different from each other:**

1. Olives are different from olive oil
2. Dry dates are different from fresh dates
3. Raisins are different from grapes
4. Wheat is different from flour
5. Maize is different from maize flour, etc.

**Riba of the present day:**

In today's western society, the economic system deals with interest in various situations and forms. Therefore, Muslims should exercise extreme caution when undertaking business dealings. Since riba incurs the wrath of Allah Ta'ala many huge business co-operations have been destroyed because they were negligent of this prohibition of Allah Ta'ala. Riba also incurs severe consequences after death.

Even though modern day business deals with cash instead of gold or silver, the principles of business will remain the same since the cash notes are a representation of gold or silver. Money that is currently in circulation is actually a token of the gold reserves of a country which is kept by the reserve bank. Therefore, the rules of riba apply to cash as well.

### **Riba in Loans**

To take a loan with the condition that when the loan is repaid an extra amount has to be paid with the original amount, then this extra amount is riba.

**Example:** A person asks his friend for a R3,000-00 loan. His friend gives him R3,000-00 with the condition that when it is repaid the amount to be paid will be R3,500-00. The extra R500-00 is riba and is Haraam.

### **Overdrafts:**

Overdraft facilities are provided by banks to accountholders. It allows the accountholder to withdraw more money from the holders account than the holder actually has. The condition is that the accountholder has to pay interest (riba) on the excess amount.

**Example:** A businessman has R4,000-00 in his account. He has to pay a certain merchant R4,800-00. He therefore withdraws R4,800-00 from the bank since he has an overdraft facility. However, when he repays the bank the R800-00, he will also have to pay a certain amount of interest e.g. 10%. This means he

will have to pay the bank R80-00 interest. Overdrafts are Haraam since interest has to be paid to the bank.

### **Hire Purchase**

Hire purchase sales are very common in present times. In this transaction a person pays a deposit and takes the goods. The balance usually is paid in monthly instalments in stipulated amounts. Where interest is incurred on payment, hire purchase will not be permissible.

**Example:** A business buys a photocopier on hire purchase. The cash price is R5,000-00. When the hire purchase agreement is drawn up, R1,000-00 is paid as a deposit and R500-00 is to be paid monthly for 12 months. Therefore the business has to pay R7,000-00 for their photocopier. This is permissible since the seller has a right to a cash price and a credit price. In this sort of transaction interest is charged on late payments. In this case, the levying of interest will be Haraam.

### **Credit Cards:**

For many people credit cards are becoming a popular option of buying and selling. It allows a person to buy merchandise and to pay for it at a later date. The money owing on these credit cards can be paid off in a certain number of days e.g. 21 days without interest being levied. However, if this number of days is exceeded then interest is charged on the amount owing.

**Example:** A person buys shoes with his credit card for R200-00. His credit card stipulates that he has 20 days to pay. If he does not pay the bank within 20 days then he will be levied with a 5% interest. This interest will be Haraam.

**Note:** When credit cards are used for reasons of safety and the user makes sure no interest is incurred, then they are permissible to use.

## **Bank Accounts**

**(Saving Accounts, Cheque Accounts, Fixed Deposits)**

### **Money is mainly put in banks for the following 2 reasons:**

1. Money is put in banks so that it may grow and persons investing in these institutions may accumulate more money. This is done on fixed deposits, savings account etc. Banks pay interest on the money invested in these types of accounts. This form of banking is totally Haraam.
2. Money is put in banks for security reasons. Many people avoid keeping large amounts of cash at their homes or businesses for fear of theft, etc. They, therefore, keep money in cheque accounts, current accounts etc. These accounts also incur interest but the Fuqaha have given the ruling that these accounts may be utilised on condition that the interest incurred be given away.

**Note:** The interest given away should not be done with the intention of earning reward from Allah Ta'ala, sadaqah, lillah etc. It should just be given away with no intention of reward at all.

## **Some commonly asked questions regarding the utilisation of riba (interest / usury)**

### **1. What can be done with riba money?**

As riba is a Haraam form of income, it should be disposed of in the same way as other Haraam, ill-gotten funds are required to be disposed of. The Fuqaha (jurists of Islam) state that the fundamental principle in disposing of Haraam funds is that such funds are “Waajibut-Tasadduq”, i.e. they have to be given into the ownership of deserving poor Muslim recipients without any intention of reward. Riba (interest) money will thus be disposed of by giving it away without any intention of gaining reward, to those needy Muslims who are eligible to receive zakaat.

### **2. Can riba be used to pay traffic fines?**

As the above method is the ONLY way of getting rid of riba, it will NOT be permissible to utilise such funds for the payment of traffic fines. Traffic laws are put into place for one's own safety and by applying for and obtaining a driver's licence, then in principle, one indirectly pledges to obey such laws. When a contravention of a traffic law takes place and one is charged a fine, one has the option of either

admitting guilt by paying the fine, or facing prosecution with a jail term. The essence of the traffic fine is then a form of ransom money for deliverance from an impending jail term. Thus, by paying the fine, one is deriving the benefit of being saved from going to jail. By paying traffic fines with *riba*, a rich person will also be benefitting from Haraam funds, in spite of NOT being eligible of doing so. Thus, this will NOT be permissible. Granting permission for paying traffic fines with *riba* further has the added implication of Muslims deliberately opening bank accounts to accumulate interest, just so that they may derive interest money to pay their fines.

### **3. Can *riba* be used to pay income tax?**

If a government imposes an oppressive tax on its citizen, then yes, it will be permissible for one to pay such taxes with the interest money, PROVIDED that the interest has been acquired from a GOVERNMENTAL banking institution, such as for instance, the Reserve Bank or the Post Office if the Post Office is a governmental institution. The reason why this would be permissible is that one is returning the interest to the SAME source from where it was derived. In other words, if the interest was acquired from the government and it is being returned also to the



government, albeit in the guise of taxes. However, this ruling does not now give one the permission to deliberately start banking on interest with the Post Office solely for the purpose of gaining interest to pay such taxes, because to intentionally initiate an interest transaction is in itself a sin. Yes, if one already had such interest lying in the Post Office savings account and that is utilised for paying such taxes, it will be in order. However, as soon as one uses up the interest (either by disposing of it to the poor or paying oppressive taxes), one will also be required to shut down that Post Office interest-bearing account, because continuing such an interest-bearing transaction is a transgression on its own.

However, interest derived from Commercial Banks where most people generally do their banking, CANNOT be used to pay ANY taxes to the government (whether it be income-tax or whatever), because in this case, the interest is NOT being returned to the SAME source from where it was accrued. The Commercial Banks are private institutions, whereas tax is paid to the government.

#### **4. Can riba be used to pay for school fees?**

Paying school fees with interest money will also be prohibited. One should educate one's child with "clean" money and not with 'filth' such as interest money. Yes, if however, someone gives his interest to deserving poor Muslim parents who are eligible recipients of zakaat (hence also eligible for accepting interest), and those parents in turn utilise that interest to pay their children's school fees, that will be permitted. But for rich parents to do so, will NOT be allowed.

#### **5. Is riba permissible for utilisation in the construction of public toilets, pathways and roads?**

As far as the issue of building public toilets, pathways and roads with riba is concerned, it will NOT be permissible to utilise interest funds for these projects. Although SOME Ulema do give permission for utilising interest in such communal projects, caution dictates against it and that is why many prominent Jurists prohibit it. The reason is obvious, that the Fuqaha state that the fundamental principle in disposing of Haraam funds is that such funds are "Waajibut-Tasadduq", i.e. they have to be given into the ownership of a deserving poor Muslim recipient without any

intention of reward. By utilising such funds on toilet blocks or roads, no poor person is being made the owner of these funds. Secondly, all people, rich and poor will be deriving benefit from the toilets and roads and it would not be in order especially for the rich to derive benefit from a facility that has been brought into existence with Haraam funds. Thus, to fund such projects with interest money will NOT be permitted.

#### **6. What is the Shar'i ruling regarding Muslim accountants?**

Riba in its every form and any form of direct involvement in the execution of such a transaction is Haraam in Shariah.

Allah Ta'ala has cursed all the components and key players of such a transaction whether merely recording the details of such a transaction at the time of enacting such a deal or simply being witness to such a transaction.

Hence, if an accountant is directly involved in the formation and execution of such interest-rebated deals in the company he is employed in, then as by him furthering his career in such a company he will be involving himself in Haraam and invoking the curses of Allah Ta'ala upon him, it will not be

permissible for him to further pursue the said profession under such circumstances.

However, if he plays no direct and physical part in the initial recording and execution of such riba orientated transactions but merely makes such recordings into the journals of the company in his task in formulating the financial position of the company, then there will be no harm in his involvement in serving as an accountant for such a company on condition that his rôle in the company is merely that of a non-active participant and financial adviser and he does not become entangled in any of the interest dealings of the company nor serves as an intermediary therein.

### **Insurance**

Insurance is the payment of a certain amount of money every month to an insurance company with the condition that if any liability (fire, theft, etc.) occurs to the payee, then the insurance company pays out the payee the value of the damaged item. Items that can be insured include cars, houses, merchandise and even one's life.

**Example:**

A person has an insurance policy for his car worth (R30,000-00). He pays R200-00 every month. One year later his car gets stolen and he claims R30,000-00 from the insurance company. In actual fact he has only given the insurance company R2,400-00 (200x 12 months). When he receives his money i.e. R30,000-00, only R2,400-00 is his and R27,600-00 is interest.

**The reason why all forms of insurance is Haraam in Islam**

All forms of voluntary insurance (be it life insurance or short term insurance of property or vehicles), are not permissible in Islam. The reason is that there are two Haraam factors involved in insurance schemes, one being interest and the other, gambling. The interest aspect comes in when, after paying a minimal amount of premiums, a substantially greater amount is received to cover one's losses. The gambling aspect comes to the fore due to the fact that insurance is like a game of chance: if you suffer a loss in your property or vehicle, you would receive a monetary kickback from the insurance company that would be far in excess of the premiums paid in by you. If on the other hand, there is no loss sustained, then instead of receiving

something back, you would have to forfeit the entire premiums that you paid in.

One should forget about getting involved in such prohibited forms of insurance and place one's trust in Allah Ta'ala with the firm conviction that only He will protect one's assets and protect one from financial predicaments. Rasoolullah (sallallahu alayhi wa sallam) said that by giving zakaat one's wealth is protected from calamities. A Mu'min should place his assets in the protection and trust of Allah Ta'ala and not look towards infrastructures established by the Kuffaar whose only purpose is to deplete the hard-earned money of the unsuspecting masses and to make the poor poorer and the rich richer. Due to the above factors, opposite-party insurance too would not be permissible.

Islam does not confine solutions for economic success and development in structures set up by the Kuffaar. Islam's solutions are simple and forthright and those are that we should:-

- a. Strengthen our Imaan and carry out the commandments of Allah Ta'ala, thereby attracting His Mercies, Bounties and Barakah in our sustenance.

- b. Make the effort on our part in earning income from Halaal sources.
- c. Place our trust in Allah that He will protect our assets and also give Barakah in our earnings and let it suffice for all our dependents.
- d. Utilise our surplus wealth in channels of Zakaat and Lillah so as to assist those who are less fortunate. If the haves would truly and correctly spend their surplus wealth on the have-nots, it would eradicate destitution and it would not be necessary even for the poor to resort to crime in order to fill their bellies. This same surplus wealth can also be used to establish industries so as to create jobs for the unemployed, both Muslim and non-Muslim. Using one's excess wealth to create job opportunities for the unemployed is also a form of sadaqah and lillah.

If we were to implement this four-point strategy, we would Insha Allah bring about a better world to live in and there would be little or no starving mouths left to feed.

Allah Ta'ala says in the Noble Qur'aan:

***“He who fears Allah Ta'ala, for him He prepares a way out, and He provides for him from sources he could never imagine.” (65:2)***

Look at the unique power of having trust in Allah Ta'ala, as extolled in the following Hadeeth:

***“Surely if you will trust Allah Ta'ala, as you really ought to, then He will provide for you in the same way as He provides for the birds who rise and leave early in the morning with hungry stomachs but return in the evening fully nourished and satiated.” (Mishkaat, page 452)***

It is said that when the eggs of crows hatch, the young emerge with white feathers on their bodies. The parents look at them and initially feel “These are not our fledglings; otherwise they would have had black feathers like us.” The result is that the parents ignore them and do not feed them until such a stage that their feathers eventually turn black. In the interim, Allah Ta'ala, in a most unique way, makes arrangements for their provision: when these young crows open their beaks, Allah Ta'ala commands the wind to blow insects into their mouths. Will that Being who causes sustenance to be conveyed to crows, allow His obedient



His obedient servants to starve to death? Never! Allah Ta'ala is that Powerful Being who feeds a baby even in its mother's womb; and then before it sets foot in the world, its mother's breasts are already bursting with milk for its nourishment.

In a nutshell, if we build our Imaan and place our trust fully in Allah Ta'ala, then thoughts of indulging in the Haraam transactions that the West is trying to indoctrinate us with, would not even cross our minds.

### **Medical Aid Schemes and Pension Funds, etc.**

In all of these particular funds an employer contributes a certain percentage of his salary to the various funds. In many cases, the employee also contributes to the fund. In most circumstances, the money that one gives and the money that one's employer gives are Halaal and the rest is riba and it is Haraam.

Example: A person contributes R100-00 every month for 20 years to his pension fund. His employer puts R25-00 into this fund also for 20 years. In actual fact the fund is R30,000-00 (R24,000-00 employers money and R6,000-00 employers contribution). When he values his fund, he finds it worth R40,000-00. Only R30,000-00 belongs to the person and

R10,000-00 is interest. This “extra” R10,000-00 should be given away.

### **An Islamic alternative to insurance:**

One scheme of “insurance” that could be viable in Islam is that in which Muslims remain totally independent of the kuffaar insurance schemes and pool their resources together by contributing towards a special private fund. This scheme is known as Takafful and can be operated as follows: The contributed capital amount of each member would be invested in a “Mudharabah” scheme; i.e. a scheme wherein only the capital outlay (not labour) is provided by the investors. Thereafter individuals will be appointed whose duty will be to set up businesses with the capital. These individuals will provide only the labour and no capital. The capital outlay will remain the property of the investors but the profits generated from the business ventures will be shared between the investors and the labourers at a mutually agreed percentage ratio. Along with the contribution, each member should also grant permission for a portion of his annual profit to be deposited into a special reserve fund with the intention of “Waqf”. Mutual consent from all the investors will also be taken for their deposits in the Reserve or Waqf Fund to be utilised to relieve the plight of any contributor

of the scheme who may be afflicted with some financial loss. In this way, money from the collective Reserve Fund (Waqf) pool may then be used to compensate any of its members who may be afflicted by some financial loss to person or property. The main pivot in the success of this scheme is the mutual consent of each contributor for part of his profits to be utilised for alleviating the need and claims of fellow contributor members. Each investor can also consent that if the Reserve Fund has been depleted, payments can be made to the afflicted persons from their capital outlay, subject to any specific conditions.

**Nowadays, in most commercial organizations etc, employers are forced to have medical aid plans in employment packages. What should Muslim employers do in such a case?**

As employees are compelled by contract to include medical aid plans in employment packages, Muslim employers will be permitted to include such packages in their employment schemes. However, the employees will be allowed to utilise only that amount which was contributed on their behalf. The excess is termed as Riba which one will not be allowed to utilise.

## **WORKSHEET**

1. What is the literal meaning of riba?

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2. What is the shar'i meaning of riba?

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3. List one aayat of the Noble Qur'aan explaining the law of riba.

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4. Write two ahadeeth explaining the law of riba.

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5. If a person exchanges 1 tonne of South African wheat for one and half tonne of Malawian wheat is this transaction valid. Explain your answer in detail.

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6. A person exchanges twenty kilos of olives for five litres of olive oil. What is the rule of this type of deal?

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7. Explain the ruling of the following: A person takes a loan of R1,200-00 with the condition of repayment of R1,500-00.

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8. Give the Shar'i ruling of bank overdrafts with an example.

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9. What is the ruling of the following sale: A buyer gets involved with a hire purchase deal. He purchases a computer. The price is R12,500-00 which includes a deposit of R500-00 and a monthly installment of R1,000-00 over 12 months. After eight installments he is unable to continue paying. He is given a warning of the item being repossessed or he will have to pay an extra R500-00. What is the ruling for this situation?

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10. A buyer does his shopping with a credit card, having very little money in his bank account e.g. he has R100-00 in his account and does shopping for R500-00. What is the ruling of this type of deal?

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11. What is insurance? Give an example.

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12. Why is insurance Haraam?

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13. What is an Islamic alternative to insurance?

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14. What is the Islamic view on medical aid schemes?

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## LESSON 14

### MUDHAARABAH

Mudhaarabah is a form of partnership where one partner provides all the capital and / or merchandise without providing labour and the other partner provides labour but does not contribute any capital or merchandise.

#### The terminology used in mudhaarabah

Mudhaarib: The partner who provides the labour in the partnership. He does not lay out any capital.

Rabbul-Maal: The partner who finances the partnership with his capital or he provides merchandise.

#### Rules regarding Mudhaarabah

- When goods or capital are given to a mudhaarib they are an amaanah (trust).
- The mudhaarib is a representative of the rabbul-maal during all transactions.
- If goods are damaged while in the mudhaarib's possession (trust), either before he starts doing the



transactions or after he starts the business, he will not have to recompense the Rabbul-Maal.

- d. Both the mudhaarib and the rabbul-maal get a share of the profits. The amount of profit obtained by each one must be stipulated as a percentage e.g. mudhaarib will get 40% of the profits and the rabbul-maal 60%.
- e. If the whole partnership becomes void, then the mudhaarib will not share in the profits, but he will have to be paid a wage for his labour efforts.
- f. If the mudhaarib does any transactions which are contrary to the wishes of the rabbul-maal e.g. he buys goods which the rabbul-maal specifically does not want him to buy, and the business experiences a loss, the mudhaarib will have to bear the cost of the loss.
- g. If the business suffers a loss due to mismanagement by the mudhaarib, he will have to bear the loss.
- h. If all the profits are given to the rabbul-maal, the business is no longer a mudhaarabah.
- i. If there is any doubt or ignorance by the mudhaarib or the rabbul-maal with regards to the profit-sharing ratio then the partnership is null and void.

- j. All those methods permissible for a sole-trader are permissible for a mudhaarib e.g. selling for cash or credit, hiring, travelling etc.
- k. A mudhaarib can bring another mudhaarib into the business if he has permission from his rabbul-maal.
- l. The mudhaarib is allowed to give goods as a collateral (surety) or he can pawn etc. without the rabbul-maal's knowledge, if such a restriction was not initially placed on the mudhaarib.
- m. The mudhaarib can be restricted by the rabbul-maal with regards to where he can trade, with whom he should / should not trade, what he can and cannot sell, etc.
- n. When specifying the amount of profits that will be shared, a percentage must be specified and not a fixed amount, e.g. a rabbul-maal cannot say "I will take R5,000-00 and you (the mudhaarib) take the balance." This is incorrect. The agreement must be specified in percentages "(e.g. I will take 70% and you will take 30%)".
- o. If there is a loss or the business makes no profit, then the rabbul-maal is responsible for the loss and the mudhaarib will not receive any payment.

- p. If one of the partners die, the partnership is terminated.
- q. If the mudhaarib is trading outside his locality, all his travelling costs will be paid by the rabbul-maal
- r. If the mudhaarib is trading in his locality, he will bear his own costs.
- s. When the rabbul-maal gives the mudhaarib permission to use his own discretion when purchasing items or to pay for minor items, then the mudhaarib will bear these costs, e.g. to wash dirty items, to package goods, etc.

### **Conclusion:**

This form of partnership is recommended for people who want halaal returns on their money. They could assist poorer members of the community in earning halaal money and also earn a profit for themselves.

Mudhaarabah is a special kind of partnership where one partner gives money to another for investing it in a commercial enterprise. The investment comes from the first partner who is called rabbul maal, while the management and work is the exclusive responsibility of the other, who is called the mudhaarib.

## **Termination of mudhaarabah**

The contract of mudhaarabah can be terminated at any time by either of the two parties. The only condition is to give a notice to the other party. If all the assets of the mudhaarabah are in cash form at the time of termination, and some profit has accrued to the principal amount, it shall be distributed between the parties according to the agreed ratio. However, if the assets of the mudhaarabah are not in the cash form, the mudhaarib shall be given an opportunity to sell and liquidate them, so that the actual profit may be determined.

There is a difference of opinion among the Muslim jurists about the question whether the contract of mudhaarabah can be effected for a specified period after which it terminates automatically. The Hanafi and Hanbali math-habs are of the view that the mudhaarabah can be restricted to a particular term, like one year, six months, etc., after which it will come to an end without a notice. On the contrary, Shafi'ee and Maliki math-habs are of the opinion that the mudhaarabah cannot be restricted to a particular time.

However, this difference of opinion relates only to maximum time-limit of the mudhaarabah. Can a minimum time-limit also be

fixed by the parties before which mudhaarabah cannot be terminated? No express answer to this question is found in the books of Islamic Fiqh, but it appears from the general principles enumerated therein that no such limit can be fixed, and each party is at liberty to terminate the contract whenever he wishes.

The unlimited power of the parties to terminate the mudhaarabah at their pleasure may create some difficulties in the context of the present circumstances, because most of the commercial enterprises today need time to bear fruit. They also demand constant and complex efforts. Therefore, it may be disastrous to the project, if the rabbul maal terminates the mudhaarabah right in the beginning of the enterprise. Specially, it may bring a severe set-back to the mudhaarib who will earn nothing despite all his efforts. Therefore, if the parties agree, when entering into the mudhaarabah, that no party shall terminate it during a specified period, except in specified circumstances, it does not seem to violate any principle of Shariah, particularly in the light of the famous hadeeth, already quoted, which says:

“All the conditions agreed upon by the Muslims are upheld, except a condition which allows what is prohibited or prohibited what is lawful.”

## **WORKSHEET**

1. Explain the term mudhaarabah.

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2. What does the words mudhaarib and rabbul-maal mean?

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3. Mention the rule of sharing profits.

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4. What will render the act of mudhaarabah null and void?

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## LESSON 15

### LAY-BYES

Lay-byes is a form of credit sales where goods are not taken until they are fully paid for.

#### Rules:

1. The seller should document the lay-bye transaction in detail and give the buyer a copy of the document. The seller should take the item and leave it aside for the buyer.
2. The lay-bye goods should be kept safely and should not be kept as part of the ordinary stock.
3. If the person who took the lay-bye dies, the money that he has paid should be refunded to his heirs.
4. If the goods are damaged, soiled etc. the buyer has the option to take the goods or be refunded or take another item. This has to be done by mutual agreement.
5. The seller should stipulate a time period for his payment, but he cannot keep the money paid after this time period expires. He will have to send the money back to the buyer. If there was no contract made and money was

given in charity, thereafter the buyer comes, the seller will have to refund the money to the buyer.

6. Items to be included on a lay-by document are:
  - a. Name of seller
  - b. Name of buyer
  - c. Buyer's telephone number and address
  - d. Name of item
  - e. Description of the item (size, brand, code, etc)
  - f. Price of the item
  - g. Amount paid
  - h. Balance outstanding
  - i. The conditions of the contract should not be vague.
  - j. Signature of both parties
  - k. Date of every payment
7. When a business is sold, lay-by deals have to be honoured by the new owner or the buyer be refunded in full.
8. If there is any doubt in the contract the transaction is invalid.
9. If it was mutually agreed on at the initiation of the contract, the seller has a right to take storage costs, etc. when refunding money.



## WORKSHEET

1. What is the meaning of lay-byes?

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2. What are the rules of lay-byes?

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3. What is to be documented in a lay-bye?

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4. What happens if one of the parties to a lay-bye deal dies?

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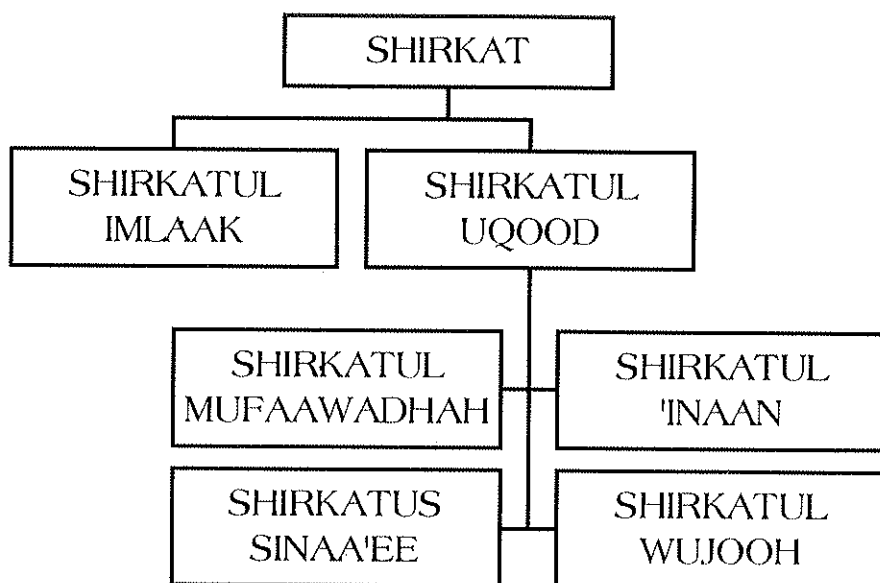
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# PARTNERSHIPS



## LESSON 16

### PARTNERSHIPS

In Shariah a partnership is called Shirkat. The technical definition of shirkat is the contract of partnership that includes capital and profits.

#### There are two types of shirkat (partnerships)

##### 1. Shirkatul-Imlaak - (partnership in ownership)

In this type of partnership, two or more people receive wealth by inheritance, gifts, charity or due to collective buying and selling, etc. and they jointly become the owners of the wealth. The law pertaining to this partnership is that neither of the two or more persons can use the wealth without first consulting the other partner.

## **2. Shirkatul-'Ugood (Business partnership)**

There are four types of Shirkatul-'Ugood.

### **a. Shirkatul Mufaawadhah**

In this type of partnership both partners can stand as a guarantee for the business and both are representatives of the partnership:

#### **Both partners:**

1. Provide an equal amount of capital.
2. Have the power of authority.
3. To be of the same religion.
4. The partnership is equal in all ventures.

#### **Conditions of Shirkatul Mufaawadhah.**

1. Both partners must be mature and free (not slaves).  
Both have to be equal in religion and authority.
2. Shirkatul Mufaawadhah is not permissible between a slave / child and a free Muslim male, since a child / slave does not have authority over many things.
3. This partnership is not valid between a Muslim and non-Muslim.

- 4 In Shirkatul Mufaawadhah each partner has a right to buy goods, make decisions, etc. for the business. Both will be partners in these circumstances. They will not be partners in items for personal use, e.g. food for the family etc.
5. If one partner receives money by gift or inheritance, then the partnership is null and void since both partners capital needs to be equal. If, however, one partner receives goods or land, the partnership is still valid.
6. Shirkatul Mufaawadhah is not permitted on land or goods.

**b. Shirkatul 'Inaan**

In such a partnership both partners are representatives of each other; but they cannot stand guarantee for each other. The capital will be equal but the profits does not have to be equal. Each partner can contribute a portion of his wealth (not all his wealth) to the partnership.

### **Conditions of Shirkatul 'Inaan**

1. In Shirkatul 'inaan the capital contribution can be equal or unequal between the partners.
2. The profits will not have to be equally shared.
3. In Shirkatul 'inaan, a partner will not contribute his entire wealth, but only a portion of it.
4. The partnership is valid if two currencies are used, e.g. the South African partner uses rands and the British partner uses pounds.
5. If one of the partner's wealth is destroyed, lost, etc. the partnership becomes null and void.
6. One partner or both can be involved in the actual trading.
7. In both Shirkatul 'inaan and Shirkatul mufaawadhah, both partners have a right to give goods for Mudhaarabah, both can make someone else their representative, both can employ someone and both can deal in cash or credit.

### **c. Shirkatus Sinaa'ee**

In such a partnership, two tradesmen are partners, e.g. two tailors; one tailor and one embroider; one bricklayer and a plasterer. Both partners will work and the money will be shared equally.

### **Conditions of Shirkatus Sinaa'ee**

1. The two tradesmen can be in the same profession or different professions.
2. The profit is shared equally, i.e. 50% of the profits for each partner.
3. Both can take on a job and both will be a partner in this job.

### **d. Shirkatul-Wujooh**

Shirkatul-wujooh is that partnership that commences without goods or capital. Goods or capital are taken on credit. The partners are representatives of each other.

### **Conditions of Shirkatul Wujooh.**

The partners agree before the partnership commence the ratio in which the profits will be shared (as a percentage) e.g. one partner gets 60% and one gets 40%. It will be incorrect for any partner to take more than the stipulated amount.

### **SHIRKATUL FAASID**

Shirkatul faasid is that partnership where the conditions of partnership are not found.

### **Miscellaneous laws regarding partnerships:**

1. Shirkat is not permissible for those things which are mubah, e.g. grass, water, wood, game, etc. (i.e. things found naturally and no capital or labour was provided).
2. If one person has a vehicle and the other person has a water container, they cannot enter into a partnership where they will be filling water in the water container and transporting it for sale.



3. In a partnership, one partner cannot give zakaah of the other partner without the permission of the other partner.
4. A partnership will be rendered invalid if one partner dies or becomes a non-Muslim or flees a country under Islamic law.
5. To make a partnership in anything Haraam is invalid, e.g. to trade in wine, music etc.

## WORKSHEET

1. Explain what does Shirkatul Imlaak mean?

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2. Shirkatul 'Uqood are of four types.

a	Shirkatul		U		A	A			D			
b	Shirkatul	'I			A							
c	Shirkatul		I		A	A	-	'E				
d	Shirkatul	W			O		H					

3. Explain the above four types of partnerships.

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4. What types of Shirkat is regarded as Faasid?

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## LESSON 17

### **STOCK EXCHANGE AND FINANCIAL MARKETS**

#### THE STOCK EXCHANGE

A stock exchange is a voluntary association of firms and individuals who, in accordance with fixed rules, buy and sell stocks and shares for the public or for themselves.

Investors may buy shares either out of hand or on the Stock Exchange.

- Investors buy shares either
  - a. as an investment, i.e. with a view to earning an income in the form of dividends.
  - b. for speculation, i.e. in the hope that the price of shares will rise and that they can be sold at a profit.

The limited liability company is today the most common form of business undertaking, owing to the following factors.

- a. The smallest investor can contribute to its capital by buying shares in small units ranging from 10c to R10 each or more.

- b. Shareholders are not liable for the debts of a limited company.
- c. The shares are negotiable and can be sold at any time.
- d. A large amount of capital can be raised by the issue of shares to the public.

The Stock Exchange is an organised market. Only registered stockbrokers may, in accordance with strict rules, become members of stock exchanges. A 'seat' on the 'floor' of the exchange hall is allocated to each member. A stockbroker's seat is telephonically connected with his office where deliberations with partners, clerks, investment analysers and clients take place continuously. The 'seats' of brokers actually form the exchange hall, where share prices are recorded on the share noticeboard. Three prices, i.e. the buying, selling, and negotiated prices at which the shares are sold, are noted on the board.

When a broker receives an instruction to buy or to sell on behalf of a client, he leaves his chair (seat) and goes to the floor where he calls out the name of the share. Other brokers who are interested, approach him and if they agree on a price, this price is recorded on the board. Soon after this, the share prices are sent to members of the exchanges in other centres. In this way,

and through the press and broadcasts, buyers and sellers are informed of the prices of stocks and shares.

As with ordinary prices, share prices are determined by the forces of supply and demand. These forces change continuously and consequently share prices (because they are equilibrium prices) do as well. Price tendencies on the Stock Exchange are known as bull and bear markets. If buyers are reasonably optimistic that share prices will rise, there is a bull market. A bear market, on the other hand, is a market where there is a general decline in share prices. Various factors are responsible for the upswing and downswing of share prices. These include the following.

- a. Normal demand and supply factors usually apply: for example, a larger demand for a certain share will cause a rise in its price.
- b. The yield (dividend) of a share determines its attractiveness to buyers (investors), who are always seeking the most profitable investment opportunities.
- c. The general economic climate has a bearing on share prices. In a boom or prosperity phase of the business cycle, a spirit of optimism generally prevails. This can result in a larger demand for shares and cause price rises. Shares are also

regarded by investors as security against inflation. In an attempt to protect themselves against the erosion of their money, more and more investors demand shares and force share prices up.

- d. Political stability also affects share prices. In times of political unrest when the general atmosphere is tense, share prices tend to drop.
- e. Other economic and non-economic factors like changes in the price of gold, the rate of inflation, changes in rates of interest and the death of an important statesman can affect share prices.

## **1. The Traded Options Market**

An option refers to the purchased right to buy or sell specified commodities or shares at a fixed price within a specified period. What is bought or sold is the right to buy or sell (but not the obligation). If the option is not exercised within the specified agreed period, the option lapses. On the other hand, if the option is exercised within the stipulated time limit, an agreement of sale results at the pre-agreed price.

The object of the transaction is to protect the holder of the option from adverse fluctuations in the price of the specified commodities or shares caused by market movements. It is a form of forward price protection. For example, a person fears that the market price of a commodity which he requires in the next three months will rise. He therefore purchases the right (but not the obligation) to buy the commodity concerned at an agreed price within the specified time limit. Conversely, a trader who expects to take delivery of a specified commodity in the next three months fears that the price thereof may fall in that period. He, therefore, sells the right (but not the obligation) to sell the commodity at a fixed pre-agreed price within the specified time limit.

The option contract in the sense discussed above may therefore be defined as follows:

“the purchased right (but not the obligation) to buy or sell specified commodities or securities at a fixed pre-agreed price within a specified period. The transaction may be concluded by the parties themselves, or through the medium of a recognised body (e.g. a traded options market) which guarantees the rights of the contracting parties.”

The option contract as defined above is not covered by the definition of any existing category of contract recognised by Islamic Law but is a modern day transaction. The subject matter of such a contract is not property or recognised benefits, nor does it constitute under Islamic Law a financial right which may permissibly be bought and sold. Thus, any dealings in such options are not permissible.

## **2. Classes of sales in the financial markets**

Sales originating in the financial markets cover the following four situations:

**First,** the commodity or the underlying documents of transfer are in the seller's possession and ownership. The buyer has the right as a result of the contract of sale to take



immediate possession of the commodity, and the seller has the immediate right to receive payment of the price. This sale is valid in Islamic Law according to well known principles.

**Second,** the buyer has the immediate right to take possession of the commodity, and the seller has the immediate right to receive payment of the price as a result of the sale. In this case, however, the transaction is not concluded directly by the parties but through the agency of a broker operating through the medium of a financial market. This sale is also valid in Islamic Law.

**Third,** the contracting parties agree that the seller will physically deliver specified goods to the purchaser at a future date, and the purchaser will physically pay the price thereof at such future date against delivery. This sale is invalid in Islamic Law because delivery of the goods and payment of the price are both deferred to a specified future date. The sale may be adapted to conform to Islamic Law if the conditions for valid Salam sale are complied with. In the case of a valid Salam sale, however, the purchaser cannot resell the goods until he has first taken delivery thereof.

**Fourth,** trading in the futures market where there is generally no actual physical delivery or payment at a specified future date but settlement of values in pure financial terms. A futures contract is not permissible in Islamic Law.

### **3. Trading in currencies**

Trading in currencies take place through the four methods of sale referred to in the notes above. The third and fourth forms of sale referred to above in relation to currencies are not permissible. The first and second methods of sale, however, in relation to currencies are permissible provided that the conditions of the SARF (buying and selling of gold and silver) sale are complied with under Islamic Law.

### **4. Investment in shares of joint stock company**

- a. It is permissible to form a joint stock company whose objects and capital are in accordance with Islamic Law. This accords with the principle of Islamic Law that in general a transaction is permissible unless there is evidence to the contrary.
- b. It is not permissible to buy shares in a company whose main object is prohibited according to Islamic Law e.g.

a company whose main object is money-lending on interest, or manufacturing a prohibited commodity such as alcohol.

## **5. Underwriting**

An issue is underwritten when a person or body undertakes to the company that in return for being paid a commission he will take up the shares which are not taken up by the public. Such an undertaking is valid provided that no fee or commission is charged for giving the undertaking and the unsubscribed shares are so taken up at their face or nominal value. If, however, the person giving the undertaking renders other services to the company such as preparing and advertising the prospectus, then he may permissibly charge a fee for such services.

## **6. Payment for value of share in installments**

A person who buys shares in a company may pay for them by way of a downpayment and the balance of the price in installments thereafter. The effect of that in terms of Islamic Law is that the person is a shareholder to the extent of what he has paid, at the same time he promises to increase his capital contribution in the future. There is no objection to

this because the principle applies equally to the remaining shareholders. Outsiders and creditors of the company however will hold the company liable to the extent of its share capital (as held out) because they have consented to deal with the company on that basis.

### **7. Subject matter of share**

A shareholder in a company owns a proportionate share in the assets (land, buildings, plant, machinery etc.) of the company. The share certificate is evidence of legal entitlement thereto.

### **8. Bearer shares**

The issue of, or dealings in, bearer shares (transferable by mere delivery of the warrant) is permissible because the owner of these shares similarly owns a proportionate share in the assets of the company.

### **9. Preference shares**

A holder of a preference share is entitled to a prior right to any profit distribution, but normally only for the specified and fixed rate of dividend. Because they promise a fixed dividend, and enjoy priority over ordinary shares,

preference shares are similar to debt. Upon winding up, preference shareholders enjoy a prior claim on the net assets of a company. The issue by a company of preference shares is not permissible because they enjoy priority as stated above. However, it is permissible to give priority to shares which are related to administrative matters.

#### **10. Trading in shares on the basis of interest.**

It is not permissible to borrow money from a stock broker or other party, and then to buy shares in a company with the amount of the loan, and deliver the share certificate to the lender as security and as a pledge for the repayment of the loan. The transaction is an interest-bearing transaction which is secured by the pledge of the shares so purchased. The transaction is forbidden on the basis of the express text of the Hadeeth to the effect that the lender (of a loan on interest), the borrower, the scribe and the witnesses are all cursed.

It is not permissible to sell shares of which the seller is not the owner at the time of sale. Such a sale is normally based on a promise by the stockbroker to lend the shares to the seller thereof on the delivery date. The sale is prohibited

because the seller sells shares of which he is not the owner, and the prohibition becomes even more serious in this case because the proceeds of the sale are deposited with the stockbroker who places the money in an interest-bearing account for his own benefit.

### **11. The sale and pledge of shares**

The sale and pledge of shares is permissible but would be governed by the rules of the company. For instance, the articles of association of a company may provide that the shares are freely transferable and may be sold to any third party. On the other hand, the articles may provide that the seller must first offer his shares to existing shareholders in which event the condition is binding. Similarly, if the articles provide that the shares may be pledged to the remaining shareholders, then the pledge would be deemed to operate over a proportionate share of the assets of a company.

## **12. Initial charge on issue of shares**

It is permissible to charge a fee which represents a portion of the selling price of the share to cover expenditure incurred and work performed in the issue of such a share, provided that the percentage charge is properly and appropriately calculated.

## **13. Issue of new shares**

The company may permissibly issue new shares to increase its capital, provided that all new issues are based on the real value of existing shares (as valued by experts), or are based on their fair market value.

## **14. Limited Liability**

It is permissible to form companies whose shareholders are not liable for its debts beyond the value of the shares they hold. The creditors for the company are aware that their claims are limited to the assets or capital of the company and they accordingly deal with the company on that basis. There is therefore no possibility of deception.

Similarly, the liability of certain shareholders may permissibly be unlimited provided that those shareholders have not charged a fee as consideration for unlimited liability. Companies exist in which the liability of some shareholders is unlimited as opposed to that of others.

### **15. Administrative regulations relating to share dealings**

The government is entitled to regulate dealings in certain classes of shares in a manner that such dealings are conducted through the medium of a licensed stock exchange and authorised stockbroker. Such administrative regulations may be imposed for valid purposes and to safeguard the public interest. Similarly, it is permissible to levy a charge on all those who deal on the stock exchange to cover administrative expenses and taxes.

A Muslim can acquire the shares of a joint stock company on the following conditions:

1. The main business of the company must be Halaal (permissible) according to Shariah. So a Muslim cannot invest in a company whose main business is Haraam, like traditional banks, insurance companies, companies dealing in wines etc.



2. If the main business is Halaal, but it is involved in borrowing money on interest or placing its funds in interest bearing account, a Muslim share-holder should raise his voice against this practice in the annual general meeting of the company.
3. When a Muslim shareholder receives a dividend he must ascertain that proportion of the profit of the company which has accrued on its interest-bearing accounts. Then, a similar proportion from his own dividend must be given by him to a person or persons entitled to receive zakaah.
4. If all the assets of a company are in a liquid form and the company has not yet acquired any fixed assets or any stock for trade, then the sale and purchase of shares must be on their par value only.

If any of these four conditions is contravened, the investment in a company is not permissible in Shariah.

All notes on this section on shares and leasing have been taken from the Fatwa of:

**Justice Mufti Muhammad Taqi Usmani**

Deputy Chairman  
Islamic Fiqh Academy

## **WORKSHEET**

1. Explain what is meant by investing in stock exchanges and financial markets.

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2. What is the Shar'i ruling regarding investments of joint stock company?

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3. What are the conditions for a Muslim to acquire shares of a joint stock company?

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## LESSON 18

### IFLAAS (INSOLVENCY/BANKRUPTCY)

Sayyidina Abu Saeed (radhiyallahu anhu) reports that during the time of Rasoolullah (sallallahu alayhi wa sallam) a man sustained damage in respect of fruits that he had purchased. He incurred a huge debt. Rasoolullah (sallallahu alayhi wa sallam) addressed the people by saying ***“Give alms to him.”*** The people did as they were ordered but this did not prove sufficient for him to fulfill his debt. Rasoolullah (sallallahu alayhi wa sallam) said to his creditors: ***“Take what you find and there is nothing besides that for you.”*** (Muslim)

In Shariah, a muflis is one who cannot pay his debts because he does not have sufficient wealth. The following rules will apply in a Shar’i court in the presence of a qadhi (Islamic judge):

1. When one becomes a muflis (insolvent), his creditors have a right to demand their money and put a “ban” on him, i.e. no businessman is allowed to trade with him.

2. If a muflis has some goods or money a qadhi (judge) cannot sell the muflis's goods. A muflis will be jailed until his debtors are paid out. The muflis will then make means to sell his goods and pay his creditors (while he is in prison).
3. When a muflis has cash in one currency and his creditors are demanding their money in a different currency e.g. the muflis has dollars and the creditors want pounds, then the qadhi can take the muflis's money and pay the creditors after transacting the necessary money exchanges.
4. When a muflis refuses to pay then his creditors can demand the goods from the qadhi. The qadhi will now place a full ban on the muflis. The qadhi now has the right to take possession of the muflis' wealth and use it to pay out the creditors.
5. The expenses of the muflis' wife and small children are paid out from his goods.
6. If a muflis is found to have nothing, he will be jailed and any of his possessions that are found can be used to pay his creditors.

- 7 The muflis will be jailed for 2 to 3 months depending on how quickly he confesses that he is in possession of any wealth, etc While in prison he cannot be released for any reason except when he is to attend the Janazah of his parents, grandparents, children and on condition that somebody stands as a guarantor for him.
- 8 If it is found after a thorough investigation, that the muflis really has no wealth, he will be released from prison and be allowed to trade. All his earnings from his trade will be used to pay off his creditors. In this time, the muflis should not be stopped from trading out of town.
9. If the muflis fails to pay his debts in this world, he will surely have to repay them in the hereafter unless the creditors forgive him for the payment of his debts.

## **WORKSHEET**

1. Who is termed as a muflis in Shariah?

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2. What are the rights of creditors against a muflis?

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3. For what period of time will a muflis be jailed?

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4. When will the qadhi put a full ban on the muflis?

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5. What options does the muflis have to pay his creditors?

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## LESSON 19

### IJAARAH

#### **Ijaarah bin Nafs (Employment of a person)**

Ijaarah bin Nafs is an agreement between two parties where the employee (person doing the work) benefits by getting some form of remuneration for his labour, paid to him by the employer.

#### **Rules:**

1. When a person is hired, both the employer and the employee must be in full agreement on the following conditions:
  - a. The type of work to be done.
  - b. The hours that the labourer should work.
  - c. The amount that he will be paid.

If there is any doubt with regards to the above the labour contract is null and void. It is recommended to draw up a written agreement. This will avoid any disputes arising later on.

2. An employee should remember that he should be punctual (i.e. he should arrive and leave at the times fixed by the employer). The employee should not waste time at work since he will be doing an injustice to the

employer and will be earning his money incorrectly. The employee may not use items such as the telephone, stationery, etc for private purposes without the permission of the employer.

3. An employer should be kind towards his employees. He should not overwork them or “under-pay” them since this is a form of oppression. (Oppression is a serious crime and one will be punished for it on the day of Qiyaamah).

### **Rules on the payment of employees**

Abdullah bin Umar (radhiyallahu anhumah) reports that Rasoolullah (sallallahu alayhi wa sallam) said: ***“Pay the labourer his wages before his sweat dries”*** (Ibne Maajah)

From this Hadeeth we learn that we should not delay in the payment of our employees. This is a promise which is broken and “when people break promises, Allah Ta’ala will set over them enemies from another nation who will usurp (steal) their belongings.” (Ibne Maajah)



1. Payment can be made to a labourer with anything that is permissible to trade with but on condition that both parties agree to the form of payment.
2. A person should be paid after the work is completed, However, if it is mutually agreed that the labourer will be paid in advance, then this is also correct.
3. Cooks, chefs, bakers etc will be paid once the food is prepared. If the food is spoilt, burnt, etc. due to the negligence of the cook one can refuse payment. If the food is spoilt due to any other reason (i.e. not due to the cook's negligence) then the cook will have to be paid.

### **The types of employees**

#### **1. Ajeer Mushtarak (common employee)**

Ajeer Mushtarak is such an employee who specialises in one particular trade but does work for many people, e.g. a washerman. He washes clothes for many people during the day. He is employed by many people at one time to do their work.

- a. The ajeer mushtarak will not be paid until his work is complete.
- b. All objects belonging to the employer are a trust to the ajeer mushtarak. If anything is damaged due to his carelessness, the ajeer mushtarak is responsible. If, however, anything is damaged due to natural causes etc. the ajeer mushtarak is not responsible.

## **2. Ajeer Khaas**

Ajeer Khaas is such an employee who does work for one employer at a time, example, a worker / staff in the shop. He is employed by his employer to work in his shop only for the duration of employment (say one month).

- a. Both employee and employer must be aware of the time period of the work.
- b. An employee is responsible for any damage that may occur, if the damage was due to his negligence. If, the damage was not due to his negligence, then the employee is not responsible.

- c. The employee is not permitted to work for anyone else during this time of employment.
- d. If a person hires a tailor to sew him a garment and says "If you sew me a Pakistani kurta, I will pay you R110-00 and if you sew me an Arabian thobe, I will pay you R150-00". Such a transaction is correct and the tailor will be paid according to what he sews.
- e. A person can also hire someone to do some work and attach a condition that "if you finish the work today you will get R60-00 and if you finish the work tomorrow then you will get R50-00".

## **WORKSHEET**

1. What is the meaning of Ijraah in terms of employment?  

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2. What are the rules the employee and employer must be in agreement with when entering into an ijaarah?  

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3. What act will render the employment contract null and void?  

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4. What are the rules of payment?  

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5. Explain the two types of employees and a few important rules of each: (a) Ajeer Mushtarak, (b) Ajeer Khaas  

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**IJAARAH BIL MAAL  
(HIRING AND RENTING)**

**Ijaarah bil Maal** means an agreement where one party benefits by receiving wealth in exchange for letting / hiring out a certain commodity or item for a specified time, e.g. a person renting a truck, receives wealth in exchange for the use of his truck.

For **Ijaarah bil Maal** to be valid the following should be known by both parnters:

- a. the item to be rented.
  - b. the price of the rental (per hour, per day, per month, etc).
  - c. the time limit rented for eg. 2 months, 5 hours etc
  - d. the form of payment i.e. cash or goods.
- [Note: it is permissible to pay for rental with anything Halaal as long as both parties mutually agree on the form of payment].
- e. the condition of the rented item.
  - f. the **ijaarah** should be documented and a copy given to both parties.

### **Hiring or renting of homes and land**

1. It is permissible to rent a shop without informing the owner the purpose of renting. However, it is necessary to inform the owner of any disturbances or damages that could occur due to the nature of the business being conducted, e.g. a shop with heavy machinery which causes vibration could damage walls or a welding shop creates large amounts of dust and smoke.
2. If one hires a piece of land and builds a structure on it or plants trees on the land, then only the land belongs to the owner. The trees and building belong to the person renting the premises. If he moves he may break down his buildings and take his trees with him. He also has a right to sell these things to the owner or he may give it to the owner.
3. A person who rents a house, may keep other persons in his house. The owner cannot object to this or evict (throw out) these people. However, if it is stipulated at the time when the contract is drawn up that certain persons may not reside there, then the owner has a right to object.
4. The owner of a shop or house has the right to claim his rent daily, weekly, monthly, etc. as per agreement.

5. A person renting a shop can vary the rent according to its tenant, e.g. he may charge R2,100-00 for a perfume shop and R2,500-00 for a jewellery shop.

### **Hiring of items**

1. When hiring out items, the condition of the items should be known.
2. When one hires out a means of conveyance e.g. bus, car, horse, etc., the owner has a right to specify who should drive or ride the conveyance. If the owner does not specify this then the person hiring the conveyance can appoint anyone who he wants for the job. If the owner did specify a driver and someone else drove the vehicle and as a result the vehicle is damaged, the person hiring the conveyance will be responsible. The same rule will apply to hiring other commodities, i.e. if the owner specifies a certain condition and the person hiring the commodity goes against this condition, and the hired item gets damaged, then the person hiring the conveyance will be held responsible for the damage.

3. When hiring a truck or an animal, the owner has a right to specify what can and cannot be loaded on to the vehicle and how much can be loaded.
4. The owner of a vehicle may claim his money at every stage during a journey or after a certain distance, e.g. a person hires a car and the owner is the driver. The owner may claim a certain amount of money after every 70km as per agreement.
5. If a person hires something and damages it due to misuse, he will have to pay for the damage.
6. The owner of an item has a right to change the price of the hired item according to the situation, e.g. if a person is hiring out his truck he may say that if sand is loaded it will cost R500-00 and if boxes of tomatoes are loaded it will cost R300-00.

#### **Actions which make Ijaarah Faasid (null and void)**

1. All those actions and conditions which nullifies bay' will also nullify ijaarah.



2. When there is doubt in the ijaarah contract, it will be faasid.
3. When one employs a person to work locally, then it will not be correct for the employer to send his employee on long journeys because of the inconvenience / difficulties of a long journey.
- 4 To hire singers, bands, mourners (i.e. people to cry at funerals) is incorrect.
5. To hire a wet nurse (one who breastfeeds children) is permissible. Such employment will only become faasid if the wet nurse falls pregnant or becomes ill.
6. If any defect is found in the hired item rendering the hired item to become useless, then the ijaarah will be nullified.
7. An ijaarah will be nullified (for both hiring or employment) if either the owner or the person hiring the commodity dies or if the employee or employer dies.

The reason for this is that a dead person has no power of ownership.

8. An ijaarah should be nullified when it will cause a loss to a person if it is maintained, e.g. if a person has a severe tooth ache and goes to the dentist to have the tooth extracted.

However, just before the extraction the pain goes away. In this case, it will be permissible to nullify the ijaarah contract because if the ijaarah contract is maintained, it will cause the loss of the man's tooth unnecessarily.

9. To hire a cow or buffalo in order to obtain its milk is not permissible.
10. It is not permissible to hire a haafiz to read over someone's grave.
11. It is not permissible to hire animals for mating purposes.

## WORKSHEET

1. What does ijaarah mean in terms of hiring and renting?

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2. What facts must be known for ijaarah to be valid?

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3. When will it be correct to inform the landlord the purpose of renting the premises from him?

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4. What is the rule when renting land and the tenant puts up a building or plant trees on the rented land?

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5. When can the landlord claim his rent?

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6. List five conditions of hiring.

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7. List four acts which will render ijaarah of hiring/renting faasid.

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8. If the period is not specified will the ijaarah be nullified?

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9. Why will ijaarah be nullified if there is doubt in the contract?

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## LESSON 21

### IJAARAH (Lease)

#### Basic rules of Leasing

1. Leasing is a contract whereby the owner of something transfers its benefits to another person for an agreed period and agreed consideration.
2. The subject of lease must have a valuable use.
3. It is necessary for a valid contract of lease that the leased property remains in the ownership of the lessor, and only its benefit is transferred to the lessee. Thus, anything which cannot be used without consuming it cannot be leased out. Therefore, a lease cannot be effected in respect of money, edibles, fuel, ammunition etc. because their use is not possible unless they are consumed. If anything of this nature is leased out, it will be deemed to be a loan and all the rules concerning the transaction of a loan shall accordingly apply. Any rent charged on this invalid lease shall be an interest charged on a loan.

4. As property remains in the ownership of the lessor, all the liabilities emerging from the ownership shall be borne by the lessor, but the liabilities attributable to the use of the property shall be borne by the lessee.

Example: 'A' has leased his house to 'B'. The taxes relating to the property shall be borne by 'A'. The water and, electricity bills and all expenses relating to the use of the house shall be borne by 'B' (the lessee).

5. The period of the lease must be determined in clear terms.
6. The lessee cannot use the leased asset for any purpose other than the purpose specified in the lease agreement. If no such purpose is specified in the agreement, the lessee can use the leased asset for whatever purpose it is normally used. However, if the lessee wishes to use the leased asset for an abnormal purpose he cannot do so unless the lessor expressly allows him to do so.
7. The lessee is liable to compensate the lessor for any damage to or loss of the leased asset caused by any misuse or negligence on the part of the lessee.

8. The leased asset shall remain in the risk of the lessor throughout the lease period in the sense that any damage or loss caused by any factors beyond the control of the lessee shall be borne by the lessor.
9. A property owned by two or more persons can be leased out and the rental shall be distributed between all the joint owners according to the proportion of their respective shares in the property.
10. It is necessary for a valid lease that the leased asset is fully identified by the parties.

**Example:**

‘A’ said to ‘B’. “I leased to you one of my two shops.” ‘B’ agrees. The lease is void unless the leased shop is clearly determined and identified.

11. It is permissible that different amounts of rent are fixed for different phases during the lease period provided that the amount of rent for each phase is specifically agreed upon at the time of effecting (agreeing to) the lease. If the rent for a subsequent phase of the lease period has not been determined or has been left to the discretion of the lessor, the lease is not valid.

**Example: 1**

'A' leases his house to 'B' for a total period of 5 years. The rent for the first year is fixed at R2,000-00 per month and it is agreed that the rent of every subsequent year shall be 10% more than the previous one. The lease is valid.

**Example: 2**

If in the above example 'A' puts a condition in the agreement that the rent of R2,000-00 per month is fixed for the first year only. The rent for the subsequent years shall be fixed each year at the discretion of the lessor. The lease is void, because the rent is uncertain.

- 12 In long-term lease agreements it is mostly not beneficial for the lessor to fix one amount of rent for the whole period because market conditions change from time to time.

In this case the lessor has two options:

- a He can contract a lease with the condition that the rent shall be increased at a specified proportion after a specified period like six months or one year.
- b. He can contract the lease for a shorter period after which the parties can renew the lease on fresh terms and conditions but the renewal shall be effected by mutual consent with full liberty to each one of them to refuse the



renewal in which case the lessee is bound to vacate the leased property and return it to the lessor.

13. The lessor cannot increase the rent unilaterally and any agreement to the contrary is void.
14. The rent or any part thereof maybe payable in advance before the delivery of the asset to the lessee but the amount so collected by the lessor shall remain with him as 'on account' of payment and shall be appropriated to the rent when the rent becomes due.
15. The lease period shall commence from the date on which the leased asset has been delivered to the lessee no matter whether the lessee has started using it or not.
16. If the leased asset has totally lost the function for which it was leased and no repair is possible the lease shall terminate on the day on which such loss has been caused. However, if the loss is caused by the misuse or by the negligence of the lessee he will be liable to compensate the lessor with the depreciated value of the asset as it was immediately before the loss.

## **Lease as a mode of financing**

Like muraabaha, a lease was not originally a mode of finance. A lease is simply a transaction meant to transfer the benefits of a property from one person to another for an agreed consideration. However, certain financial institutions have adopted the use of leasing as a mode of financing in place of interest. This kind of lease is generally known as the 'financial lease' as distinguished from the "operating lease" and many basic features of actual leasing transactions have been dispensed with.

Some basic differences between the contemporary financial leasing and the actual leasing allowed by the Shariah are indicated below:

### **1. The commencement of the lease**

In most cases of the 'financial lease' the lessor i.e. the financial institution, purchases the asset through the lessee himself. The lessee purchases the asset on behalf of the lessor who pays its price to the supplier, either directly or through the lessee. In some lease agreements, the lease commences on the very day on which the price is paid by the lessor irrespective of whether the lessee has taken delivery of the asset. This is not allowed in Shariah because it amounts to charging rent on the money given to the customer which is simply nothing but pure interest.

The correct way according to Shāriah would be that the rent be charged after the lessee has taken delivery of the asset and not from the day the price has been paid. If the supplier has delayed the delivery after receiving the full price the lessee will not be liable for rent for the period of delay.

It should be clearly kept in view that when the lessee himself has been entrusted with the purchase of the asset intended to be leased, there are two separate relationships between the institution and the client which come into operation one after the other. In the first instance, the client is an agent of the institution to purchase the asset on behalf of the institution. At this stage the relationship between the parties is nothing more than the relationship of a principal and his agent. The relationship of lessor and lessee has not yet come into operation. The second stage begins from the date when the client takes delivery from the supplier. At this stage the relationship of lessor and lessee comes into existence.

These two capacities of the parties should not be mixed up or confused with each other. During the first stage, the client cannot be held liable for the obligation of a lessee. In this period he is responsible to carry out the functions of an

agent only. However, when the asset is delivered to him, he is liable to discharge his obligations as a lessee.

In leasing the parties need not effect the lease contract after taking delivery. If the institution, while appointing the client as its agent, has agreed to lease the asset with effect from the date of delivery, the lease will automatically commence at that date without any additional procedure.

In leasing, the asset remains in the risk and ownership of the lessor throughout the lease period because the ownership has not been transferred. Therefore, if the lease period begins right from the time when the client has taken delivery, it does not violate the principle mentioned above.

## **2. Expenses consequent to ownership**

As the lessor is the owner of the asset and he has purchased it from the supplier through his agent, he is liable to pay all the expenses incurred in the process of its purchase and its import to the country of the lessor. Consequently, he is liable to pay the freight, custom duty etc. He can, of course, include all these expenses in his cost and can keep them in view while fixing the rentals but as a matter of

principle, he is liable to bear all these expenses as the owner of the asset. Any agreement to the contrary, as is found in the traditional financial leases, is not in conformity with Shariah.

### **3. Liability of the parties in case of loss to the asset.**

As mentioned in the basic principles of leasing, the lessee is responsible for any loss caused to the asset by his misuse or negligence. He can also be made liable for the wear and tear which normally occurs during its use. However, the lessee cannot be made liable for a loss caused by factors beyond his control. The agreements of traditional 'financial leases' generally do not differentiate between the two situations. In a lease based on Islamic principles both the situations should be dealt with separately.

### **4. Termination of lease**

If the lessee contravenes any term of the agreement, the lessor has a right to terminate the lease contract unilaterally. However, if there is no contravention on the part of the lessee, the lease cannot be terminated without mutual consent. In some agreements of the 'financial lease' it has been noticed that the lessor has been given an unrestricted

power to terminate the lease unilaterally whenever he wishes according to his sole discretion. This is again contrary to the principles of Shariah.

## **5. Rent on Termination of the lease**

In some agreements of the 'financial lease' a condition is incorporated to the effect that in case of the termination of the lease, even at the option of the lessor, the rent of the remaining lease period shall be paid by the lessee.

This condition is obviously against Shariah and the principles of equity and justice. The basic reason for inserting such conditions in the agreement of lease is that the main concept behind the agreement is to give an interest-bearing loan under the ostensible cover of lease. Therefore, the financial lease tries to avoid the logical consequences of a lease contract.

Naturally, such a condition cannot be acceptable to the Shariah. The logical consequence of the termination of the lease is that the asset should be taken back by the lessor. The lessee should be asked to pay the rent due up to the date of termination. If the termination has been effected due to

the misuse or negligence on the part of the lessee, he can also be asked to compensate the lessor for the loss caused by such misuse or negligence, but he cannot be compelled to pay the rent for the remaining period.

#### **6. Sub-lease and assigning of the lease**

The lessee cannot sub-lease the leased asset except with the express permission of the lessor.

#### **7. Assigning of the lease**

The lessor can sell the leased property to a third person whereby the relationship of the lessor and the lessee shall be established between the new owner and the lessee. However, the transferring of the lease itself is not permissible.

The difference between the two situations is that in the latter case the ownership of the asset is not transferred to the assignee, but he becomes entitled to receive the rent of the asset only. It is not allowed in Shariah.

These are some basic features of the 'financial lease' which are not in conformity with the dictates of Shariah. When using the lease as an Islamic mode of financing these shortcomings must be avoided.

The list of the possible shortcomings in the lease agreement is not restricted to what has been mentioned above but only the basic errors found in different agreements have been pointed out and the basic principles of Islamic leasing have been summarized. An Islamic lease agreement must conform with all the basic principles of the Shariah.



## **WORKSHEET**

1. Explain what is meant by the term leasing.  
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\_\_\_\_\_
2. Why could money, edibles, fuel and ammunition not be leased out? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. What is the rule of period in leasing?  
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\_\_\_\_\_
4. What is the rule on damage or loss of the leased asset?  
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\_\_\_\_\_  
\_\_\_\_\_
5. State why will the lease in the following example be void? Yusuf said to Ahmed "I leased to you one of my two shops." Ahmed agrees.  
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\_\_\_\_\_  
\_\_\_\_\_

6. In the following two examples give the rule which one is correct and give the reason thereof.

**Example: 1**

'A' leases his house to 'B' for a total period of 5 years. The rent for the first year is fixed at R2,000-00 per month and it is agreed that the rent of every subsequent year shall be 10% more than the previous one. The lease is valid.

**Example: 2**

If in the above example 'A' puts a condition in the agreement that the rent of R2,000-00 per month is fixed for the first year only. The rent for the subsequent years shall be fixed each year at the discretion of the lessor.

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7. What is the ruling if leased assets have totally lost the function for which it was leased and repair is possible.

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8. What is the Islamic ruling on the following and give reasons. "In lease agreements, the lease commences on the very day on which the price is paid by the lessor

irrespective of whether the lessee has taken delivery of the asset?" \_\_\_\_\_  
\_\_\_\_\_

9. List a few rules on expenses incurred in consequent to ownership. \_\_\_\_\_  
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\_\_\_\_\_

10. What is the ruling on termination of lease?  
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\_\_\_\_\_  
\_\_\_\_\_

11. What is the Shariah ruling on the rent on termination of the lease? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Will it be correct for a lessee to sublease? \_\_\_\_\_

13. On what condition can the lessor sell the leased property to a third person?  
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\_\_\_\_\_  
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## LESSON 22

### SHUF'AH

“Shuf’ah” is the right given by Shariah to a person of purchasing a fixed property first at the time of its sale i.e. he is given the first choice of purchasing the fixed property.

He is given this first option of purchasing a property because he is a partner in that property/building or neighbour of that property/building. Such a person is called a Shafee’.

#### **Rules:**

1. If a person is selling his home or business, the person who has the first choice of buying the home or business (the shafee’) is one’s partner or neighbour. As soon as the shafee’ hears about the sale, and he does not say verbally that “I am using my right of shuf’ah”, etc. then he has given up his right and cannot claim it later. If the information of a sale reaches a shafee’ by fax or letter, as soon as he reads the information he has to exercise this right of shuf’ah. If he continues reading the letter or fax till the end, the right of shuf’ah is forfeited.

Shuf'ah has to be uttered verbally as soon as it is known.

2. When a shafee' accepts a bribe to renounce his right of shuf'ah e.g. the seller says: "I will give you R1,500 to withdraw your right", then his right of shuf'ah is lost and he has committed a Haraam act by accepting a bribe.
3. The right of shuf'ah cannot be transferred to the shafee's inheritors after the shafee's death.
4. If a shafee' was told that a house was to be sold for a certain price and later it was found that the house was sold for a different price, he can reclaim his right of shuf'ah since he was deceived.
5. If the shafee' is deceived in any way with regards to the sale of the house or business, i.e. he was told a certain pious person was the buyer and thereafter someone else bought the house or if he was told that only half the property was sold and he finds out the whole property was sold, he may claim his right of shuf'ah, e.g. a

person is selling his house. His neighbour has the right of shuf'ah. If he tells his neighbour "the house is for sale for R200.000-00" or "a certain person is moving in" or "only half my property is for sale" and thereafter he sells the house for R175.000-00 or a different person moves in or he sells the whole property, then the neighbour now has a right to reclaim his right of shuf'ah.

6. A Shafee' will be considered as exercising his right of Shuf'ah by saying (or anything similar to): "I request, demand, exercise, etc my right of Shuf'ah". It is not necessary for someone to be present to listen to this claim.

## WORKSHEET

1. What is the meaning of Shuf'ah?  

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2. Who is a shafee'?  

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3. What is the rule if a shafee' accepts a bribe in terms of his right as a shuf'ah?  

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4. Do the inheritors of a shafee' have the right of shuf'ah?  

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5. What is the rule of a shafee' when he is deceived?  

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