



← RULINGS OF →
ISLAMIC LAW
A SIMPLIFIED PRESENTATION



◇ CHAPTER 9: ◇

COMMERCIAL TRANSACTIONS



Chapter 9

Commercial Transactions

In Islamic contexts, a ‘sale’ means the permanent exchange of one property or legitimate benefit for another, even for a deferred handing over, provided that it is neither usury nor loan.⁴⁰¹

Ruling: Sales are permissible in Islam, as Allah says: ‘But Allah has permitted trade and has forbidden interest.’ (2: 275). Ibn [Umar reports that the Prophet (peace be upon him) said: ‘When two persons make a sale, each of them continues to have a choice as long as they are together and have not parted.’⁴⁰² It is universally agreed by Muslims that trade is permissible. Moreover, people need trade so that a person can have what is in possession of another, because it serves his interests and he cannot legitimately acquire it except by purchase. This means that sale is permissible because it meets people’s needs.⁴⁰³

Essentials: A sale has three essentials: parties, subject of sale, and a formula.⁴⁰⁴

⁴⁰¹ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 211.

⁴⁰² Related by al-Bukhari, *hadith* No. 2,112; Muslim, *hadith* No. 1,531.

⁴⁰³ Al-Zuhaili, *Al-Fiqh al-Islami*, vol. 5, p. 3,306.

⁴⁰⁴ Al-Shawkani, *Fath al-Qadir*, vol. 5, p. 74; al-Bahuti, *Kashshaf al-Qina [*, vol. 2, p. 3.

Witnesses

To have witnesses to a sale is recommended, but not obligatory.⁴⁰⁵ Allah says: ‘Have witnesses when you make business deals’ (2: 282). This is a clear order, but it is meant as a recommendation, rather than obligation. [Imarah ibn Khuzaymah reports that his uncle, a Companion of the Prophet (peace be upon him), told him that the Prophet (peace be upon him) once bought a horse from a Bedouin and told the Bedouin to follow him so that he could give him the money. The Prophet (peace be upon him) walked fast, but the Bedouin was slow, and people continued to ask him if the horse was for sale, not realizing that the Prophet (peace be upon him) had already bought it.⁴⁰⁶ This *hadith* shows that the Prophet (peace be upon him) bought the horse but there was no one to witness the sale. Had it been necessary or obligatory, the Prophet (peace be upon him) would have ensured the presence of witnesses. Moreover, during his lifetime the Prophet’s (peace be upon him) Companions used to trade in the markets, but we have no report that he ordered any of them to ensure the presence of witnesses to a sale. Nor do we have a report that they brought witnesses to their deals. Needless to say, trading is something that goes on all the time, and if people were required to have witnesses for every sale, this would have caused hardship. Never the less, taking witnesses eliminates the possibility of cheating or denying what was agreed upon.

⁴⁰⁵ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 214.

⁴⁰⁶ Related by Ahmad, *hadith* No. 21,883; Abu Dawud, *hadith* No. 3,607; al-Nassa’i, *hadith* No. 4,647; al-Hakim, vol. 2, p. 21.

Conditions: The following conditions must be met for the sale to be valid:

1. There must be agreement between the seller and the buyer. Allah says: ‘Believers, do not devour each other’s wealth illegally, unless it be through lawful trade which you conduct by mutual consent’ (4: 29). Abu Sa[‘id al-Khudri reports that the Prophet (peace be upon him) said: ‘A sale can only be through mutual agreement.’⁴⁰⁷
2. Each of the two parties should be a person of age, sane and rational.
3. The seller must be the owner of what is being sold, or someone acting for the owner, such as an attorney, guardian, executor, manager or employee assigned to selling. No person may sell something he does not own. The Prophet (peace be upon him) said to Hakim ibn Hizam: ‘Do not sell what you do not possess.’⁴⁰⁸
4. What is being sold should be something that is permissible to use in the normal way, not in case of necessity. Jabir reports that the Prophet (peace be upon him) said: ‘Allah has forbidden the sale of wines, carrion, pigs and idols.’⁴⁰⁹ Ibn [Abbas reports that the Prophet (peace be upon him) said: ‘If Allah forbids people to eat something, He also forbids them to take its price.’⁴¹⁰

⁴⁰⁷ Related by Ibn Majah, *hadith* No. 2,185; Ibn Hibban, *hadith* No. 4,967; al-Bayhaqi, vol. 6, p. 17.

⁴⁰⁸ Related by Ahmad, *hadith* No. 15,311; Abu Dawud, *hadith* No. 3,503; al-Tirmidhi, *hadith* No. 1,232; al-Nassa’i, *hadith* No. 4,613; Ibn Majah, *hadith* No. 2,187.

⁴⁰⁹ Related by al-Bukhari, *hadith* No. 2,236; Muslim, *hadith* No. 1,581.

⁴¹⁰ Related by Ahmad, *hadith* No. 2,221; Abu Dawud, *hadith* No. 3,488; al-Bayhaqi in *Al-Sunan al-Kubra*, *hadith* No. 11,051.

5. What is being sold can be delivered to the buyer. What cannot be delivered is considered like something that does not exist, and as such it cannot be sold. It is in fact a form of *gharar*, which means something deceptive: it has an appearance but its substance is unknown. In such a sale, the buyer may give the price agreed but may not obtain what he bought. Thus, it is not permissible to buy a fish that is still in the water, the stones that are still in the dates, birds flying in the sky, milk still in the cow, the unborn cub, or an animal in the wild. Abu Hurayrah reports: ‘Allah’s messenger has forbidden any *gharar* sale.’⁴¹¹
6. The subject of the sale must be known to both parties, either both seeing it at the time of the sale or by describing it in a way that distinguishes it from other things. Lack of knowledge of what is being bought and sold counts as *gharar*, which is forbidden. To buy something one has not seen, or one has seen but does not know, and it is not present at the time of the deal is wrong.
7. What is being sold should be defined and the price should be clearly stated.

Purchase by installments

This refers to a sale where the price of what is purchased is being paid in installments at specific dates or times.⁴¹² For example, a car being sold for 100,000 of the local currency on terms of an immediate payment of 40,000 and 12 monthly

⁴¹¹ Related by Muslim, *hadith* No. 1,513.

⁴¹² Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 219.

payments of 5,000 each. Such an arrangement as this is permissible, as [A'ishah reported: 'The Prophet (peace be upon him) bought food from a Jew with payment deferred until a specified date and gave him an iron shield as a pledge of surety.'⁴¹³

Conditions: In addition to the aforementioned conditions applicable to sales, the following conditions should be met for sales paid for by installments:

1. The seller must be in possession of the article to be sold and be able to dispense with it at the time of the sale. It is not permissible for the two parties of the sale to agree the price and the terms of payment, and then for the seller to buy the article and hand it over to the purchaser. This is forbidden because the Prophet (peace be upon him) said: 'Do not sell what you do not possess.'
2. It is not permissible to force the purchaser, either at the time of the deal or later, to pay more than the price agreed if the purchaser defaults on some installments when they fall due. To do so makes the transaction usurious, and all usurious transactions are forbidden in Islam.
3. It is forbidden for the purchaser to delay payment of any instalment if he is able to pay it when it is due.
4. The seller may not retain ownership of the goods after the sale. It is, however, permissible for the seller to stipulate that the goods are pledged to him, in order to guarantee payment of the installments on time.

⁴¹³ Related by al-Bukhari, *hadith* No. 2,068; Muslim, *hadith* No. 1,603.

Usury: definition and ruling

The Arabic term *riba*, which means ‘usury’, originally means ‘increase’. In Islamic usage it means ‘an increase in one of the two exchanged items without a compensation to offset this increase.’⁴¹⁴

Usury is forbidden, which is clearly stated in the Qur’an. Allah says: ‘Allah has made trade lawful and usury forbidden’ (2: 275), and ‘O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers.’ (2: 278). The Prophet (peace be upon him) considered it one of the major sins and he cursed all those who participated in usurious transactions, whatever was their role. Jabir reports: ‘Allah’s messenger (peace be upon him) cursed the one who devours usury, the one who pays it, the one who writes the contract between them and the two witnesses to the contract. He said that they are all the same.’ The Muslim community is unanimous that usury is forbidden in Islam.⁴¹⁵

Types

One: *Riba al-Faḍl* (i.e. an increase in quantity)

This means that the two items exchanged in a particular deal are of the same type but the quantity of one of them is more than the other. To give an example, a deal stipulates that the

⁴¹⁴ Ibn ʿAbidin, *Al-Durr al-Mukhtar*, vol. 4; p. 184.

⁴¹⁵ Al-Khatib al-Shirbini, *Mughni al-Muhtaj*, vol. 2, p. 21; *Al-Muhadhdhab*, vol. 1, p. 270; Ibn Qudamah, *Al-Mughni*, vol. 4, p. 1; *Al-Mabsut*, vol. 12, p. 109; Al-Shawkani, *Fath al-Qadir*, vol. 5, p. 274.

purchaser buys 1,000 kilograms of wheat for 1,200 kilograms of wheat. The two parties make the exchange when the deal is made and the increase of 200 kilograms of wheat is extra and is given for nothing in return.

Islamic law forbids this type of usury in six kinds of commodity: gold, silver, wheat, barley, dates and salt. If any of these six kinds is sold for the same kind, there can be no increase in the two quantities exchanged. Abu Saʿīd al-Khudri reports that the Prophet (peace be upon him) said: ‘If gold is sold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, or salt for salt, then it must be one for one, and immediate exchange. Whoever gives or asks for extra commits usury. The giver and the taker are the same.’⁴¹⁶ Anything that shares the same reason for prohibition is likewise forbidden. The reason that makes such an exchange usurious is measure and weight. Therefore, any extra given in a deal that exchanges quantities of the same kind that is determined by measure or weight is usurious and forbidden, even though the exchanged quantities of the same kind may differ in quality.⁴¹⁷

Two: *Riba al-Nasiʿah* (i.e. increase for a delay)

This refers to an additional quantity of one of the exchanged items in return for delayed payment, or in return for delayed possession in the sale of two kinds that share the reason applicable to *riba al-Faḍl*, when one of them is not money. To

⁴¹⁶ Related by Muslim, *ḥadīth* No. 1,584.

⁴¹⁷ Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, vol. 2, p. 140.

give an example: One person sells 1,000 kilograms of wheat in return for 1,200 kilograms of wheat to be given in a year's time. The other form is to sell one kilogram of barley for one kilogram of wheat, but no exchange of the goods takes place.

This type of deal is forbidden, and all the texts that forbid and warn against usury in the Qur'an and the Sunnah primarily include this type of usury. It is the one that was practised in pre-Islamic days and is the type offered by usurious banks in our present time.⁴¹⁸ Abu Sa'īd al-Khudri reported that the Prophet (peace be upon him) mentioned gold and silver and then said: 'Do not sell anything of these that is not present in return for what is present.'⁴¹⁹

Loans: definition and supporting evidence

A loan is money given by one person to another to be returned later in the same amount, so as to benefit the recipient only. It is legitimate, as is clearly stated in numerous Qur'anic verses and *hadiths* that encourage helping others and easing their problems. It is universally agreed by Muslims that loans are perfectly lawful.⁴²⁰

Abu Rafī' reports that 'Allah's messenger borrowed a young camel from a certain man. He subsequently received a number of camels which were part of people's zakat. He ordered Abu

⁴¹⁸ Al-Ramli, *Nihayat al-Muhtaj*, vol. 39, p. 3; Ibn 'Abidin, *Al-Durr al-Mukhtar*, vol. 21; p 2.

⁴¹⁹ Related by al-Bukhari, *hadith* No. 2,177; Muslim, *hadith* No. 1,584.

⁴²⁰ Ibn 'Abidin, *Al-Durr al-Mukhtar*, vol. 4, p. 179; al-Dasuqi, *Hashiyah*, vol. 2, p. 222; Al-Dardir, *Al-Sharh al-Saghir*, vol. 3, p. 291.

Rafi [to give the man a similar camel. Abu Rafi [came back later and said that the youngest camel among them was already over six years old. The Prophet (peace be upon him) said to him: “Give it to him. The best of people are the ones who repay their debts best.”⁴²¹

Surety

The Arabic term *rahn*, which means ‘surety’, is defined as giving something of value as security for a debt. Should the borrower fail to repay his debt, then the surety may be used or sold to repay the creditor.⁴²² Its legitimacy is based on the Qur’anic verse that says in respect of loans that need to be documented: ‘And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken.’ (2: 283). The fact that the verse mentions this in a case of travel is to highlight something that often happens. The Sunnah clearly indicates that giving something as surety is perfectly legitimate. [A’ishah reports: ‘The Prophet (peace be upon him) bought food from a Jew with payment deferred until a specified date and gave him an iron shield as a pledge of surety.’

Rulings:

1. It is not permissible to give as surety something that cannot be sold, such as an endowment or a dog, because

⁴²¹ Related by Muslim, *hadīth* No. 1,600. It should be noted that: 1) The older camel is more valuable than a young one because it could be better used and for harder tasks. Hence the Prophet’s (peace be upon him) comments. 2) The fact that the Prophet (peace be upon him) gave the man more than what was due to him does not constitute usury, because this was not agreed between them in advance. This is a gift he gave to the man, which is perfectly permissible. 3) The Prophet (peace be upon him) must have borrowed the camel in the first place to help someone else, not for his own use. Had it been for himself he could not have repaid the man from zakat, as zakat was not lawful for him to take.

⁴²² Ibn Qudamah, *Al-Mughni*, vol. 4, p. 326.

this cannot be used to repay the creditor. Nor is it permissible to give in pledge something that the giver does not own.

2. It is essential to know the amount of the surety, its type and description.
3. The party giving the surety should be a person who is qualified to take such an action, the owner of the thing to be pledged or has the authority to give it as surety.
4. Neither the party giving the surety, nor the one accepting it, can dispose of the pledged article without the consent of the other party.
5. It is not permissible for the person taking the surety to benefit by the pledged article unless it is an animal that can be ridden or milked. In this case, it is permissible for him to ride it or take its milk, provided that he bears the cost of looking after it.
6. The pledged article is a 'deposit' for the party receiving it, and he only guarantees it in case of misconduct. When the time is due of repaying the debt that the article was pledged in surety for, the creditor must repay it. If he does not, the judge forces him to repay it. If he still refuses to pay, the judge may punish or imprison him until he has repaid. Alternatively, he may order the sale of the pledged article to repay the creditor.

Partnership: definition and rulings

The Arabic term *sharikah*, which means in modern parlance ‘partnership, firm or company’, originally means joining two properties together so that they cannot be separated. In Islamic contexts it means ‘having joint rights or actions’.⁴²³ Examples of joint rights include the rights to inheritance, will, or a gift that gives shares of benefit or ownership. This is also called ‘partnership in ownership’. Having a joint action is one that results from partnership made by contract. This type is the focus of our discussion here.

Partnership is legitimate as evidenced by several Qur’anic verses and *hadiths*. Allah says: ‘Thus do many partners wrong one another, except for those who believe and do righteous deeds’ (38: 24) and ‘If they are more than two, then they shall share in one-third’ (4: 12).

Partnership is a legitimate contract which enables people to cooperate in investing their money and in undertaking large industrial, commercial or agricultural projects that they cannot individually undertake.

Hire

In Islamic terminology *ijarah*, or hire, means a contract to obtain a known benefit in an ongoing arrangement for a specific period from a known or described object, or a contract to get

⁴²³ Ibn Qudamah, *Al-Mughni*, vol. 5, p. 3,875.

some specific work for a specified remuneration.⁴²⁴ This is a legitimate arrangement as evidenced by the Qur'an and the Sunnah. Allah says: 'If, after that, they (i.e. your divorced wives) suckle your infants, pay them for it' (65: 6). 'Said one of the two women, "O' father, Hire him; for the best person that you could hire is one who is strong and worthy of trust"' (28: 26). It is confirmed that 'the Prophet (peace be upon him) and Abu Bakr hired a man from the al-Dayl tribe who was an expert guide.'⁴²⁵ This was when they migrated from Makkah to Madinah and they wanted him to take them along unfamiliar routes so as to elude their pursuers.

Stern warnings are given to those who do not pay people their agreed wages. Abu Hurayrah reports that the Prophet (peace be upon him) said: 'Allah Almighty said: "I shall be the adversary of three types of person on the Day of Resurrection: a man who has given his word by Me and has broken it; a man who has sold a free man and has consumed the price; and a man who has hired a workman, has exacted his due in full from him and has not given him his wage.'⁴²⁶ Ibn [Umar reports that the Prophet (peace be upon him) said: 'Give anyone you hire their wages before their sweat has dried.'⁴²⁷

Conditions for hire

1. The hire must be undertaken by someone who is qualified to act, i.e. a sane free adult with sound judgement.

⁴²⁴ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 242.

⁴²⁵ Related by al-Bukhari, *hadith* No. 2,264.

⁴²⁶ Related by al-Bukhari, *hadith* No. 2,227.

⁴²⁷ Related by Ibn Majah, *hadith* No. 2,443; al-Quda [i in *Musnad al-Shihab*, *hadith* No. 744.

2. The benefit to be gained must be recognised, because it is the subject matter of the contract. As such, it is treated in the same way as sale, where the article sold must be known.
3. The remuneration must be known, because it is given in an exchange of things. Hence it is treated like the price in a sale transaction.
4. The benefit should be lawful. No hire is valid for something forbidden such as fornication or selling wines.
5. The benefit should be possible to realize. It is not permissible to hire someone to do what he cannot possibly do, such as hiring a blind man to do something that needs sight.
6. The benefit should be owned by the one offering it, or he should be permitted to give it. Hire is a sale of benefits and, as such, this condition applies.
7. The period of hire should be known. Hire for an unspecified period is not permissible because it leads to contention.

Borrowing

To borrow means to gain the benefit of something, but it remains intact. A borrowed article is taken by the borrower to benefit by it, such as borrowing a car to take a journey then return it undamaged to its owner.⁴²⁸

⁴²⁸ Al-Bahuti, *Kashshaf al-Qina* [, vol. 4, p. 67.

Borrowing is lawful and encouraged in Islam because it is implied in Allah's order: 'And cooperate in righteousness and piety' (5: 2). Safwan ibn Umayyah reports that 'the Prophet (peace be upon him) borrowed from him body shields before the Battle of Hunayn.'⁴²⁹ Anas also reports that 'the Prophet (peace be upon him) borrowed a horse from Abu Talhah,' who was Anas's stepfather.

Conditions for borrowing

1. The borrower and the person lending the article should be qualified to take such an action, and the borrowed article should be owned by the person lending it.
2. The borrowed article should be usable for lawful purposes. It is not permissible to borrow something for whatever is forbidden, such as borrowing a cup made of gold or silver to use for drinking.
3. The borrowed article should remain intact after using it. If it is consumable, such as food, it cannot be lent or borrowed, unless the lender allows the person to consume the item and replace it with that which is similar. In conclusion, there should be no material benefit for the lender stipulated on the loan as this would make it *riba*.

⁴²⁹ Related by Ahmad, *hadith* No. 15,302; Abu Dawud, *hadith* No. 3,563; al-Hakim, vol. 2, p. 54.

Endowment

Endowment means dedicating something that can give benefit, while retaining ownership of it, in order to gain reward from Allah. This means that the principal is retained, but the yield is given freely.⁴³⁰ For example, a person may make a house an endowment, renting it and using the rent to help poor people, or to maintain a mosque, or to publish religious books, etc.

Creating an endowment is highly encouraged, and this is illustrated by what is reported about [Umar: ‘He obtained some agricultural land at Khaybar. He went to the Prophet (peace be upon him) and asked him: “O Messenger of Allah, I have this land at Khaybar, which is the most valuable property I have ever owned. What do you order me to do with it?” The Prophet (peace be upon him) said: “You may wish to retain the principal and dedicate the yield for charity.” [Umar did that, stipulating that the land itself would never be sold, given as a gift, or possessed by inheritance.’⁴³¹

Abu Hurayrah reports that the Prophet (peace be upon him) said: ‘When a human being dies, all his deeds come to an end except in three ways: a continuous act of charity, a useful contribution to knowledge or a dutiful child who prays for him.’⁴³² The continuous act of charity means the endowment.

⁴³⁰ Al-Zuhaili, *Al-Fiqh al-Islami*, vol. 6, p. 4,535.

⁴³¹ Related by al-Bukhari, *hadith* No. 2,737; Muslim, *hadith* No. 1,632.

⁴³² Related by Muslim, *hadith* No. 1,631.

Rulings: The following rulings apply to endowments:

1. The person dedicating the endowment must be qualified to take such action, being a sane, free adult who can make appropriate decisions.
2. The endowed property should be of a type that can be used for a long time, while it remains, and it must be clearly identified.
3. The endowment should be to serve a good purpose, such as the maintenance of mosques, helping poor people, education, etc. Its aim is to earn Allah's reward. Therefore, it is forbidden to make an endowment to maintain the temples of non-Muslims or to buy what is forbidden.
4. If what is endowed falls into a state that makes it of no benefit, it may be sold provided that its value is used for a purpose similar to that intended by the person who endowed it. For example, if it is a mosque the funds should go towards building a similar mosque, and if it is a house the funds should be used towards buying a similar house. This is to maintain the purpose for which it was originally endowed.
5. An endowment is a binding contract which is confirmed by a mere verbal statement. An endowment cannot be revoked or sold.
6. The endowed property should be identified; endowing what is unidentified is void.



7. The conditions stipulated by the person creating the endowment must be abided by, as long as they do not contravene Islamic law.
8. If the endowment is for the benefit of one's children and grandchildren, it should be shared equally between males and females.