

Trade Transaction

Compiled by

Mohammed Ashraf, FCCA

[Extracts from Sheikh-ul-Islam Imam Yousuf Al Qaradawi]

People in general need food, clothes, houses, vehicles and other necessities of life in addition to different luxuries which are obtained through trade and it is obvious that they also need rulings on conducting such transactions. This article is an endeavor to point out rulings on transactions by Allah, in His Noble Book - Quran, and the Prophet ﷺ through his honorable Sunnah (Prophetic Tradition).

Lawyers, Accountants and students pursuing these professions may keep an eye over the contract and sale of good act while reading these 1500 year old Islamic injunctions in this article.

Trade

Trade is permissible according to the Quran, Sunnah, consensus of Muslim scholars, and analogical deduction. Allah Says (what means): "...but Allah has permitted trade..." [Quran 2: 275] and also Says (what means): "There is no blame upon you for seeking bounty from your Lord (during Hajj) ..." [Quran 2: 198]

The Prophet ﷺ said: "The seller and the buyer have the right to keep or return goods as long as they have not parted. If both parties speak the truth and point out the defects and qualities (of the goods), then they will be blessed in their transaction. But if they tell lies or hide something, then the blessings of their transaction will be destroyed." [Bukhaari]. The Prophet said: "Whoever cheats is not one of us". [Muslim]

Muslim scholars uniformly agree on the permissibility of trade transaction in general because people's needs are interdependent. Any wise person does not grant anything for nothing. This means that a person usually do not give anything in his possession, like money or goods,

to another person in return for nothing. Consequently, the wisdom necessitates the permissibility of trade in order to enable people to fulfill their needs.

Trade Contract Formulae

Trade transactions can be validated by means of a verbal or written formula. In the modern days we usually call it express or implied contracts.

The verbal formula expresses the sellers' verbal agreement at the time of when he, for example, says to the buyer, "Well, I sell it to you" and the buyers' verbal acceptance of the same when he, for example, says, "And I buy it". This formula is an act of exchange itself whereby the seller is given the usual price and the buyer takes the commodity without any verbal declaration.

Sometimes a trade transaction is validated by means of both verbal and written formulas. Sheikh-ul-Islam Taqi-ud-Deen said: "There are some ways of exchange. First, when the seller gives only a verbal acceptance and the buyer takes the commodity (without declaring his acceptance). For example, a seller may say to the buyer, 'Take this piece of cloth for a dinar (an old Arab coin that equals 4.25 grams of gold), and the buyer takes it (without saying a word). The same ruling applies when the price is a given material; for example, the seller may say to the buyer, 'Take this piece of cloth for yours' and then the buyer takes it. Second, when the buyer declares his acceptance and the seller only gives him the commodity whether the price is a given material or the sale is on credit (and the buyer honestly guarantees to pay).

Third, when neither the seller nor the buyer speaks (about the price) for there is a custom to that effect." [Majmu'ul Fataawa, 29/7-8]

Conditions for Buyer and Seller

There are certain conditions that need to be fulfilled by either the buyer or seller in order to make a trade transaction valid as lacking would invalidate the transaction:

Mutual Consent

A trade transaction becomes invalid if either the seller or the buyer is unjustly forced to conclude it. Allaah, The Exalted, Says (what means): {...but only [in lawful] business by mutual consent...}[Quran 4: 29].

Moreover, the Prophet ﷺ said: "Selling should be only by mutual consent." [Ibn Hibbaan, Ibn Maajah, and other compilers of Hadith]

Coercion

Any transaction concluded through just compulsion is deemed valid, as in the case when the ruler (or the one in authority) forces a bankrupt person to sell his remaining property in order to pay off his debts.

Minor or Sane Person

A trade transaction becomes invalid if either of the seller or the buyer is a minor, a foolish or weak-minded person, an insane person, or a slave who has not taken his master's permission (to conclude the transaction).

Ownership and Contingent Contract

The Prophet ﷺ said to Hakim Ibn Hizam: "Do not sell what you do not have (or possess)." [Ibn Maajah and At-Tirmithi who deems it a Saheeh (authentic) Hadeeth]. Al-Wazeer said: "Scholars agree that it is impermissible for a Muslim to sell whatever is not present with him or whatever he does not possess, and then goes out to buy that thing for his customer, for this is a void trade transaction."

Conditions for Commodity

Lawful to Use

It is impermissible to sell whatever is prohibited for use by a Muslim, such as intoxicants, the flesh of swine, musical instruments, and

dead animals. The Prophet ﷺ said: "Allaah and His Messenger prohibited the trade of intoxicants, dead animals, pigs, and

idols." [Bukhaari and Muslim]. He ﷺ also said: "Allaah prohibited intoxicants and their (gained) prices, dead animals and their prices, and pigs and their prices." [Abu Daawood]. It

is also illegal to sell the impure fats (or the ones affected by impurity) for Prophet ﷺ

the said: "When Allaah prohibits something, He prohibits the price paid for it." [Abu Daawood]. Also, Al-Bukhaari and Muslim related

that the Prophet ﷺ was asked: "O Allaah's Messenger! What about the fat of dead animals, for it is used for greasing the boats and the hides, and people use it (as oil) for lamps?" He ﷺ replied, 'No, it is prohibited.'

Availability of Goods and Contingent Contract

The price and the commodity must be available at the time of conclusion of trade transaction for any unavailable commodity is considered nonexistent and is illegal to be sold.



For example, it is illegal to sell a fugitive slave, a runaway camel, or a bird in the air. Likewise, it is illegal for a Muslim to sell something taken by force except in the presence of the one who took it forcefully, or one who is able to restore it (such as the police or a judge or the like, to guarantee delivering it to the buyer).

Non Existent Future Goods Contract

The price and the commodity must be known to the seller and buyer as hiding any material fact is regarded as fraud which is prohibited in Islam. Consequently, it is invalid for the buyer to buy something that is not seen or recognized by him and vice versa, for the seller to sell. For instance, an animal's embryo in its mother's womb or milk in udders, separately.

Idiocy Contract


There are various selling systems practiced before Islam that are still forbidden in Islam. Mulaamasah means that when the buyer touches something displayed for sale, he has to buy it at the price decided by the seller) and Munaabadhah means that when the buyer throws something to the seller, the buyer has to buy it at the price decided by the seller.

Abu Hurayrah  narrated: "The Messenger of Allaah  forbade selling by mulaamasah and munaabadhah." [Al-Bukhaari and Muslim]. Selling by hasaah (stone) is also prohibited and is another type of sale which means that when the buyer throws a stone at a certain commodity displayed for sale, which he intends to buy at the price decided by the seller.

Conditions for Contract

It is also necessary to study and tackle the different kinds of conditions pointing out the legal and the illegal conditions of trade transaction's contract.

Primary Condition


The scholars of Islamic Jurist  defined a primary condition, "It is obligatory on one of the two parties, buyer and seller, of the sale to sell the other for the benefit of the latter." According to them, a transactional condition is invalid unless it is made at the time of the transaction and embedded in the transac-

tional contract. In other words, a condition is invalid if made before or after concluding the contract.

In general, the conditions in trade transactions are divided into valid conditions and invalid ones.

Validity Conditions

Valid conditions are those that do not contradict the objective of the contract. Such a kind of condition obligates its fulfillment. The

Prophet  said: "Muslims must keep to the conditions they make." [Abu Daawood & At-Tirmithi]

Types of Validity

Such conditions obligate fulfillment also because all conditions in trade transactions are originally legal except for those invalidated and prohibited by the Lawgiver (Allaah Almighty). The valid conditions are of two kinds and are currently known as Guarantees and Warrantees:



First Type

This condition of trade transactions ensures and consolidates the contract. It benefits the one who sets such conditions. Examples of such valid conditions are those made by the seller such as stipulating taking a security deposit or stipulating surety. This surely makes the seller free from worry. There are similar valid conditions in favor of the buyer such as stipulating about delays in the payment or part of it for a specified term, i.e. to pay it at a specific date. So long as the buyer is committed to this condition the sale is valid.

A buyer may also set a condition concerning a specification of the commodity like requiring a special brand or product as people have different preferences. In such a case, the sale is legally valid as long as the commodity meets this condition.

Otherwise, the buyer has the right to cancel the contract or at least get a compensation for the missing stipulated quality. This compensation is estimated by comparing the value of the commodity lacking the required conditioned the difference between the two values can be paid to the buyer if he asks for that.

Second Type: The second type obliges one of the two parties to stipulate lawful benefit from the commodity under certain circumstances. For example, a seller of a house may stipulate staying therein for a specific period, or a seller of a riding animal or a car may stipulate riding it to a certain place.

Jabir  narrated: "The Prophet  sold a camel and stipulated a ride (and use it) until he reaches Madeenah." [Al-Bukhaari and Muslim].


This Hadeeth states the permissibility of selling an animal and stipulating riding it to a certain place. The same goes for similar transactional cases. Another example is when the buyer stipulates a specific work to be done on a commodity like stipulating purchase of firewood by the seller for delivery or buying cloth with a condition upon the seller to stitch it.

Invalid Conditions

There are two types of invalid conditions:




First Type: Any illegal condition invalidates or nullifies the selling contract like when one of the two parties add and addendum to the main contract. For example, it is an illegal condition when a seller of a commodity makes a condition that the buyer must make him partner in business, lend him a sum of money, allow him to share his house, etc. Consequently, he says, "I sell you this commodity on the condition that you rent me your home." Such a condition is legally in-

valid as it nullifies the original contract.

This is because the Prophet  forbade concluding a selling contract based on another conditional contract. (At-Tirmithi & An-Nasaa'i) This Prophetic prohibition was interpreted by Imaam Ahmad Ibn Hanbal exactly as pointed out above.

Second Type: This second type does either nullify or make a clause void but does not render the contract void. For example, a buyer of a commodity may make a condition that he will give it back if he undergoes loss or a seller of a commodity may make a condition that the buyer must not resell it.

Such types of conditions are illegal violating the basic norms and principle of business contract as it is the absolute discretion of buyer to use the purchased commodity in whatever manner he likes. The Prophet, sal-lallaahu alayhi wasallam, said: "If anyone imposes a condition which is not in the Book of Allaah then that condition is invalid even if he imposes one hundred conditions." [Al-Bukhaari and Muslim].

The phrase "in the Book of Allaah" in the aforementioned Hadeeth refers to Sharee'ah (Islamic Law) including the Quran and the Sunnah. It is pertinent to note that still such an invalid condition does not nullify the contract. To illustrate, in the well-known incident of Bareerah, the master who sold her made a condition that her wala (freed slave's loyalty by virtue of emancipation) would go to him if she was emancipated [freed]. However, the Prophet  declared that the condition was null but he  did not consider the contract to be invalid. The Prophet  said: "Verily, the Wala' is for the emancipator." [Al-Bukhaari and Muslim]