

Part VI

The Economic Way

Chapter 23



Tijārah: Trade and Commerce

Guidance from the Qur'ān and Sunnah on the Islamic Way of Transacting Commerce

THERE ARE A NUMBER of Qur'ānic injunctions which have encouraged Muslims to engage themselves in lawful trade and in a wide range of commercial activities. Some of the injunctions mention trade as seeking the “*faḍl* of Allah”, the bounty of Allah. There are a number of *ḥadīth* of the Prophet ﷺ which also support the Qur'ānic injunctions. In order to do successful trade, Muslims have been asked to undertake travel.

عَلَّمَ أَن سَيَكُونُ مِنْكُمْ مَرَضَىٰ وَآخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِنْ فَضْلِ اللَّهِ وَآخَرُونَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ

He knows that some of you are ill and that others are travelling in the land seeking Allah's bounty, and that others are fighting in the Way of Allah. (Sūrat al-Muzzammil 73: 20)

Ibn Juzayy al-Kalbī said about this *āyah* in *Kitāb at-tashīl li ʿulūm at-tanzīl*:

Then He made exceptions from this obligation [to stand in prayer at night]¹ for three categories:

First, the sick since their sickness is a valid excuse. Lastly, the *mujāhidūn* because of the importance of *jihād*. In between these two categories there is a third, who are the traders whom He refers to as “travelling in the land seeking Allah's bounty.”

The noted scholar aṣ-Ṣāwī رحمه الله said in his gloss on the *tafsīr* of the *Jalālayn*:

Allah, exalted is He, in this *āyah* regarded as equal: *mujāhidūn* and those earning *ḥalāl* livelihoods in order to spend it on themselves and their dependants, indicating that earning wealth is of the same rank as *jihād*, because of that which is transmitted in the *ḥadīth*, "Whoever conveys food from one city to another and sells it at its price on that day will have the rank of the martyrs with Allah."

Ibn Mas'ūd رحمه الله said, "Whatever man conveys anything from one of the cities of Islam patiently anticipating [a reward from Allah] and sells it at its price on that day, has a rank with Allah like that of the martyrs," and then he recited, "*others travelling in the land seeking Allah's bounty.*" (Aṣ-Ṣāwī, *al-Hāshiyah 'alā al-Jalālayn*)

There are so many bounties of Allah mentioned in the Qur'ān, and one of them is the use of the seas, oceans and rivers for help in internal and external trade and movements of goods and commodities.

وتَرَى الْفَلَكَ مَوَاحِرَ فِيهِ وَلِتَبْتَغُوا مِنْ فَضْلِهِ وَلِعَلَّكُمْ تَشْكُرُونَ

And you see the ships cleaving through it so that you can seek His bounty, and so that hopefully you will show thanks. (Sūrat an-Naḥl 16: 14)

Allah has also helped in sending the wind for sailors to sail the sea for wayfarers seeking the bounties of Allah through trade:

وَمِنْ آيَاتِهِ أَنْ يُرْسِلَ الرِّيحَ مَبْشُرَاتٍ وَلِيَذِّبَكُمْ مِنْ رَحْمَتِهِ وَلِيَجْريَ الْفَلَكَ بِأَمْرِهِ وَلِتَبْتَغُوا مِنْ فَضْلِهِ وَلِعَلَّكُمْ تَشْكُرُونَ

Among His Signs is that He sends the winds bearing good news, to give you a taste of His mercy, and to make the ships run by His command, and to enable you to seek His bounty so that hopefully you will be thankful. (Sūrat ar-Rūm 30: 46)

Analogous to the wind for the age of sailing ships is the bounty of Allah in creating the oil that drives contemporary forms of transport.

In Sūrat al-Jumu'ah, however, we have been warned that engagement in trade must not make us negligent of our duties to Allah. As soon as the call for Friday's prayer is given, and likewise the call for other prayers, we are asked to close our business and answer the call earnestly and loyally and submit to Allah:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

You who have imān! when you are called to ṣalāh on the Day of Jumu'ah, hasten to the remembrance of Allah and abandon trade. That is better for you if you only knew. (Sūrat al-Jumu'ah 62: 9)

Apart from prayers, the Mosque provides for believers a meeting place, a place of consultation where contacts are also established. Brothers in Islam become closer, and thus it helps in cementing relationships even outside the Mosque. After the prayers, we are asked to disperse in the land of Allah and continue our trade and transactions and earn our livelihood in *ḥalāl* ways:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ

Then when the ṣalāh is finished spread through the earth and seek Allah's bounty and remember Allah much so that hopefully you will be successful. (Sūrat al-Jumu'ah 62: 10)

We are reminded, however, that the business and trade must not make us forget our responsibility towards Allah and His Messenger ﷺ. During the time of the Prophet ﷺ, once he was delivering a sermon and people heard the voices of a caravan of traders arriving. Some people rushed away without listening to the *khuṭbah* (sermon) of the Prophet ﷺ in order to do business with the caravan that was arriving. Therefore, the following verse was revealed as a reproach:

وَإِذَا رَأَوْا تِجَارَةً أَوْ لَهْوًا انفَضُوا إِلَيْهَا وَتَرَكُوكَ قَائِمًا قُلْ مَا عِنْدَ اللَّهِ خَيْرٌ مِنَ الْلَهْوِ وَمِنَ التِّجَارَةِ وَاللَّهُ خَيْرُ الرَّازِقِينَ

But when they see a chance of trade or entertainment they scatter off to it and leave you standing there. Say: 'What is with Allah is better than trade or entertainment. Allah is the Best of Providers.' (Sūrat al-Jumu'ah 62: 11)

The Messenger of Allah ﷺ engaged in trade as an agent of his wife Sayyidatunā Khadījah. He once said:

التَّاجِرُ الْأَمِينُ الصَّدُوقُ الْمُسْلِمُ مَعَ الشُّهَدَاءِ يَوْمَ الْقِيَامَةِ

The trustworthy, honest Muslim trader is with the martyrs on the Day of Rising. (Ibn Mājah, *kitāb at-tijārāt, bāb al-ḥathth 'alā al-makāsib*)

In yet another *ḥadīth*, he ﷺ said:

التَّاجِرُ الصَّدُوقُ الْأَمِينُ، مَعَ النَّبِيِّينَ وَالصِّدِّيقِينَ وَالشُّهَدَاءِ

The trustworthy honest trader is with the prophets, the utterly truthful (*ṣiddiqūn*), and the martyrs. (Al-Hākim, *al-Mustadrak*)

These words of the Prophet ﷺ have given honest trading such a high status that those engaged in it are likened to the martyrs who fight and give their lives in *jihād fi sabilillāh* (war in the path of Allah). That an honest trader will rise up with the martyrs also means that if he continues his trade without deceiving people and without practising usury and adheres to other rulings of lawful trade, then it will be construed as if he has passed his life waging 'economic *jihād*.'

How should trade and business be carried out

The following code of conduct for Muslim traders is given in the Generous Qur'ān:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

You who have imān! do not consume one another's property by false means, but only by means of mutually agreed trade. And do not kill yourselves. Allah is Most Merciful to you. (Sūrat an-Nisā' 4: 29)

The above verse of the Noble Qur'ān has set down an important principle concerning trade (*tijārah*). Every Muslim should live his life knowing that he is always in the presence of Allah.

We have to think that we hold all property as a trust from Allah, whether the property is in our own name or in someone else's name or belongs to the entire community. The Qur'ānic words "false means (*bi'l-bāṭil*)" refer to those practices which are against the *Sharī'ah* and are thus unlawful. The trade should be such that in the process there is an exchange of benefits as profit without exercising any unlawful pressure or fraud on either party. There should be no bribery or usury in the trade.

The Qur'ānic verse emphasises mutual agreement in the trade which means that there should be no dissatisfaction or disagreement between the parties in a commercial transaction. People often think that there is no harm in practising bribery or usury, if there is the full agreement of both parties. In reality, even this agreement has come about by force of circumstances. There is still a great deal of concealed 'pressure' to enter into such agreements, just as in gambling there is seemingly an agreement between the parties to a bet, but in reality, that sort of tacit agreement has come about as a result of false hopes in their minds that they are going to win. One does not participate in gambling in the hope of losing. Likewise, in fraudulent practices in trade there also seems to be an agreement between parties but it is not such that the loser in the fraud is aware of the actual fraud. Had he known about it, he would certainly have refrained from it.

In Sūrat al-Baqarah, believers are asked not to use their property to corrupt judges or those in authority with the intention of wrongfully and knowingly consuming other people's property.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Do not devour one another's property by false means nor offer it to the judges as a bribe, trying through crime to knowingly usurp a portion of other people's property. (Sūrat al-Baqarah 2: 188)

Although the above verse speaks of bribing judges and other authorities in acquiring someone's property, many such cases arise out of contractual trade agreements between two parties that end up in the law courts where one of the parties, through the influence of bribes, wins the case wrongfully and thus acquires someone else's property.

The Qur'ānic injunction puts a stop to such practices. Even though the court may order in favour of the wrong party, it will not become lawful (*ḥalāl*) for him as the *ḥadīth* of the Prophet ﷺ testifies:

إِنَّمَا أَنَا بَشَرٌ، وَإِنِّكُمْ تَخْتَصِمُونَ إِلَيَّ، فَلَعَلَّ بَعْضُكُمْ أَن يَكُونَ الْخُنَّ بِحُجَّتِهِ مِنْ بَعْضٍ، فَاقْضِي لَهُ عَلَى نَحْوِ مَا أَسْمَعُ مِنْهُ، فَمَنْ قَضَيْتَ لَهُ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ فَلَا يَأْخُذَنَّ مِنْهُ شَيْئًا، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ

I am but a man to whom you bring your disputes. Perhaps one of you is more eloquent in his proof than the other, so I give judgement according to what I have heard from him. Whatever I decide for him which is part of the right of his brother, he must not take any of it, for I am granting him a portion of the Fire. (Mālik in the *Muwattaʿa*, Book 36: Judgements, Section 1: Stimulation of Desire to Judge Correctly, Number 36.1.1, Aḥmad, al-Bukhārī, *kitāb al-maẓālim*, *bāb ithm man khāṣama fī bātil wa huwa yaʿlamuhu*; Muslim, *kitāb al-aqḍiyah*, *bāb al-ḥukm bi aẓ-ẓāhir wa al-laḥn bi al-ḥujjah*; and the four authors of the *sunan* collections, from Umm Salamah)

As they are human weaknesses, greed and temptations overpower man, particularly greed for wealth and property.

According to a tradition, man ages and two things become younger in him: the desire to accumulate more wealth and the desire to live longer. Ordinarily, honest men and true believers in Allah are content with whatever they get. In their trade and business they are straightforward and they establish right with justice as commanded by Allah:

وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

Give just weight – do not skimp in the balance. (Sūrat ar-Raḥmān 55: 9)

Every Muslim must be honest in every matter, such as weighing out things when he is selling and in all other dealings with people. He must not cheat by displaying specimens of a good quality and then selling inferior stuff, or giving less weight than agreed upon.

Every Muslim is ordered to earn his livelihood in a lawful manner. If one acquires property through unlawful means and then gives out charity (*ṣadaqah*) and *zakāh* to the poor and needy, it will not be acceptable to Allah. On the contrary, he will be deemed to have committed a wrong action.

من جمع مالا حراما ثم تصدق به لم يكن له فيه أجر، وكان إصره عليه

Whosoever acquires unlawful wealth and then gives it away as *ṣadaqah* will have no reward, and he will have to bear the burden [of his wrongdoing]. (Ibn Khuzaymah, Ibn Ḥibbān and al-Ḥākim from Abū Hurayrah, as cited in *Kanz al-ʿummāl*)

Any property earned in an unlawful manner and through *ḥarām* means, has no blessing from Allah, and whatever property such a person leaves behind for his progeny, also becomes a source of greater problems in this world and the next world. Allah, our Creator, does not wipe out evil with evil or dirt with dirt. Any property earned with evil means continues its evil effect for generations to come. Lawful property acquired with lawful means will have its blessings which will become perceptible even among one's progeny.

The Messenger of Allah has said:

ولا يكسب عبد مالا من حرام فيتفق منه فيبارك له فيه، ولا يتصدق به فيقبل منه، ولا يتركه خلف ظهره إلا كان زاده إلى النار، إن الله لا يمحو السيئ بالسيئ ولكن يمحو السيئ بالحسن، إن الخبيث لا يمحو الخبيث.

When a slave of Allah earns property in a *ḥarām* manner and then spends from it, he will have no blessing from it and if he

gives *ṣadaqah* from it, it will not be accepted of him. If he leaves it behind [to be inherited] it becomes his provision for the Fire. Allah does not erase evil by means of evil, but He erases evil by means of good. Dirt does not erase dirt. (Aḥmad, al-Ḥākim in *al-Mustadrak*, and al-Bayhaqī in *Shu'ab al-īmān* from Ibn Mas'ūd, as cited in *Kanz al-ummāl*)

When we try to understand the Divine injunctions and the further explanations given by the Prophet ﷺ, it becomes clear that the Divine laws strike at the very root of modern capitalism. They enjoin moral rules upon man in his earning and spending and hold him responsible for the wellbeing of his fellow man. Hoarding is thus condemned,² usury forbidden,³ extravagance denounced⁴ and moderation enjoined.⁵ Wealth is not to be devoured in vanity⁶ but is to be developed by fair means and through generosity and trade so that it is used for the welfare of the community, hence there will be no need for inventions such as socialism.

The Qur'ān thus enjoins the cardinal values of equity, justice, mutual co-operation and self-sacrifice for organising the socio-economic fabric of Islamic society. It is narrated that the Prophet ﷺ said:

مَنْ وَلِيَ شَيْئًا مِنْ أُمُورِ الْمُسْلِمِينَ لَمْ يَنْظُرِ اللَّهُ فِي حَاجَتِهِ حَتَّى يَنْظُرَ فِي حَوَائِجِهِمْ.

Whoever is put in charge of any of the affairs of the Muslims, Allah will not look into his needs until he looks into their needs. (Aṭ-Ṭabarānī in *al-Kabīr* from Ibn 'Umar)

He has further said, speaking about public office:

وَإِنِّهَا أَمَانَةٌ. وَإِنَّهَا، يَوْمَ الْقِيَامَةِ، خِزْيٌ وَنَدَامَةٌ. إِلَّا مَنْ أَخَذَهَا بِحَقِّهَا وَآدَى الَّذِي عَلَيْهِ فِيهَا

It [public office] is a trust, and it will be on the Day of Rising a humiliation and a cause for regret except for those who take it according to its right and discharge what is due from them in it. (Muslim, *kitāb al-imārah*, *bāb kirāhat al-imārah bi ghayri ḍarūrah*)

Again:

مَا أَمَّنَ بِي مِنْ بَاتٍ شَبَعَانٍ وَجَارِهِ جَائِعٌ إِلَى جَنْبِهِ وَهُوَ يَعْلَمُ بِهِ.

Whoever knowingly passes the night satiated while his close neighbour is hungry does not believe in me. (Al-Bazzār, aṭ-Ṭabarānī from Anas)

It was for this reason that the Caliph ʿUmar ؓ declared: “ʿUmar ibn al-Khaṭṭāb would be answerable to Allah if a camel starved to death along the Euphrates.”

A study of the teachings of the Qurʾān and the Prophet’s sayings suggests the objective of setting up a just economic order which stops exploitation and sets up a contented, satisfied society. Islamic society is genuinely devoted to human welfare. It would need a voluminous book to detail what the early Islamic governments did to achieve this objective.

Directions for Sale Transactions

Men and women are allowed to engage in lawful trade in the *Sharīʿah*. In the *ḥadīth* literature, men and women are mentioned as selling to and buying from one another.⁷

All are equally entitled to trade, hence while a transaction is being carried on with one man and agreement has been reached, another should not intervene because of the words of the Messenger of Allah ﷺ: “Do not let any of you bid against each other.” (*Al-Muwatṭaʾ*, Book 31, Number 31.44.96) The *Sharīʿah* allows an auction, because, although it is forbidden to bid on top of someone else’s bid, this is only in the case when the seller and purchaser have reached agreement. Before that it is permissible to bid.

Traders should not go out to meet the caravans that come for trade because of the *ḥadīth* of the Messenger of Allah ﷺ: “Do not go out to meet the caravans for trade.” (*Al-Muwatṭaʾ*, Book 31, Number 31.44.97) This malpractice is known in English as ‘forestalling’, and it was by way of its proliferation that key modalities of modern trade have become prevalent. It is, however, forbidden in the *Sharīʿah* as it was forbidden in Common Law, which is the basis of both US and UK law.

Hoarding food is unlawful.⁸ It is through this inhuman practice that society suffers, while the hoarder raises the price. The cattle

seller is prohibited from leaving them unmilked for some days before selling so that they might fetch a higher price.⁹ This is simply deception. Fruits or crops must not be sold before they are in a fit condition because it is not guaranteed that they will reach maturity.¹⁰ The fruits on trees can only be sold if they are properly estimated.¹¹ Someone who buys some fruit, fresh or dry, should not resell it until he gets full possession of it.¹² Frivolously making oaths in sale transactions is also expressly forbidden. This practice is rampant in many Muslim countries where traders keep on taking oaths to describe their merchandise and their prices.

The Noble Qur'ān, as we have seen before, lays stress on honest and straightforward dealing in the very earliest revelations:

وَيْلٌ لِّلْمُطَفِّفِينَ الَّذِينَ إِذَا أَكَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ وَإِذَا كَالَهُمْ أَوْ وَزَنَهُمْ يَخْسِرُونَ

Woe to the stinters! Those who, when they take a measure from people, exact full measure, but when they give them a measure or weight, hand over less than is due. (Sūrat al-Muṭaffifin 83: 1-3)

وَأَوْفُوا الْكَيْلَ إِذَا كَلَّمْتُمْ بِالْقَيْسِ الْمُسْتَقِيمِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Give full measure when you measure and weigh with a level balance. That is better and gives the best result. (Sūrat al-Isrā' 17: 35)

أَوْفُوا الْكَيْلَ وَلَا تَكُونُوا مِنَ الْمُخْسِرِينَ وَزِنُوا بِالْقَيْسِ الْمُسْتَقِيمِ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْثَوْا فِي الْأَرْضِ مُفْسِدِينَ

Give full measure. Do not skim. Weigh with a level balance. Do not diminish people's goods and do not go about the earth, corrupting it. (Sūrat ash-Shu'arā' 26: 180-2)

Uqbah ibn Āmir said, "It is not *ḥalāl* for a man to sell goods knowing that there is a defect in them without making it known." (Al-Bukhārī, *kitāb al-buyū'*, *bāb idhā bayyana al-bayyi'āni wa lam yaktumā wa naṣaḥā*)

It is mentioned that al-Ādā' ibn Khālīd said, "The Prophet ﷺ wrote to me: 'This is what Muḥammad the Messenger of Allah ﷺ has bought from al-Ādā' ibn Khālīd, the sale from a Muslim

to a Muslim, there being no defect in it, nor anything *ḥarām*, and no deception.” (*Ibid.*)

According to another *ḥadīth* from Ḥakīm ibn Ḥizām ؓ from the Prophet ﷺ there is that he said:

Then if the two of them are truthful and make [things] clear, they will be blessed in their sale, but if they conceal [things] and they lie, the blessing of their sale is obliterated. (Al-Bukhārī, *kitāb al-buyūʿ*, *bāb mā yamḥaqu al-kadhibā wa al-kitmān fī al-bayʿ*)

Trade in all forms must be clean and honest. If one carries it out according to the guidance of the Qurʾān and the Sunnah, one will see Allah’s blessings even though he may not be able to amass fabulous wealth. After all, as the Messenger of Allah ﷺ has said:

Nine tenths of provision is in trade, and a tenth in cattle. (Saʿd ibn al-Manṣūr narrated it)

Trade was encouraged by the Messenger of Allah ﷺ so much that when the *Muhājirūn* (emigrants) fled to Madīnah due to the unbearable persecution of the Makkan pagans, the *Anṣār* (Helpers) became their brothers in *īmān*, and not only gave them shelter but some of them also divided their belongings in half and shared them with their brothers of the *Muhājirūn*. Saʿd ibn ar-Rabīʿ al-Anṣārī divided all his property into two parts and decided to give one part to ʿAbd ar-Raḥmān ibn ʿAwf but he said: “May Allah bless you in your family and your property; show me the way to the market.” (Al-Bukhārī, *kitāb an-nikāḥ*, *bāb qaww al-rajul li akhihi unzur ayya zawjatayya shiʿta ḥattā anzila laka ʿanhā*) Saʿd informed him that there Banī Qaynuqāʿ had a big market. Next day, ʿAbd ar-Raḥmān ibn ʿAwf went to the market with cheese and butter, and made a profit. Later he became a very successful businessman and used his property for the cause of Islam. ʿAbd ar-Raḥmān ibn ʿAwf was simply following the examples of the Prophet ﷺ, Abū Bakr, ʿUmar, and other companions who were engaged in lawful trade at one time or the other in their lives.

As long as there is no coercion, deceit, hoarding, undercutting, usury, uncertain transactions involving *gharar*, two sales in one transaction, every Muslim is encouraged to do trade and

business. The only trade that is declared unlawful is that of dealing in usury, wine and other intoxicants, pigs and idols.

It is unlawful, as al-Qayrawānī says, in trading to swindle, cheat or lie in respect of the price, or to deceive. Nor is it lawful to hide defects; nor is it lawful to mix a commodity of poor quality with one of good quality. Furthermore, it is not lawful for a seller to conceal some aspect of his commodity, mention of which could discourage the buyer from buying it, or to hide a defect the mention of which could lower the price.¹³

Here let me point out that Allah is the real owner of all things and man only a legal owner, more appropriately, a trustee with usufructuary rights. Private property is, indeed, a trust in possession and one has to deal with it as is expected of a trustee, and should remember the definition of *īmān* as being true to the trust placed in one by Allah.

Law of Contract

The Arabic word for contract is *‘aqd*, which literally means an obligation or a tie. It is an act of ‘putting a tie to a bargain.’ When two parties enter into contract, it is called *in‘iqād*, that is joining or tying the offer and the acceptance together. The obligations thus arising out of contracts are called *‘uqūd*. We are ordered through Qur’ānic injunction to fulfil all our obligations:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

You who have īmān! fulfil your contracts. (Sūrat al-Mā'idah 5: 1)

The word *‘uqūd* used in the Qur’ān is very meaningful and comprehensive. All human beings are required to fulfil the *ḥuqūq Allāh*, the rights of Allah, by establishing the *ṣalāh* (prayers), *ṣawm* (fasting), *zakāh* (poor-due) and Ḥajj (pilgrimage) and to fulfil the *ḥuqūq al-‘ibād*, the rights of the slaves of Allah, such as repaying debts, honouring contracts, neighbourliness, kindness and mercy to all human beings (and animals). Thus the term *‘uqūd* has a much wider connotation compared to the term “contract” in common law.

Milk or ownership in Islamic law refers to a relationship between a man and his property, which is under his control to the exclusion of other claimants. One may have physical possession of the property (*milk al-yad*) or right of disposal of the property (*milk at-taṣarruf*) or may have proprietary rights (*milk ar-raghābah*).

The Law of Contract centres round property (*māl*)

Māl is something that exists and can be held in use and be beneficial at the time of need. Air and water cannot be secured and hence, cannot constitute *māl*. Likewise grass and wild trees would not be considered as *māl*. The usufruct of the property will also be included in *māl*, as for example, the rent to be collected by the landlord from his tenant in respect of a house let to him.

CONSIDERATION

In the *Sharīʿah*, a contract is made only when one party offers something to another party for some consideration and the other party accepts the offer. The offer and acceptance must be made in a free manner. The consideration must be lawful. The parties must also agree upon their rights and duties.¹⁴

OFFER

An offer is the first stage of making a contract. The offer can be made in a number of ways:

1. It can be made verbally (*bi'l-kalām*). This kind of offer is to be made in the same meeting.
2. It can be made in writing (*bi'l-kitābah*). This form of offer becomes effective as soon as the letter leaves the person offering and will remain valid until received by the recipient. The offer must be replied to immediately.
3. It can be made through a message sent with some person, a messenger (*rasūl*) whose honesty is not doubted and if the offer is accepted, it will be a good acceptance. Mālikī, Shāfiʿī and Ḥanbalī jurists are of the opinion that the offer must be made by the owner of the property in return for

a due consideration, but the Ḥanafī jurists say that it can come from either party.

4. It can be made through signs and gestures, particularly in those cases where the person offering is deaf or dumb or when the recipient does not understand the language of the person offering. The Mālikī school regards as valid the well-known signs made by a person without any impediments, since the main idea is that the person offering should communicate the offer. Most jurists believe that the known signs of dumb persons made to constitute an offer are valid, but there are some jurists who consider signs and gestures invalid as modes of making an offer.
5. It can be made by conduct (*fiʿl*). An offer made through the delivery of goods is valid according to the Mālikī school.

However, an offer cannot be made through silence. If the contracting person keeps silent while he is expected to express himself, it will be deemed an invalid contract.

WITHDRAWAL OF AN OFFER

The time between the making of an offer and its acceptance is called *majlis al-ʿaqd* (the sitting for the contract). Ḥanafī and Ḥanbalī jurists say that the person offering has the option to withdraw his offer before it has been accepted. Since the person who is to receive has been given the chance to make up his mind whether to accept or reject the offer, it seems equitable that the person offering should also have the right to withdraw his offer before acceptance is made. It is likely that the person offering might have made some mistake or forgotten to include something in his offer, therefore he can quickly withdraw his offer while the other party is still busy in making up his mind whether or not to accept it. But the Mālikī school takes a different view and says that once the offer is communicated to the recipient the person offering has no right to withdraw the offer because he ought to have made up his mind before making an offer, and will not be permitted to change it later on.

CONSIDERATION (PRICE)

Consideration is an essential ingredient of a valid contract. Anything that is impossible to attain cannot form a valid consideration.¹⁵

The consideration must be lawful. Therefore, wine, pork etc., which are not lawful in Islam cannot be offered as a consideration. A contract by a Muslim to sell grapes or dates for preparing wine, will be invalid according to the Mālikī and the Ḥanbalī schools. Likewise, the sale of weapons to robbers or rebels is void.

COMPETENCY OF PARTIES

The parties who want to enter into a contract must be legally competent to do so. A minor (someone who has not reached the age of puberty), or a slave, or an insolvent person or someone of unsound mind, or an intoxicated person cannot enter into a contract.

Likewise, a person who is terminally ill (*marad al-mawt*) cannot make a valid contract.¹⁶

TERMINATION OF CONTRACT

The contract can be terminated by the mutual consent of the parties according to the terms stipulated in their contract, or on the basis of the nature of the contract. Some contracts are terminated unilaterally, while there are others which would need the agreement of both parties. If the consent of one of the parties has been obtained to the contract in a manner which means that it is not a free contract due to coercion, undue influence, fraud, misrepresentation or a mistake then such party may void the contract at his option; but the other party cannot do so.

THE CONTRACT OF SALE ^cAQD AL-BAY^c

The contract of sale (*bay^c*) means the delivery of a definite object which possesses legal value in exchange for something equivalent in value (called the price). The concept of sale also includes barter (i.e. exchange of one thing for another of equivalent value)

although there are a number of limitations on this. Price may be paid immediately on delivery of goods sold, or it may be paid after delivery of the goods bought has been made, or goods may be delivered immediately and the price may be paid later. It is possible to postpone the payment of the price as well as the delivery of the goods.

The purchaser (*mushtarī*) and the seller (*bā'ī*) are each referred to by one generic name *‘āqīd*. The *‘āqīd* must possess the following qualifications:

1. He must be *mumayyiz*, a discriminating person, i.e. he must be able to understand the implications of the contract of sale. Thus an insane person or a minor who does not understand the implications of the contract of sale will not be a *mumayyiz*. However, according to all the schools of Islamic Jurisprudence (except ash-Shāfi‘ī) if a minor is *mumayyiz* the contract is valid.
2. He must be capable of disposing of his property.
3. He must be free to use his own discretion (*mukhtār*) i.e. he must not be working under coercion, undue influence, misrepresentation, fraud or a misapprehension.

THE OBJECT FOR SALE

1. It must be owned by the seller or his agent.
2. It must be in a position to be delivered. The sale of a bird in the air or fish in the sea is void.
3. It must be lawful (*ḥalāl*) and wholesome (*ṭāhir*). The sale of unwholesome things like wine, pig and dead animals (except fish) is void.

***Ḥawālah*: Transfer of Debts**

Some contracts are transferrable. As for example, if A lends some money to B, A may, by contracting with B and C, transfer the claim to C, i.e. arrange that B repay the money to C rather than to A. This is called *ḥawālah*¹⁷ (i.e. assignment, transfer or referral). Imām Mālik approves of such transfer but other jurists of the Shāfi‘ī and Ḥanbalī schools oppose it, while the Ḥanafis allow

it in exceptional cases. However, all jurists permit A to sell his claim against B to anyone A wishes or to make a gift of it to any person other than the debtor B. The following are the conditions requisite for a valid *hawālah*:

1. The debt which is the subject matter of the contract must be a lawfully subsisting obligation.
2. The original creditor A and debtor B must mutually agree that the assignee debt that constitutes the object of the transfer, should be paid by B to C.
3. The debt must have fallen due, even though it consists of the price to be paid by a slave for his freedom; but it is not necessary that the debt owed to the transferrer C should have fallen due.
4. Both debts must consist in objects of the same kind, equal in quantity and quality; there are several opinions however, as to the varying fineness of coins.¹⁸
5. The two debts must not consist of foodstuffs which have been purchased.

The uncertain sale (*bay^c al-gharar*)

The *gharar*¹⁹ sale is a kind of sale in which uncertainty is involved, such as the sale of fish in the sea or birds in the air before they are caught, and thus it encompasses futures transactions in modern finance. The Messenger of Allah ﷺ has forbidden the *gharar* sale, e.g. the sale of dry dates for unripe dates on the tree except in the case of *ʿarāyā* (pl. of *ʿariyyah*,²⁰ see below). Where two or more distinct articles are the objects of a single sale, the price of each should be individually known and determined, otherwise the transaction is void because of uncertainty (*gharar*) and two sales in one sale is forbidden. The *gharar* sale, in other words, involves speculative risks in the contract.

نهى رسول الله ﷺ عن بيع الحصاة، وعن بيع الغرر

The Messenger of Allah ﷺ forbade sale through [casting] pebbles²¹ or the *gharar* sale. (Muslim, *kitāb al-buyū^c*, *bāb buṭlān bay^c al-ḥaṣāh wa al-bay^c alladhī fihi gharar*; Aḥmad)

The *gharar* sale resembles the present sale of future goods recognised by the Sale of Goods Acts in Common Law²² countries.

Muzābanah and ‘Ariyyah Sales: A Misunderstanding Removed

The *ḥadīth* in the *Muwatṭa’* of Imām Mālik on the subject of *muzābanah* sale are as follows:

حدثني يحيى، عن مالك، عن نافع، عن عبد الله بن عمر: أن رسول الله ﷺ نهى عن المزبنة. والمزبنة بيع الثمر بالتمر كيلا، وبيع الكرم بالزبيب كيلا

Yahyā related to me from Mālik from Nāfi from ‘Abdullāh ibn ‘Umar that the Messenger of Allah ﷺ forbade *muzābanah*. *Muzābanah* is selling fresh dates for dried dates by measure, and selling grapes for raisins by measure. (*Al-Muwatṭa’*, Book 31, Number 31.13.23)

In another *ḥadīth*, *muzābanah* sale is defined as:

والمزبنة اشتراء الثمر بالتمر في رؤوس النخل

Muzābanah is selling fresh dates for dried dates while they are still on the trees. (*Al-Muwatṭa’*, Book 31, Number 31.13.24)

Muzābanah is a general rule while *‘ariyyah* is an exception in the principles of contract of sale, because it is a charitable act to grant the produce of a date-palm or a vine to someone. *Muzābanah* in date-palms and grape-vines, when applied to wheat, is sometimes called *muḥāqalah*. In the above *ḥadīth* narrated by Sa‘īd ibn al-Musayyab he said, “*Muḥāqalah* was buying unharvested wheat in exchange for threshed wheat and renting land in exchange for wheat²³.” Mālik said explaining the practice current in Madīnah at his time:

Mālik said, “The Messenger of Allah ﷺ forbade *muzābanah*. The explanation of *muzābanah* is that it is buying something whose number, weight and measure is not known with something whose number, weight or measure is known, for instance, if a man has a stack of food whose measure is not known, either

of wheat, dates, or whatever food, or the man has goods of wheat, date kernels, herbs, safflower, cotton, flax, silk, and does not know its measure or weight or number and then a buyer approaches him and proposes that he weigh or measure or count the goods, but, before he does, he specifies a certain weight, or measure, or number and guarantees to pay the price for that amount, agreeing that whatever falls short of that amount is a loss against him and whatever is in excess of that amount is a gain for him. That is not a sale. It is taking risks and it is an uncertain transaction. It falls into the category of gambling because he is not buying something from him for something definite which he pays. Everything which resembles this is also forbidden.” (Al-Muwatṭaʾ, Book 31, Number 31.13.25)

Dry fruits cannot be bartered for fresh or unripe fruits on the tree, because it becomes *muzābanah*.

The ḥadīth on *ʿariyyah* sale mentioned in the *Muwatṭaʾ* is as follows:

حَدَّثَنِي يَحْيَى، عَنْ مَالِكٍ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ زَيْدِ بْنِ ثَابِتٍ: أَنَّ رَسُولَ اللَّهِ ﷺ أَرْخَصَ لِصَاحِبِ الْعَرِيَّةِ، أَنْ يَبْعَهَا بِخَرْصِهَا

Yahyā related to me from Mālik from Nāfiʿ from ʿAbdullāh ibn ʿUmar from Zayd ibn Thābit that the Messenger of Allah ﷺ allowed the holder of an *ʿariyyah* to barter the dates on the palm for the amount of dried dates it was estimated that the palms would produce. (Al-Muwatṭaʾ, Book 31, Number 31.9.14)

Ibn Juzayy al-Kalbī said in *al-Qawānīn al-fiqhiyyah*:

As for the *ʿariyyah* it is that someone gives to him [a poor person] the dates of a date-palm or the fruits of a tree but not their original [tree]. It is permissible for the person giving the *ʿariyyah* to buy them from him [the poor person] with their amount estimated in dried dates, under four conditions, which are:

1. That their ripeness has appeared;
2. That they are five *wasq* measures or less;
3. That the amount paid should be of the same type as the *ʿariyyah*;
4. And that he gives him the fruit at the time of the cutting of

the fruit from the palm-tree, not as a cash payment, and that is an exception from *muzābanah*. (Al-Kalbī, Ibn Juzayy, *kitāb al-‘uqūd, al-bāb ath-thālith fī al-‘umrā wa ar-ruqbā wa al-minḥah wa al-‘ariyyah*)

Ash-Shāfi‘ī permitted its purchase by the donor of the *‘ariyyah* and from someone else,²⁴ but only permitted it in dates or grapes.

‘Abd ar-Raḥmān ibn al-Qāsim said in the *Mudawwanah*:

Mālik said, “*‘Ariyyah* is in date-palms and in all fruits such as are dried and stored such as grapes, figs, acorns (*jawz* possibly walnuts), almonds and the like of those things that are dried and stored.” (Ṣaḥnūn, *al-Mudawwanah al-kubrā, Kitāb al-‘arāyā*)

‘Ariyyah is a special permission given in the case when a rich person wants to give the produce of a certain date-palm or a certain fruit tree to a poor person as a *ṣadaqah* but the poor man may need the dried fruit urgently hence the rich person can give him dried fruit in exchange for the fresh fruit estimating the measure of fresh fruit on the tree, so as to save him the trouble. Imām Aḥmad ibn Ḥanbal reports from Sufyān ibn Ḥusayn:

العرايا نخل كانت توهب للمساكين فلا يستطيعون أن ينتظروا بها فيبيعوها بما شاؤوا من ثمرة.

‘Arāyā are date-palms which would be given to bereft people, so they would not be able to wait for them and so they would sell them for whatever they wished of their fruits. (Aḥmad ibn Ḥanbal, *Musnad*)

Imām Mālik said that during famine, the Arabs used to give the fruit of some trees full of dates as *ṣadaqah* to poor people just as owners of herds of camels and goats used to dedicate one or two of them to some poor people to drink their milk.²⁵ Imām Mālik restricted the purchase of the fresh fruit of the *‘ariyyah* in exchange for dried fruit to the donor of the use of the tree, but Imām ash-Shāfi‘ī and Imām Aḥmad ibn Ḥanbal said that anyone can buy the fresh fruit with dried fruit.²⁶

Imām Mālik further says that *‘ariyyah* are those fruits which are in someone else’s orchard. The owner of land may not like frequent visits by the owner of one or two trees, so the landowner

with the majority of the trees can give dried dates to the estimated measure of the fruits on the tree. This is also permissible.²⁷ Imām Mālik's view is based on the principle of *taḍarrur*, because one may not interfere in someone else's property. According to Imām Mālik:

العَرِيَّةُ أَنْ يَعْزِي الرَّجُلُ نَخْلَةً، ثُمَّ يَتَأَذَى بِدُخُولِهِ عَلَيْهِ فَرُخِصَ لَهُ أَنْ يَشْتَرِيَهَا مِنْهُ

The *‘ariyyah* is that a man grants a date-palm [or several], and then he is bothered by [the poor person's] entering upon him, so that then he is granted a concession to buy them from him.

It will be clear from these examples, therefore, that to regard the *muzābanah* sale and the *‘ariyyah* as the same is to misunderstand completely their provisions and significance as stipulated in the *ḥadīth* on the two types of sale. After discussing *muzābanah* and *‘ariyyah* contracts, Professor Coulson says in his book *A History of Islamic Law*:

The *Muwattaʿa* here simply reflects the stage of a rough and uneasy compromise between the comparatively liberal and practical outlook of the earliest scholars and the rigid approach of the doctrinaire group. (Coulson, *A History of Islamic Law*, Edinburgh 1971, p. 44)

One is at a loss to find ‘an uneasy and rough compromise’ in such a simple and straightforward Prophetic solution and special dispensation in the matter of *‘ariyyah*. For a Muslim scholar, it is difficult to see such watertight compartments as the imaginary ‘doctrinaire group’ and ‘earliest scholars’ for they did not exist during that period. To us they were all *as-salaf aṣ-ṣāliḥūn* the right-acting earliest generations who, we believe, were sincere and who carefully followed in the footsteps of the Messenger of Allah ﷺ and depended solely on the Book of Allah and Sunnah of His Messenger ﷺ.

The Doctrine of *Khiyār al-Majlis*

The Prophet ﷺ is reported by Abū Barzah al-Aslamī ؓ to have said:

عن أبي برزة الأسلمي قال قال رسول الله ﷺ ﴿البيعان بالخيار ما لم يتفرقا﴾

Each of the parties to a contract of sale has the option against the other party as long as they have not separated. (Aḥmad; Abū Dāwūd, *awwal kitāb al-ijārah, bāb fī khiyār al-mutabāyiʿayn*; and Ibn Mājah, *kitāb at-tijārāt, bāb al-bayyiʿān bi al-khiyār mā lam yaftariqā*; from Abū Barzah. Ibn Mājah and al-Ḥākim, in *al-Mustadrak*, also narrated it from Samurah)

This *ḥadīth* of the Prophet ﷺ expresses the doctrine known as *khiyār al-majlis*, which gives the parties to a contract, duly completed by offer and acceptance, the right to repudiate the agreement during the session (*majlis*) of the bargain.

Imām Mālik comments on this *ḥadīth* in the following words:

وليس لهذا عندنا حدّ معروف، ولا أمر معمول به فيه.

With us [the People of Madīnah] there is no well known definition in this case nor any matter which is acted upon. (*Muwaṭṭaʿ*, Book 31, Number 31.37.80)

He meant there is no definition of what constitutes their separating and no established practice with respect to that. Professor Coulson remarks on the point of view of Imām Mālik in the following words:

This is one of the many occasions on which the law expressed in the reported precedents of the Prophet or later authorities was rejected by the early Medinan scholars when it ran counter to their currently accepted doctrine. (Coulson, *A History of Islamic Law*, Edinburgh 1971, p. 46)

He erroneously brands the *ḥadīth* of the Prophet ﷺ quoted above as merely “the alleged statement of the Prophet.” (*Ibid.*)

Professor Coulson falls into the error of assuming that Imām Mālik was in the habit of rejecting Prophetic traditions and the authority of the precepts of the Prophet ﷺ expressing Islamic Law. The *Muwaṭṭaʿ*, on the contrary, shows that Imām Mālik always quotes a *ḥadīth* or a precedent of the *Khulafāʾ ar-Rāshidūn* ﷺ or very prominent Companions. Many Muslim scholars of the past have considered the *Muwaṭṭaʿ* as a book that has rendered a

great service to the cause of collection of *ḥadīth* long before Imām al-Bukhārī and Imām Muslim and other scholars of *ḥadīth* began to produce their systematic compilations of *ḥadīth*. As we have seen before, great scholars like Imām ash-Shāfi‘ī have rated the *Muwatta’a* as ‘the most authentic book after the Book of Allah.’

The misunderstanding in the above example of this detached academic arises out of the statement of Imām Mālik in the *Muwatta’a* in the matter of *khiyār al-majlis* which does not in the least disregard or reject the most authentic *ḥadīth* the Prophet ﷺ quoted at the beginning of chapter 38 (*bāb bay‘ al-khiyār*). Imām Mālik has only stated the fact as to what operated in his time in Madīnah. It should be pointed out that it is typical of the Mālikī school that the *‘amal ahl al-Madīnah* (the practice of the People of Madīnah) is very much relied upon. The practice of the People of Madīnah, which Imām Mālik mentioned here, was based on the Sunnah of the Prophet ﷺ. It was the learned and right-acting Imām’s view that Madīnah was the birthplace of Islam and the place to which the Prophet ﷺ emigrated; the nerve centre of the *Ummah*, the centre where important legal verdicts were given by the Prophet ﷺ and the *Khulafā’ ar-Rāshidūn* ؓ, the place where the Companions and their Followers lived and taught according to the Book of Allah and the Sunnah of the Messenger of Allah ﷺ. Hence, the practice of the people of Madīnah could not be contrary to the Sunnah of the Prophet ﷺ especially during the early period in which Imām Mālik lived and taught.

As far as *khiyār al-majlis* is concerned, other schools of law have contested its validity. There were scholars like Ibn Ḥajar who were of the opinion that the doctrine does not contradict the *‘amal* of the People of Madīnah because it had been the view of Ibn ‘Umar, Sa‘īd ibn al-Musayyab, az-Zuhrī and Ibn Abī Dhī‘b who were eminent leaders in their eras in Madīnah.²⁸

Forbidden Contracts of Sale

The following contracts of sale are forbidden in the Sunnah of the Prophet ﷺ. They are self explanatory:

1. TWO TRANSACTIONS IN ONE SALE

عن أبي هريرة، قال: ﴿نهى رسول الله ﷺ عن بيعتين في بيعة﴾ .

There is from Abū Hurayrah رضى الله عنه, “The Messenger of Allah ﷺ forbade making two transactions of sale into one contract of sale.” (At-Tirmidhī, *abwāb al-buyūʿ ʿan rasūlillāh* ﷺ, *bāb mā jāʾa fī an-nahy ʿan bayʿatayni fī bayʿah*; an-Nasāʾī, *kitāb al-buyūʿ*, *bāb at-tijārāh*; *Muwaṭṭaʿ*, Book 31, Number 31.33.72)

Many modern transactions use this practice, for example, all the offers to buy a product and get something extra for free. Mālik gives many examples in the *Muwaṭṭaʿ*, including having a different price for a product if it is bought with cash or on credit.

2. EXTRA CONDITION ATTACHED TO A SALE

أن النبي ﷺ نهى عن بيعٍ وشرطٍ

The Prophet ﷺ forbade a contract with a stipulation. (Narrated by al-Haytamī from Imām Abū Ḥanīfah in *Majmaʿ az-zawāʿid* in which he attributed it to aṭ-Ṭabarānī in *al-Awsaṭ*)

The contract must not be combined with an extra condition.

3. SALE OF WHAT ONE DOES NOT OWN

عن حكيم بن حزام قال ﴿نهاني رسول الله ﷺ أن أبيع ما ليس عندي﴾ .

From Ḥakīm ibn Ḥizām there is that he said, “The Messenger of Allah forbade me to sell a thing which I don’t have.” (At-Tirmidhī, *abwāb al-buyūʿ ʿan rasūlillāh* ﷺ, *bāb mā jāʾa fī karāhiyyah bayʿ mā laysa ʿindahū*)

4. MULĀMASAH AND MUNĀBADHAH SALES

نهى النبي ﷺ عن الملامسة والمنابذة

The Prophet ﷺ forbade *mulāmasah* and *munābadhah*. (Al-Bukhārī, *kitāb al-buyūʿ*, *bāb bayʿ al-munābadhah*; Muslim, *kitāb fī al-buyūʿ*, *bāb*

ibtāl bay al-mulāmasah wa al-munābadhah; Aḥmad, Abū Dāwūd, an-Nasā'ī and Ibn Mājah also transmitted it)

Mālik explained these two sales in the *Muwaṭṭa'*:

Mulāmasah is when a man can feel a garment but is not allowed to unfold it or examine what is in it, or he buys by night and does not know what is in it. *Munābadhah* is that a man throws his garment to another, and the other throws his garment without either of them making any inspection. Each of them says, "this is for this." This is what is forbidden of *mulāmasah* and *munābadhah*. (*Al-Muwaṭṭa'*, Book 31, Number 31.35.76)

5. BIDDING IN ORDER TO RAISE THE PRICE (NAJASH) IS FORBIDDEN

نَهَى عَنْ النَّجَشِ .

[The Messenger of Allah ﷺ has forbidden bidding up the price [dishonestly, not intending to purchase]. (Al-Bukhārī, *kitāb al-buyū'*, *bāb an-najash wa man qāla lā yajūzu dhālika al-bay'*; and Muslim, *kitāb al-buyū'*, *bāb taḥrīm bay' ar-rajul alā bay' akhihi*; Ibn Mājah and an-Nasā'ī also transmitted it)

This is the practice of dishonestly entering a bid for something, not intending to buy it, but merely in order to raise the price.

6. FORESTALLING (TALĀQĪ RUKBĀN)

عن ابن عباس رضي الله عنهما قال: قال رسول الله صلى الله عليه وسلم لا تلقوا الركبان...

Ibn 'Abbās رضي الله عنهما said, "The Messenger of Allah ﷺ said, "Do not go out to meet the caravan [in order to buy from them or sell to them]...." (Al-Bukhārī, *kitāb al-buyū'*, *bāb an-nahy li al-bā'i an lā yahfila al-ibil wa al-baqar wa al-ghanam wa kulla mahfalāh*)

This sort of trade can lead to fraudulent practices such as buying things at a very cheap rate in order to sell at an exorbitant price since the people of the town would not be able to discover the actual price, or buying up and hoarding in order to be able to dictate the price. It might also be to deceive the caravan traders by offering them a low price before they come to the town and discover that they have been cheated.

Similarly, during famine, the traders might go out to caravans to buy foodstuffs from them at a nominal price without telling them the current market price in the town.

Unfortunately, this prohibition has long since been subverted in the East and the West, and this practice has become a standard of modern commercial life.

7. THE SALE OF A CITY DWELLER FOR A COUNTRY DWELLER (*BAYĤ ḤĀḌIR LI BĀD*)

عن ابن عباس رضي الله عنهما قال: قال رسول الله ﷺ ... ولا يبيع حاضر لباد

Ibn ʿAbbās رضي الله عنه said, “The Messenger of Allah ﷺ said, ‘...And someone who is resident must not sell or buy’²⁹ on behalf of a country dweller.”³⁰

That is, he should not act as a broker for him. This was what Ibn ʿAbbās رضي الله عنه explained it as in the two *ṣaḥīḥ* books.³¹

Country-dweller here means first of all nomads and people who live in rural areas and then secondarily village dwellers if they are not familiar with the markets of the city and the prices there.

This *ḥadīth* refers to two types of transactions: a city dweller has a lot of merchandise in the city which he could easily sell, but, in order to gain large profits he takes the commodity to sell in the villages although the city-dwellers are in need of those things. Secondly, he tries to stop direct trade between villagers and city-dwellers, and becomes a self-imposed agent on behalf of the villagers and buys or sells commodities on their behalf at artificial prices ensuring himself an extra large profit.

Acceptable contracts

1. *SHIRKAH*: PARTNERSHIP

The words sharing and partnership occur several times in the Qurʾān: Mūsā (عليه السلام) prays to Allah to make Hārūn (عليه السلام), his brother, his partner in his mission to Pharaoh:

وَاجْعَلْ لِّي وَزِيرًا مِّنْ أَهْلِي هَارُونَ أَخِي اشْدُدْ بِهِ أَزْرِي وَأَشْرِكْهُ فِي أَمْرِي

Assign me a helper from my family, my brother Hārūn. Strengthen my back by him and let him share in my task. (Sūrah Ṭā Hā 20: 29-32)

Sharing the estate in inheritance is mentioned here:

فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ

If there are more than that they share in a third. (Sūrat an-Nisā' 4: 12)

Shirkah,³² or partnership contract, signifies the conjunction of two or more persons to carry on a business sharing profits accruing from joint investment or joint labour. In the widest sense of the term *shirkah*, the partnership exists where property is held in common between two or more co-proprietors. A person thus alienates an undivided share of his property, in return for an undivided share of the property of another each having the right to administer the whole.

Linguistically it means "to mix", and in *Sharī'ah*, the compiler [ad-Dardīr] said, "Partnership is the permission" from each one of the two, or of them,³³ to the other "to transact" i.e. for him to transact in property "belonging to the two of them" i.e. to the two granted permission together. (Ibn 'Arfaḥ ad-Dasūqī, *ash-Sharḥ al-kabīr 'alā Ḥāshiyat ad-Dardīr 'alā Mukhtaṣar Khalīl, bāb fī bayān ash-shirkah wa aḥkāmihā wa aqsāmihā*)

The *shirkah* may be effected in a specified amount of capital or in labour on contribution of labour and skill or in credit where no capital is contributed and the partners buy and sell on credit on understanding that they shall share the profits. There may be a *shirkah* of mixed characters in cases of capital and labour, agricultural farms and labour and so on and so forth. The *madhhabs* take different views on the permissibility of each form, and we will examine that below.³⁴

Ibn Juzayy al-Kalbī said:

There are two types of partnership in property: *‘inān* partnership and *mufāwadaḥ* partnership. (Al-Kalbī, Ibn Juzayy, *al-Qawānīn al-fiqhiyyah, al-kitāb ar-rābi‘ min al-qism ath-thānī fī al-‘uqūd al-mushākalah li al-buyū‘, al-bāb al-khāmis fī ash-shirkah*)

Shirkat al-^cInān: Limited Partnership

Shirkat al-^cInān is a limited partnership in which a partner is not allowed to do anything without his partner. Ibn Juzayy said:

^c*Inān*³⁵ partnership is that each of the two partners puts wealth and then they mix it or put it into a single box and both trade from it together and neither of them acts independently of the other in transacting. (*Ibid.*)

Shirkat al-Mufāwadah: Unlimited Partnership

Ibn Juzayy said:

Mufāwadah partnership is that each of the two delegates transacts on behalf of the other [partner] both when he is present and when he is absent and he is bound by everything which his partner does. Ash-Shāfi'ī forbade *mufāwadah* partnership and Abū Ḥanīfah stipulated equality of capital investments. (*Ibid.*)

Ibn Juzayy says further about partnership in property:

It is incumbent in partnership in property that the profit be divided between them in the proportion to the share of each of the two of them from the property, and it is not permissible that either of them stipulate for himself more of the profit than his share of the wealth, contrary to Abū Ḥanīfah.

And that kindness which either of the two partners does is taken from his share in particular unless it is such as whose benefit is hoped for in respect of trade, such as giving hospitality to traders and the like of that. (*Ibid.*)

Shirkat al-Abdān: Partnership in Labour

Islamic Law allows two or more persons to associate themselves for the exercise of a profession or a handicraft. The profits will be practically equal for the partners with a view to lending mutual assistance even though the associates work separately. Imām Mālik is cited by Ṣaḥnūn in *al-Mudawwanah al-kubrā* as saying that the stock of tools may be provided by each partner in such labour associations, but the other jurists say that the tools will be owned by the association or hired by the association at common expense. In this kind of *shirkah*, any payment received or engagement entered upon by one of the associates for some work done or to

be done binds the other, and the payment remains at their risk even after the dissolution of the partnership. It will be illegal for one of the associates to hold a greatly predominant share in the stock of tools. Ibn Juzayy al-Kalbī said:

As for partnership in labour, that is in manufacture and work, it is permissible, contrary to ash-Shāfiʿī, but it is only permissible under two conditions:

1. That it is in the same manufacture such as two tailors, and two blacksmiths. It is not valid with differing trades such as a tailor and a carpenter.
2. That it takes place in the same venue in which they both work, and if they are in two different places it is not valid, contrary to Abū Ḥanīfah in respect to both conditions. If one of the two has more tools than the other, then if it is worthless he renders it ineffectual, and if they have a significance he leases his share of them. (*Ibid.*)

Shirkat al-Wujūh: Partnership in Liabilities

Ibn Juzayy al-Kalbī said:

As for *wujūh* partnership, it is that they both share not in wealth nor in work, and it is partnership in liabilities such that if the two of them buy something it is their joint liability and if they sell it they divide its profits between them, but this is not valid, contrary to Abū Ḥanīfah. (*Ibid.*)

Summary by Ibn Juzayy al-Kalbī

Mālik declared *ʿinān*, *mufāwāḍah* and partnership in labour valid but declared *wujūh* partnership invalid, whereas Abū Ḥanīfah permitted all four, and ash-Shāfiʿī permitted *ʿinān* in particular. (*Ibid.*)

This summary here is intended to clarify the distinct position of each of the *madhhabs*, since it is one of the features of our age that the science of Islamic commercial transactions is being rebuilt in our time on the shaky foundations of *multi-madhhabism*, with the result that usury all too easily enters into equation.

2. QIRĀḌ OR MUḌĀRABAH: DORMANT PARTNERSHIP

Qirāḍ agreement is a contract by which a person entrusts funds

to a trader (*ʿāmil*) in order that he trade with them, subject to the lender having a share in the profit. Ibn Juzayy al-Kalbī said:

The Iraqis call it *muḍārabah* and its nature is that a man pays wealth to another for him to trade with and the extra will be shared between them according to that which they agree upon: a half or a third or a quarter etc., after repayment of the capital sum. *Qirāḍ* is permissible and is excepted from being an uncertain transaction or an unknown return. (Al-Kalbī, Ibn Juzayy, *al-Qawānīn al-fiqhiyyah, al-kitāb ar-rābiʿ min al-qism ath-thānī fī al-ʿuqūd al-mushākalah li al-buyūʿ, al-bāb ar-rābi fī al-qirāḍ*)

Thus, in *qirāḍ*, the capital is handed over to an agent to trade with, and the contract comes into force when the agent starts his trading journey. *Qirāḍ* was encouraged by the Prophet himself ﷺ, and it was a common form of trading in the early days of Islam. Commercial enterprises in the time of the Prophet ﷺ used to be organised under the charge of a caravan leader commissioned by one or more rich persons of the community. The caravan continued to be a major factor in commerce until the contravention of the laws forbidding forestalling became widespread.

In the contract of *qirāḍ*, a certain capital is handed over to the agent on condition that the person entrusting it shall participate in the profits in a pre-agreed proportion. The dormant partner remains the owner of the capital. The agent is only in possession by virtue of the trust reposed in him. He is only held responsible for negligence or breaking the rules of the contract.

Capital in Qirāḍ Partnership

Ibn Juzayy al-Kalbī said:

First, that the capital should be dinars or dirhams, for it is not acceptable with goods and other things, but there is a difference of opinion concerning unminted gold and silver and nuggets of gold and silver, and *fulūs*.³⁶ If he is owed money by a man it is not valid for him to pay it to him as a *qirāḍ* according to the dominant majority. It is the same if he owes another person money and tells [the agent] to take possession of it so that he can give it to him as a *qirāḍ*. (*Ibid.*)

In the dormant partnership, the capital should not consist of a debt owed by a debtor to his creditor nor should it consist of a pledge or of a security. That is, the debtor or the holder of the pledge should not be the agent and the creditor should not be the dormant partner. Capital should not consist of debased coins nor of goods which the agent has taken upon himself to realise because in these cases the value of the capital cannot be strictly determined. In *qirāḍ* partnership, the risk for the enterprise should not be thrown exclusively upon the agent, otherwise the contract will become invalid. It is prohibited that the shares of the profit be ambiguous or fake, otherwise, it will create confusion later on; the parties must be clearly agreed upon them before the enterprise begins. The agent will be required to perform his duties in good faith taking into consideration the good of the entrepreneur. He should take the same amount of care as he would do if the concern were solely his own.

Difference between Ordinary Partnership and the Qirāḍ Partnership

Ordinary partnership has its existence where the partners live and work. All the partners play an active part in the concern and each contributes his share of the capital.

In the *qirāḍ* or dormant partnership, on the other hand, an investor furnishes the funds but the active agent operates the concern almost without control. The agent can be far from the place where the contract was entered into. In the *qirāḍ* partnership the capital must consist as a general rule in cash, specifically gold and/or silver, but in the ordinary form of partnership it is not so.

Qirāḍ is also called *muḍārabah* which may be from the phrase *ḍarb fi'l-ard* or "moving about in the land of Allah seeking for trade or work" which is mentioned in al-Baqarah.³⁷ Perhaps, the word *muḍārabah* is derived from this Qur'ānic phrase.

3. WAKĀLAH: AGENCY

The word *wakīl* appears about twenty-four times in the Noble Qur'an. In the following verse in Sūrat al-An'ām, it is used to

convey the meaning 'a person responsible for arranging one's affair' or a 'guardian':

وَكَذَبَ بِهِ قَوْمُكَ وَهُوَ الْحَقُّ قُلْ لَسْتُ عَلَيْكُمْ بِوَكِيلٍ

Your people deny it and yet it is the Truth. Say: "I am not here as your guardian." (Sūrat al-An'ām 6: 66)

The same word is further repeated in verse 107 of the same sūrah to convey the same meaning:

وَمَا أَنْتَ عَلَيْهِمْ بِوَكِيلٍ

And you are not set over them as their guardian. (Sūrat al-An'ām 6: 107)

In Islamic law, *wakālah* or agency arises where one person authorises another to replace him in the exercise of his civil rights. The person thus authorised is called *wakīl*. A *wakīl* can be entrusted with all acts which can be done by a representative, such as concluding or rescinding a contract, collecting a sum due, assigning a debt or discharging a debtor, even though the amount of the debt be unknown to all three. Once one appoints a *wakīl*, the latter should not act unless he has full powers. The principal cannot delegate his *wakīl* to take an oath on his behalf, nor can he appoint an agent to commit an illegal act. A general agent can be appointed to deal with all matters on behalf of the principal except the principal's divorce, or for giving consent to the marriage of the principal's virgin daughter or to sell the principal's house. If he is a special agent, his powers will be limited according to the instructions given by the principal.

Ibn Juzayy al-Kalbī said:

Concerning agency (*wakālah*) about which there are six issues.

1. Concerning the person who authorises and the agent. The agency of a person who is absent and a woman and a sick person are permissible by unanimous agreement as is the agency of a healthy person who is present, but contrary to Abū Ḥanīfah. As for the agent, every person for whom it is permissible to transact on his own behalf in any matter, then it is permissible for him to

deputise in it for someone else except that it is not permissible to charge an enemy as agent nor a *kāfir* in buying and selling or paying advance deposits in case they do something *ḥarām*, nor is it permissible to charge them with taking possession of something from Muslims in case they raise themselves up over them.

2. Concerning that in which agency is valid and invalid. Agency is valid in every thing in which it is valid to deputise someone of financial matters and other things and in acts of *‘ibādah* and worship except for those related to physical activity such as prayer and fasting for which it is not valid to deputise someone, although it is valid to deputise in acts of worship connected with property such as *zakāh*, but they differ about it in the Ḥajj. (Al-Kalbi, Ibn Juzayy, *al-Qawānīn al-fiqhiyyah*, *al-kitāb as-sādis fī al-abwāb al-mushākalah li al-aqḍiyah li ta‘alluqihā bi al-aḥkām*, *al-bāb ath-thāmin fī al-wakālah*)

Obligations of a Wakīl

A *wakīl* will be responsible to sell or buy for a price, and should declare clearly to the third party: “I am sent by my principal so-and-so in order that you may sell to him this and that.” He will be responsible for any breach of warranty in the thing already sold, unless the buyer has been informed that the vendor was acting simply as an agent for so-and-so.

He must accept only *sharī‘ah* legal tender, i.e. gold and silver, as payment, or if the principal has authorised, he may accept barter in a *ḥalāl* manner. He must, however, conform to the current market price, otherwise the principal is not bound to ratify his transactions.

It is essential for the *wakīl* to comply with the instructions given by his principal, otherwise the latter may refuse to accept the purchase or part with the merchandise. Likewise, if the thing is bought at a reduced price or has some defect. He should also comply with his principal’s instructions as to the time and place of the purchase or sale, nor should he raise or reduce the price of the commodity for which limits are agreed and fixed although fluctuations up to five percent (5%) will be tolerated. If the *wakīl* exchanges foodstuff for foodstuff or has exchanged gold for

gold, the principal may rescind the sale, as that can be usury. The principal is bound to ratify a sale or purchase made by his *wakīl* under more favourable but lawful terms.

The *wakīl* cannot sell the wares which are given to him for sale to himself, nor can he sell them to one of his wards under his guardianship although he is allowed to sell to his wife since, in Islamic Law, it is only the person of the spouses that are in common, not their personalities. A Muslim must not appoint a Jew, a Christian or an enemy of his debtor as his agent in the transactions of sale and purchase although there are differences of opinion on this subject given the complex nature of modern society.

If the principal and his *wakīl* have, independently of each other, sold the same goods, the first sale in point of time shall be considered valid provided the subsequent sale was not followed by immediate delivery. The *wakīl* must obtain a receipt for the payment of the principal's debt, otherwise, in case of complaints, the *wakīl* will be held liable. The principal will remain the vendor's debtor so long as the vendor has not received his purchase price.

4. *ḌAMĀN*: GUARANTEE AND LIABILITY

Ḍamān, liability or guarantee, is a form of contract by which a third person constitutes himself liable for the debt of another.

He is called *ḍāmin* and is also known as *ḥamīl*, *kafil* and *za'īm* 'claimant.' According to Islamic law, a person who becomes *ḍāmin* or surety must enjoy full civil rights.

A married woman can become a guarantor. A sick person can be a guarantor to the extent of responsibility for the value of the disposal of the third of his or her estate. Such a surety (*ḍāmin*) may be given for a debt which is not yet due and may be paid at once provided it is one which can be legally extinguished before it has fallen due. An extension of the period may be sought by the *ḍāmin* provided the debtor is solvent. If he has the means to discharge the debt, it will be considered illegal to ask for such an extension through surety. A *ḍāmin* or a surety can withdraw so long as the loan has not been made, but he cannot withdraw

prior to the creditor taking an oath as to the existence of the debt. The debt in question must be such that it can be discharged by the surety.

The *ḍāmin* has his remedies if his principal proves to be a defaulter. He can sue him in the court of the *qāḍī* for what he has paid either in money or in kind but he will have to prove that such payment was made. Everything that discharges the obligation of the principal debtor also discharges the obligation of the *ḍāmin*. If the surety dies, the payment of the debt that he has guaranteed is to be made chargeable upon his estate. A surety can be sued as long as the debtor is present and solvent. In the case where several persons constitute themselves as sureties for one debtor and for one and the same debt, the creditor can only claim from each co-surety the amount each has given guarantee for unless they have constituted themselves jointly and severally liable.

5. *Ijārah: Hire*

The contract of hire in Islamic law is called *ijārah* (also known as *kirā'*) which is derived from an Arabic word *ajr* meaning remuneration or reward.

There are three cases:

1. The hire of human beings, which is called *ijārah*.
2. The hire of animals, properties or land which is called *kirā'*.
3. The hire of things such as ships which are conditional, i.e. there is no guarantee that a ship will complete its voyage and return, so that the payment of the wage *ju^{cl}* is not made until the completion of the voyage.

Ibn Juzayy al-Kalbī said:

The noun *ijārah* is used in particular for [hiring] humans and the noun *kirā'* is used for [hiring] animals,³⁸ houses and land.

He also said:

Second section, concerning the *ju^{cl}* (wage), which is *ijārah* for a benefit the obtainment of which is stood surety for, and it is permissible, contrary to Abū Ḥanīfah. The difference between it and *ijārah* has three aspects:

1. That the benefit is not obtained by the person paying the wage until the work is completed such as the return of a slave or a fugitive that has fled, contrary to *ijārah* because he obtains the benefit according to the amount of the work that has been done, and so for that reason when an employee has done a part of the work for which he is being paid, then he gets the wage according to the measure of what he has done. But he does not obtain any of the *ju^{cl}* until the work has been done, and renting ships is an example of *ju^{cl}*, so that the wage is not obliged except by fulfilment, contrary to Ibn Nāfi^c.

2. That the work done for a *ju^{cl}* may be known or it may be unknown, such as digging a well until water emerges from it, and it may be close or far, contrary to *ijārah*, for which it is necessary that the work for it should be known. There is some doubt between *ju^{cl}* and *ijārah* concerning stipulating for a doctor the recovery of a sick person, and concerning a teacher being employed to teach the Qur'ān.

3. That it is not permissible to stipulate advance payment of the wages for *ju^{cl}* contrary to the case with *ijārah*. (Al-Kalbī, Ibn Juzayy, *al-Qawānīn al-fiqhiyyah*, *al-kitāb ar-rābi^c min al-qism ath-thānī fī al-^cuqūd al-mushākalah li al-buyū^c*, *al-bāb al-awwal fī al-ijārah wa al-ju^{cl} wa al-kirā'*)

The price in these cases should be in proportion to the temporary benefit sold. The famous Mālikī scholar and jurist ad-Dardīr says that the words *ijārah* and *ajr* are synonymous.

Ijārah is referred to in the Qur'ān in respect of hiring the services of Mūsā ؑ by a figure, said to be Shu'ayb ؑ, on the recommendation of his daughter after Mūsā ؑ had helped them in watering their flocks:

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنِ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ قَالَ إِنِّي أُرِيدُ أَنْ أَكْحَلَ
إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي ثَمَانِي حَجَّجٍ فَإِنْ أَتَمَمْتَ عَشْرًا فَمِنْ عِنْدِكَ

One of them said, "Hire him, father. The best person to hire is someone strong and trustworthy." He said, "I would like to marry you to one of these two daughters of mine on condition that you work for me for eight full years. If you complete ten, that is up to you." (Sūrat al-Qaṣaṣ 28:26-27)

Ships are excluded from the above definition of *ijārah* because transport by sea can only form the object of a conditional contract which is termed *miyārah*, the chartering of a ship.

For *ijārah* to be valid, the ingredients essential are the hireling (the person to be hired) and the lessee, the price or remuneration for the hire and the consent of the person hired. The contracting parties must be legally capable to enter into the *ijārah* contract and there must be proper stipulation of price or remuneration. Ibn Juzayy al-Kalbī said:

First section, concerning *ijārah* and it is permissible according to the dominant majority, and its principle elements are four:

1. The lessee.
2. The hireling, and with respect to both of them the same is stipulated as is stipulated for two parties to a sale. It is abhorrent for a Muslim to hire himself to a *kāfir*.
3. The wage.
4. The benefit, about which it is stipulated the same as is stipulated in general concerning the price and the thing priced. (Al-Kalbī, Ibn Juzayy, *al-Qawānīn al-fiqhiyyah*, *al-kitāb ar-rābi*^c *min al-qism ath-thānī fi al-^cuqūd al-mushākalah li al-buyū*^c, *al-bāb al-awwal fi al-ijārah wa al-ju*^c *l wa al-kirā*^c)

The remuneration for hire is to be paid day by day but in the following cases, it is to be paid in advance:

1. If it consists of a definite object.
2. If there has been a stipulation to that effect.
3. If it is a local custom to do so.
4. If it is for hire of any animal for some definite journey which is not yet commenced.

The same value will presumably apply in cases of modern means of transport.

The *ijārah* contract will be void if it is combined with a conditional agreement, e.g. a person agrees to grind corn subject to his receiving the barn, or that he agrees to weave cloth in return for a proportional share of the cloth. The contract will be null and void if in a letting agreement of land, the rent is given

in the form of foodstuff. The remuneration or salary in an *ijārah* contract may be fixed in proportion to the work to be done. An employer may hire from his employee the things he has let. A master who takes an apprentice may stipulate that the apprentice shall engage himself for one year.

Hired servants, workmen or persons hiring moveables will be considered as simple bailees, and hence, the risk will not be at their charge as long as there has been no negligence on their part. The caretaker of houses or workmen working for their employer or brokers or agents shown to be honest persons or sailors whose ship has been lost due to an act of Allah will not be deemed responsible for the loss or damage.

An agreement in respect of *ijārah* can be rescinded if the hirer or lessee is evicted or if a workshop is closed by order of the government authorities or if a hired wet-nurse becomes pregnant or falls ill and is unable to nurse the child. The *ijārah* agreement ceases on the death of the workmen engaged, but does not cease on the death of an employer.

Likewise, the *kirā'* agreement ceases if the thing hired out is lost but not on the death of a person who has hired it.

Where disputes arise in respect of a verbal letting agreement of land or houses, and neither side can prove their allegations, each party is called upon to swear an oath and the contract will be annulled.

6. TAḤKĪM: ARBITRATION CONTRACT

Taḥkīm or arbitration contract is that form of contract in which it is agreed that in case of any dispute or disagreement in the terms of the contractual agreement, it will be settled through the appointment of a *ḥakam* or arbitrator.³⁹

Notes

¹ The *āyāt* at the beginning of Sūrat al-Muzzammil are held to have made standing in prayer at night obligatory at the beginning of Islam.

² Sūrat al-Humazah 104: 2

³ Sūrat al-Baqarah 2: 275

⁴ Sūrat al-Isrā' 17: 26

⁵ Sūrat al-Isrā' 17: 29

⁶ Sūrat an-Nisā' 4: 2

⁷ Al-Bukhārī 34, *ḥadīth* 67

⁸ *Al-Muwatṭa'*, Book 31, Number 31.24.56 which is a *ḥadīth* of 'Umar.

⁹ *Al-Muwatṭa'*, Book 31, Number 31.44.97

¹⁰ *Al-Muwatṭa'*, Book 31, Number 31.8.10

¹¹ Al-Bukhārī 34, *ḥadīth* 75, 82, 83

¹² *Al-Muwatṭa'*, Book 31, Number 31.15.27

¹³ Al-Qayrawānī, *Risālah*, *Op. Cit.*, See chapter: *Bāb fī al-buyū' wa mā shākala al-buyū'*, pp. 102-112

¹⁴ Cf. Ṣaḥnūn, *al-Mudawwanah al-kubrā*. 15:197: ash-Shāṭibī, *al-Muwāfaqāt fī uṣūl ash-sharī'ah*, vol. 2, pp. 248-264; al-Kāshānī, *Badā'i' aṣ-ṣanā'i'*, 7, 171.

¹⁵ Al-Jawzī, Ibn Qayyim, *al-I'lām*, vol. 3, p. 96; also see ash-Shāṭibī, *al-Muwāfaqāt*, *Op. Cit.*, vol. 2, p. 327

¹⁶ Ash-Shāfi'i, *Kitāb al-umm*, vol. 3., p. 194; *al-Mughnī*: vol. 4, p. 525: al-Kāshānī, *Badā'i' aṣ-ṣanā'i'*, cit., vol. 1, p. 170

¹⁷ *Al-Minhaj*, p. 174; *Durr al-mukhtār*, vol. 3, p. 201

¹⁸ Coins may be differing qualities of gold and silver.

¹⁹ *Gharar* sale comprises a large number of sales of unknown or uncertain products, many of which are catalogued in the *ḥadīth* and

in the books of *fiqh* separately but are in fact examples of *gharar*, such as *munābadhah* and *mulāmasah*.

²⁰ *‘Ariyyah* is to assign, for example, a date palm and its produce to a person for their use. In this case, it is permissible for the person to sell the ripe dates on the tree, whose value has been estimated, for a consignment of dry dates.

²¹ There are various forms that this can take, such as selling whatever a thrown pebble lands on.

²² Common Law is the basis of law in the UK and the US. However, futures transactions are now conducted globally.

²³ This transaction was the basis of what is called sharecropping. It was the contract by which the newly ‘freed’ slaves in the southern states of America were permanently indebted. See Oliver, Paul, *The Story of the Blues*. Chilton Book Co. (Jan. 1982)

²⁴ But the other *madhhabs* only permit the original donor of the *‘ariyyah* to purchase the dates.

²⁵ ash-Shawkānī, *Nayl al-awṭār*, Cairo (undated), vol. 5, p. 226

²⁶ *Ibid.*

²⁷ aṭ-Ṭahāwī reports from Imām Mālik, cf. ash-Shawkānī, *Nayl al-awṭār*, *Op. Cit.*, p. 226

²⁸ Also see Ibn Ḥajar, *Fath al-Bārī sharḥ Ṣaḥīḥ al-Bukhārī*, vol. 4, pp. 276-277

²⁹ The verb can have the sense of selling to a person and buying on his behalf.

³⁰ *Ibid.* The second half of the previous *ḥadīth* from *Ṣaḥīḥ al-Bukhārī*. There are a number of *ḥadīth* in the same sense.

³¹ az-Zurqānī from his commentary on the *Muwaṭṭa’*.

³² “*Shirkah*, *sharkah* and *sharikah*, but the first is the more chaste.” Ad-Dasūqī in his *Hāshiyah*.

³³ Mostly authors refer to partnerships of two people, but the author here seems to refer to the permissibility of two or more partners.

³⁴ For details, see *Al-Mughnī*, vol. 5, p. 111; *Minhāj*, p. 179; *Durr al-mukhtār*, vol. 2, p. 546

³⁵ *shirkah ‘inān* is the co-partnership of two persons in one particular thing, exclusive of the rest of the articles of property of either. Lane’s *Arabic-English Lexicon*.

³⁶ *Fulūs* sing. *fals*, is coinage of non-precious metals, which were used for small transactions. Their value does not exceed that of half of a dirham. According to all the Imāms except for Abū Ḥanīfah they are not included in *zakāh* assessment except by traders.

³⁷ Sūrat al-Baqarah 2: 273

³⁸ Such as mounts or beasts of burden.

³⁹ *al-Minhāj* p. 181; *Sharḥ al-Wiqāyah*, vol. 3, p. 740